



LIFE BEGINS

A Publication of the
Senior Lawyers Section
(Washington State Bar Association)

Volume 19 Spring 2017 Number 1

The following article is a detailed synopsis of the second half of our May 2016, Seminar. This article (as well as the first half in our last issue) was written by our Senior Lawyers Section Secretary, Al Armstrong. Al has been doing this for several years and it shows in his writing. No wonder he does such a fantastic job as our ExComm Secretary, too! THANKS AGAIN, AL! (With embarrassed apologies from Editor Ron Mattson for his prior failure to acknowledge Al's contributions.)

Recap of 2016 Senior Lawyers Section CLE May 6, 2016: Part II

By Al Armstrong

Updates at the Supreme Court

Chief Justice Barbara Madsen, Washington State Supreme Court

The afternoon began with our keynote address by our State Supreme Court Chief Justice, Barbara Madsen. She became the first woman elected to the Court in 1992, and since 2009 has been our Chief Justice.

She noted that the Supreme Court has administrative duties as well as decision-making tasks. The Court appoints members (chosen from the legal community and members of the general public) to such panels as the Minority and Justice Commission, Access to Justice Board, the Interpreter Commission and the Board for Judicial Administration (of which Justice Madsen is the Chair). These commissions, among other activities, offer in-put and recommendations regarding proposed state legislation. A concern of many of these committees is the need for providing, at public expense, court interpreter services (in civil as well as criminal cases) to those with limited English skills.

She stressed that the need for widely-available interpreter services has never been greater than at present. The Board of Judicial Administration backed a recently-introduced (2013 regular session) legislative measure that would have assured local jurisdictions reimbursement for one-half

of the costs of providing interpreter services to all persons in need of such services, with the local jurisdiction paying the other half. One would not have to prove indigency in order to have an interpreter appointed. (Under the current law (RCW 2.42.120, 2.43.030 and 2.43.040), the local jurisdiction is only reimbursed by the State for "up to one-half" of the cost.) In other cases (except for those deemed indigent) the costs of interpreter services is borne by the witness or party needing such services. Justice Madsen reported that this bill was not passed, much to her disappointment.

The Chief Justice followed the foregoing remarks with the following Supreme Court update:

In Re Pers. Restraint Petition of Khan – Interpreter Services

Justice Madsen noted that translation services can even be deficient in criminal cases, even involving serious criminal charges, which was the subject of her first "update at the Supreme Court: the case of *In Re Pers. Restraint Petition of Khan*, 184 Wn. 2d 769, 363 P.3d 577 (2015). The defendant, born in Pakistan, was charged with multiple counts of child rape in Snohomish County. His native language was Urdu. He was found guilty at trial. His appeal had been unsuccessful, but the defendant filed a personal restraint petition,

continued on page 4

In This Issue

| | | | |
|---|---|-----------------------------|----|
| Recap of 2016 Senior Lawyers Section CLE: Part II | 1 | CLE Registration Form | 3 |
| 2017 Senior Lawyers Section Conference | | Continuation of Recap | 4 |
| Practice Transitions: Baby Boomers and Beyond! | 2 | Editorial | 10 |

2017 Senior Lawyers Section Conference Practice Transitions: Baby Boomers and Beyond!

May 5, 2017
Seattle Airport Marriott
3201 South 176th Street
Seattle, WA 98188

This seminar has been approved for 7 CLE credits: 1 Ethics, 1 Law and Legal Procedure, and 5 Other.

Make plans now to attend the Senior Lawyers Annual Conference on May 5, 2017 at the Seatac Marriott! Every year this conference features an impressive array of speakers, and this year is no exception. This year the section is addressing the topic of the shifting demographics within the legal profession and the challenges and opportunities ahead for Baby Boomers and beyond. Over a third of the attorneys in WA and nationwide are Baby Boomers facing unique challenges as they decide if, how, and when to transition out of the practice of law. Our seminar this year addresses some of those challenges not only to Baby Boomers but to those who come before and after the Baby Boomer generation.

We also welcome **WA Supreme Court Justice Charles Wiggins** who will discuss *Ethical Lessons from WWII: The Japanese Internment* and former U.S. attorney **Jenny Durkan** who will be discussing the emerging and important issues in *Cybersecurity*.

Other session topics include:

- Real property considerations in your transition plan
- Shifting demographics of the WA State Bar and membership nationally
- Various types of licensing status with the WA State Bar Association and details about what each means
- Addressing ethical issues as you build your transition plan
- Best practices for transitioning out of practice or reducing your practice
- Estate planning for elder clients – advanced planning for dementia

If your schedule is too busy to attend in person, please consider attending via webcast. This is the first year the Senior Lawyer Section will be opening up our seminar to webcast attendees so please take advantage.

If you are not a member of the section we encourage you to join the section and register for the seminar at the section discounted pricing of \$185, an outstanding value for 7 CLE Credits!

For those attending in person there will be a lunch provided in the atrium of the hotel. This is a perfect opportunity to network with fellow colleagues and to make new acquaintances.

A registration form is attached to this message if you would like to send in a check or you can click the link below to access the online registration page for the seminar.

Use this link to register online: <https://www.mywsba.org/OnlineStore/ProductDetail.aspx?ProductId=11715659&page=sem&mt>.

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.



Event Registration

(Please print clearly)

Registrant / Name: _____ WSBA ID #: _____

Company: _____

Address: _____

*Phone #: _____ *Email: _____

***(Required for Webcast Registration)**

Event / Seminar #: 17860STC Omit my name from list of attendees available to program exhibitors & registrant networking list.

Title: Practice Transitions: Baby Boomers and Beyond!: 2017 Senior Lawyers Conference

Event / Seminar Date: May 5, 2017 Amount: \$ _____

Please check the box for type of attendance: In- Person Webcast

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.

CC#: _____ Exp. Date: _____

Name as it appears on credit card: _____

Billing address if different from above: _____

Signature: _____

“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 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”.

| | |
|---|---|
| <p>Send completed form with payment to: Washington State Bar Association 1325 Fourth Avenue, Suite 600 Seattle, Washington 98101-2539</p> | <p>Fax your completed form with credit card information to: Washington State Bar Association CLE Division Fax: (206) 727-8324 Phone: 1-800-945-WSBA or (206)-443-WSBA</p> |
|---|---|

Accounting Use Only

Date: _____ Check: # _____ Total: \$ _____

Recap of 2016 Senior Lawyers Section CLE from page 1

alleging, among other things, that his counsel had been ineffective for not procuring an interpreter, and that failure to have an interpreter's services deprived him of due process and equal protection of the law. His petition was denied but, on discretionary review, the Supreme Court, in a divided opinion, found error, and sent the matter back to the trial court for a hearing to determine if the error was harmless or otherwise. Justice Madsen cited this case as indicative of our need for greater availability of interpreters to meet the needs of our increasingly diverse population.

State v. Blazina – Criminal Defendants' Court Financial Obligations

Justice Madsen, noting the concern about incarceration due to failure to pay court-ordered fines and costs, cited the case of *State v. Blazina*, 182 Wn.2d 827, 344 P.3d 680, 685 (2015). This case dealt with LFOs – legal financial obligations. Many legal observers are questioning our justice system's inadvertent creation of a permanent class of debtors – those criminal defendants who have served their sentences but remain caught in the system because of fines and costs that, many times through no fault of their own, they simply can't pay. Many of these people are then re-incarcerated, thus turning our jails into de facto debtors' prisons. The Chief Justice noted that it is difficult enough for the recently-released to find employment and housing, and it really does no good for society or the taxpayer keep running these defendants through the system. The decision in the *Blazina* case addressed some of the issues. Writing for the Court, Chief Justice Madsen held that the sentencing court must make an individual inquiry, at sentencing, as to the defendant's ability to pay court-imposed fines and costs. In addition, the opinion held that a defendant may later ask for a review of their sentence insofar as to their individual ability to pay court fines and costs even though there was no objection at their original sentencing. The *Blazina* ruling has triggered several personal restraint petitions, resulting in cases being remanded to the sentencing courts.

The Chief Justice related that there have been several developments with respect to defendants and court costs and fines. Recent amendments to RC10.01.160 and RCW 10.73.73.160 have addressed some concerns regarding a defendant, otherwise in compliance with his/her sentence and probation, and his/her inability to pay fines and costs. A more comprehensive treatment of these concerns is addressed in a bill proposed to the 2015 legislative session, which, alas, has not been enacted. This bill would amend and supplement existing sentencing statutes, prohibiting, among other things, interest accrual on non-restitution fines and costs. Further, the courts would be prohibited from imposing costs on an indigent defendant, and may, with the defendant's consent, convert the unpaid costs to

community service, at a rate not below the state minimum wage. In the case of court-ordered restitution, payments by the defendant shall first be applied to payment of the principal of the restitution amount. Defendants would not be sanctioned for failure to pay unless, after considering a particular defendant's income and expenses. Indigence due to being homeless or mentally ill would not be considered by the court as willful failure to pay, and the court is given the specific authority to waive or reduce fines and costs if it finds that the failure to pay fines is not willful. The state would have the burden of showing noncompliance by a preponderance of the evidence. Limits would be placed on ordering defendants to pay costs of incarceration.

State v. EEJ – Free Speech and Police/Minority Community Relations

This case dealt with the arrest of a black 17-year-old who was arrested and convicted of obstruction of a law enforcement officer under RCW 9A.76.020 (1). The conviction was based upon his interaction with the police, who had been called to the home by defendant's mother, concerned about her intoxicated, out-of-control daughter. On appeal to the Washington Supreme Court, the appellant argued that the charge arose out of constitutionally-protected speech. The majority agreed, finding that the defendant's words and conduct (as opposed to conduct alone) were used by the trial court as a rationale for a guilty finding, and that the words used by the defendant (however harsh they were) were indeed constitutionally protected speech.

Chief Justice Madsen concurred in the decision, but outlined her disagreement with the majority in two ways: the youth's conduct was indeed impairing the arresting officers' ability to carry out their tasks, but found that the manner of the officer's running interaction with the defendant may have served to escalate the situation. In her concurrence, the Chief Justice advocated adding a common law requirement to the obstruction statute; that if the facts warrant, the state would not be able to sustain its burden at trial in an obstruction prosecution if the arresting officer had contributed to the escalation of circumstances that resulted in the arrest for obstruction. She noted that there are communities where tensions with law enforcement exist, and, that, in Seattle, a recent study of arrests for obstruction showed that 51% of arrests for obstruction are of African-Americans, whereas blacks constitute only 8% of the city's population. In the case at hand, however, the majority analysis rested on free speech issues, while there was clearly sufficient evidence for conviction based upon the defendant's conduct alone. She noted that one may not escape responsibility for criminal actions by conflating actions with words which may have been said at the scene of the arrest. This reasoning

continued on next page

Recap of 2016 Senior Lawyers Section CLE from previous page

makes officers less safe. In the instant matter, the officers did have legitimate security concerns, and the actions of the defendant clearly made the officer's job more difficult. However, she also found actions of the officer contributed to the direction that the interaction took.

Salas vs. Hi-Tech – Evidence of Immigrant's Undocumented Status Inadmissible

The Chief Justice addressed the issue raised in *Salas* – in a tort case involving lost wages, is the immigration status of an undocumented worker admissible? The case involved a plaintiff, Alex Salas, bringing suit against the defendant Hi-Tech for negligence. The plaintiff's status as an illegal immigrant came to light in pre-trial discovery. At trial, the court admitted evidence of the plaintiff's immigration status over plaintiff's objection. The defendant's rationale (and the trial court's) was that plaintiff's immigration status, and the resultant possibility of deportation bore directly on the question of the plaintiff's claim for future lost wages, as wages would be less in Mexico. The jury found in favor of Hi-Tech and Mr. Salas appealed. The Court of Appeals found this evidence was prejudicial but, as the trial court had not adequately been briefed on the issue, the trial court's ruling was allowed to stand. Our Supreme Court accepted review, and, by the 7 to 2 ruling, reversed the Court of Appeals: "We hold that, with regard to lost future earnings, the probative value of a plaintiff's undocumented status, by itself, is substantially outweighed by the danger of unfair prejudice." Chief Justice Madsen voted with the majority.

State v. A.N.J. – A Motion to Withdraw Plea of Guilty Granted

This case highlighted the Grant County public defender case-load controversy from several years ago.

A 12-year-old defendant (A.N.J.), who had plead guilty in 2005 to one count of First Degree Child Molestation in Grant County, sought to withdraw his plea, citing ineffectiveness of counsel. The attorney who had represented the young defendant was a sole practitioner who had a public defense contract with Grant County. During the year in which he represented A.N.J., he handled 262 other persons with respect to this contract, as well as having charge of 30-40 dependency cases at any given time, plus about 200 other active cases. From a flat fee of \$162,000, he had contracted to not only provide adequate defenses, he was expected to pay for all expert witnesses and investigators. In the event of a legal conflict in an appointed case, he would pay replacement counsel out of this amount. (By the time this matter was before the Supreme Court, Grant County's public defender system had been revamped.)

A few months after the entry of the plea, and prior to sentencing, the defendant hired new counsel and moved to withdraw his plea, alleging his appointed counsel had conducted no investigation and had only spent minimal time with him prior to entering the plea. The trial court denied the motion, and the Court of Appeals affirmed. In the meantime, the trial court sentenced the defendant to 15-36 weeks in custody and required him to register as a sex offender. The original attorney admitted that he probably did not discuss the mandatory minimum or that the defendant's school would be notified of his sex offender status. There were numerous other irregularities – whether the defendant understood the precise elements of the crime charged or that he was aware that being released from the requirement to register as a sex offender was discretionary. The Supreme Court remanded the case to the trial court with instructions to allow the defendant to withdraw his plea based upon ineffective assistance of counsel; the Court, however, did not find any ethical violations on the part of original counsel. The Court noted the public defense system that this attorney and other public defenders have had to work under. The record suggests the attorney believed he acted in the best interest of his client is evidenced by his willingness to "sign a declaration detailing his adequate performance in support of the defendant's motion to withdraw his plea."

King v. King – Constitutional Right to Appointed Counsel in Dissolution Case?

The Chief Justice noted that increasing numbers of litigants in Washington courts are acting in a *pro se* capacity. This challenges the courts to find a way of adjusting to this trend while leaving intact judicial impartiality. In other words, the courts are not really permitted to "even the playing field" when hearing a case wherein one party is unrepresented. However, the Chief Justice noted, in her written materials, the following comment was added to Code of Judicial Conduct 2.2: "it is not a violation of this Rule... for a judge to make reasonable accommodations to ensure *pro se* litigants the opportunity to have their matters fairly heard." She also notes that this still provides little real guidance for the courts. Of course, an attorney who represents a client against a *pro se*, even if well-meaning, is prohibited from giving substantive legal advice to the unrepresented party. At any rate, issues raised by litigants acting *pro se* were addressed by our Supreme Court in 2007 in *King v. King*. In this matter, a dissolution where custody of the parties' children was an issue, the trial court granted the represented party, Mr. King, custody of the couple's three children unrepresented party lost custody of the children. The unrepresented party, through volunteer counsel, moved the court for a new trial and requested that counsel be ap-

continued on next page

Recap of 2016 Senior Lawyers Section CLE from previous page

pointed, at public expense, to represent Ms. King. The trial court denied the motion, citing lack of funding and lack of authority to appoint uncompensated counsel.

Ms. King appealed, and the Supreme Court accepted direct review. This case attracted intense interest, and the Court was deluged with amicus curiae brief from many entities on each side of the issue. The Appellant's request for publically-funded legal counsel was based on several provisions of the Washington State Constitution: article I, section 3 (due process), article I, section 10 (administration of justice) and article I, section 12 (equal protection). Also adduced was the Fourteenth Amendment of the U.S. Constitution. The majority found that, although custody of children involves a very important issue for the parties involved, there is insufficient State involvement in a dissolution action, including one involving custody of children, to require publicly-funded representation. Justice (she was not yet Chief Justice) Madsen dissented. Her opinion detailed the difficulties King encountered at trial, and observed that in past cases, the Supreme Court had indeed, found a wider application under State Const. article I section 3 than under the Fourteenth Amendment "when the fundamental interest in one's children are at stake." Thus, (as opposed to the majority's reasoning) an independent analysis of our equal protection provision *is* required. Under this analysis, she found sufficient State involvement in private dissolution actions (at least those involving child custody) to mandate publicly-paid counsel for indigent parties. "Although the State is not a party opponent in this case, if Ms. King loses, she will be deprived of the care, custody, companionship, and control of the children whether the State takes custody through termination or dependency proceedings or her former husband does through private litigation."

McCleary v. State – Some Legislators Push Back

As we know, our Washington State Supreme Court took our State Legislature to task some time ago regarding school funding. But apparently some members of the Legislature are prepared to dish it out as well as take it. The Chief Justice concluded her written materials with copies of some proposed legislation: Senate Bill 5867 would reduce the size of our Supreme Court from nine to five Justices; the Justices would draw straws in order to determine who departs. The money saved would be used to fund basic education. The Bill was referred to the Committee on Law & Justice.

**American College of Trust and Estate Counsel (ACTEC)
Ethics Rules as Applied to
Estate Planning/Probate/Guardianship**

Karen Boxx

Karen Boxx is a Professor at the University of Washington School of Law, where she teaches in the areas of trust and estates, as well as community property, conflict of laws, cannabis law and professional responsibility. She is also of counsel at Keller Rohrback.

Professor Boxx spoke to us at our 2013 CLE, and this year she favored us with a presentation on the American College of Trust and Estate Counsel's new addition of its Commentaries to the Model Ethics Rules, roughly similar to our RPCs. These new Commentaries (the Fifth Edition), add a number of ethics rules that she will discuss. She described the purpose and function of ACTEC's Commentaries: "to provide guidance to lawyers but not to get lawyers in trouble." She and fellow U.W. Professor Tom Andrews were appointed "co-reporters" for the new edition. Her presentation focused on these newly-included RPCs and what the Commentaries may address. Note: the rules cited by Professor Boxx are from the Model Rules of Professional Responsibility.

Rule 1.10 (Imputation of Conflicts of Interest). Professor Boxx cautioned that the Model Rule 1.8 has its own imputed conflict of interest provisions, so any exceptions to imputed conflicts set forth in Model Rule 1.10 cannot be relied on without consulting both rules.

Rule 1.12 (Former Judge, Arbitrator, Mediator or Other Third Party Neutral). As it is becoming more common for trust and estate lawyers to mediate disputes between estate or trust beneficiaries, firms and individuals may want to review the screening procedures to avoid imputation of conflict.

Rule 1.15 (Safeguarding Property). Lawyers should remember that when they serve as personal representatives, trustees, or guardians, records and materials held by them may be seen to come under the aegis of Rule 1.15. If attorneys are providing legal services in connection with their fiduciary role, "there is an argument" that this rule applies to the trust/estate property in the lawyer's custody. "Follow 1.15 and stay safe."

Rule 5.3 (Responsibility Regarding Non-Lawyer Assistants). Professor Boxx noted that trust and estate attorneys often delegate their work to paralegals and other professionals. She notes that "special concerns arise

continued on next page

Recap of 2016 Senior Lawyers Section CLE from previous page

when the non-lawyers with whom an estate planner becomes associated take on more of the estate planning work than is appropriate for a non-lawyer, such that the non-lawyer is flirting with the unauthorized practice of law." Also, trust and estate attorneys need to be mindful about using systems and forms created and distributed by non-attorneys. Attorneys are responsible for adequate supervision of non-lawyers.

Rule 7.1 (Advertising). There are numerous potential problems that an estate attorney, or any attorney, for that matter, must confront when advertising, providing a web page, and "lead generation vendors." The Commentary to this Rule will discuss these matters as well as representations about a lawyer's scope of practice and "reciprocal referral arrangements.

Rule 8.5 (Disciplinary Authority). If one engages in the practice of law in another state, such as "non-temporary" estate planning, the rule provides that that other state may discipline the offending lawyer, and, through reciprocity, the errant lawyer can then face discipline in the home state.

Professor Boxx was concerned about possible mandatory reporting requirements, supported by the Treasury Department and FATF (Financial Action Task Force), an international advisory body that develops measures to stop use of the world's financial system by those involved with terrorism and crime. These mandatory requirements would obligate attorneys to file reports with the appropriate authorities if they suspect their clients of financial wrongdoing. ACTEC and the American Bar Association oppose this, on grounds that this requirement would force an attorney to violate the confidentiality provisions of the RPCs. The correct remedy to any potential problem would be for the attorney to withdraw from representation if they suspect clients of engaging in illegal financial activity. Attorneys are cautioned that inadequate due diligence can draw a practitioner into criminal or fraudulent activity.

Professor Boxx noted a change in ACTEC's position with respect to simultaneous representation of spouses by estate planners. Up to now, ACTEC approved of an attorney not only representing both spouses in these matters but the practice of keeping the confidences of each of the spouses, not disclosing to one spouse what the other told the attorney. However, the drafters of the Commentaries have had second thoughts, finding that keeping the confidence of each spouse creates too much of a conflict. This change of heart will be reflected in the Fifth Edition.

The Commentaries will address the issue of elder abuse as it relates to Rule 1.14. Our RPC 1.14 allows an attorney,

who reasonably believes his client has diminished capacity and is at risk of substantial physical or financial harm, to take "reasonably necessary protective action" to safeguard that client, even to the extent of revealing, with certain limitations, confidential information that would ordinarily be protected under RPC 1.6. Rule 1.16 highlights some issues that require the attorney to use their own careful judgement in situations where, for instance, a child who is his mother's attorney-in-fact asks the attorney: "Can I see my mom's will?"

Washington's New Limited Liability Company Statute

Chris Brown and David C. Tingstad

Chris Brown, business and tax law partner at Karr Tuttle Campbell, led off the presentation. Washington's new Limited Liability Statute – 25.15 RCW – took effect on January 1 of this year. This revised statute, seven years in the making, provides for more flexibility as well as greater specificity for those choosing the LLC business model. In addition, the legislature enacted 23.95 RCW, which centralizes a number of primarily administrative provisions relating to several business entities, LLCs being among them. Relative to 25.15 RCW, several key changes were made, including the following:

Allowing wider use of oral agreements between LLC members and the LLC itself. While the old law allowed enforceable oral agreements as long as they did not override a "default" rule, (that is, a rule provided by statute), the new law allows enforceability of an oral agreement even if it does purport to override a "non-waivable" default rule. Under the old law, overriding a waivable default rule required the new agreement to be in writing.

The new law clarifies which of the "default rules" may not be changed and lists these rules all in one place: RCW 25.15.018. This list also includes the allocation of fiduciary duties.

Will your LLC be member-managed or manager managed? The new law does not require this election to be made in the certificate of formation, but can be addressed in the LLC agreement itself.

Fiduciary duties: the new act specifies duties of loyalty and care, and allows members to modify these duties within certain limits.

continued on next page

Recap of 2016 Senior Lawyers Section CLE from previous page

Voting rights: under the old law, the default rule provided that voting rights were to be apportioned to each member based upon their percentage of contribution. The new law provides for per capita voting as a default provision.

Personal liability of members: Pursuant to the new law, in the event of a merger, the members must give separate written consent for personal liability to attach.

Let's look at the record: The new enactment expands inspection rights for minority members, subject to specified requirements.

Improper distributions: under the old law, member-manager liability was implicit; by the terms of the new law, such liability is made explicit.

David Tingstad, Managing Partner of Beresford Booth PLLC, and whose practice emphasizes LLC law, continued the presentation, stressing that "LLCs are not corporations and not partnerships." The practitioner, he advised, must be fully advised of the intricacies of LLC law. He stated that Delaware case law can be very useful for interpreting our new law as some of the recent changes reflected current provisions of that state's LLC law. He noted that there were some differences between our statutory set-up and that of Delaware: in our state, it is not permissible for fiduciary duties/liability to be abrogated by agreement; in Delaware, these obligations can be eliminated by agreement.

Mr. Tingstad strongly advises that LLC agreements be in writing – he finds situations wherein his clients inform him that "we don't have a formal LLC agreement" 'cringe worthy.' Although there is now greater allowance of LLC oral agreements, the importance of requiring agreements to be in writing is needed "now more than ever." He reminded the attendees that course-of-dealing can change an LLC provision.

Despite the clear differences between corporations and LLCs, we sometimes have to look to corporate/agency practice to discern the apparent authority of an LLC member, or for guidelines and limits for a member obtaining LLC records.

Who can be an LLC manager? Under the old act, the term "person" was used in the very definition. In the new act, the manager can be a "person, board, committee, or other group of persons."

Mergers and Conversions: to approve of a merger or conversion, the old Act's default provision required approval by each class of members, and only those members whose contributions and obligations are greater than 50%

could vote. Now, the default is a vote by all members without regard to class or contributions.

Are LLC "units" mentioned in the new statute? No. Mr. Tingstad indicated that he does not favor the use of "units" – somewhat analogous to corporation stock in LLC practice.

Charging Orders are now the exclusive collection remedy for a creditor of an LLC member's personal debt. The Charging Order only gives the creditor the rights of a transferee – that is, the right to receive distributions due the member. Under the prior act, the creditor could also obtain a judgement, apart from the charging order, that could be used to foreclose on the member's actual interest in the LLC itself.

Communicating Between Generations

Lisa Voso

Our next speaker was Lisa Voso, attorney, facilitator, and founder of Voso Impact-Corporate Communications Training. Ms. Voso, addressing the potential for misunderstanding and conflict due to differing communication styles, focused on inter-generational interactions and possible solutions to problems brought about by varying life situations, generational perspectives, and modes of communication.

Ms. Voso began by defining generational entities: Traditionalists, (those born between 1922 and 1945), Baby Boomers (1945-1960), Generation Xers (1960-1980) and Millennials (1980-2002). She acknowledged that these categories are somewhat arbitrary and underscored this fact by saying that the one thing that people have in common is that "everyone is different." However, conflict between those of different generations can be minimized by acknowledging the prevalent influences and communication styles of their respective generations. For example, Traditionalists, in the workplace, will favor face-to-face communication and will desire respect from their interlocutors. Baby Boomers may tend to want to be listened to and desire recognition from others. For Generation Xers, email is the primary means of communication and they prefer facts to be presented to them in short sound bites or short meetings. For Millennials, any means of communication may be favored, depending on whichever is fastest. Visual communication is best to keep Millennials motivated, and they do not relish being talked down to.

The trick, according to Ms. Voso, is to avoid getting the other party into their "emotional red zone" by being aware of that person's preferred style of communication and by not disrespecting their "core values."

continued on next page

Recap of 2016 Senior Lawyers Section CLE

from previous page

The Role of Trial Lawyers in the Modern Trial

Michael Wampold

Also favoring us with a return appearance was third-generation trial lawyer Michael Wampold, addressing his view of the job of attorneys during trial: guiding the jury to play the role of the reluctant hero – and inspiring the jury to “right the wrong.”

He compared the experience of a jury to that of a mythological hero. Stories, (myths if you will) often recount the trials of a character somehow taken away from their normal existence and surroundings, sometimes involuntarily, and forced to endure many trials and challenges in attempting to return to their previous existence. The protagonist, having triumphed over danger and self-doubt, ultimately returns and is transformed.

The role of the trial lawyer is to act as the spiritual, emotional and mental guide to encourage the jury to “right the wrong.” This is done by putting the jury in the role of the “reluctant hero” and being sure not to ‘talk down’ to the jury members. “It’s my role to help the jury do justice.” Mr. Wampold wove this philosophy into his narration of a recent medical malpractice case, in which he represented the plaintiff.

His client, a two-year-old child, was being treated at Swedish Hospital’s pediatric care unit. His treatment called for the insertion of a catheter and guide wire through the femoral vein. When these were withdrawn, a 30 cm length of wire was inadvertently left in the child, resulting in six months of terrible pain, until the error was discovered. The physician performing the initial surgery was, at the time, “in the 41st hour of his 48-hour shift.” At trial, he was able to inspire the jury to “right the wrong,” patiently shepherding the jury members on their journey into and through the heretofore unknown land of legalisms, witness testimony, jury instructions and argument. With the attorney acting as the teacher, and the jury as “reluctant hero,” the plaintiff and his parents were well-compensated for his ordeal. In concluding, Wampold said that one key element to motivating the jury was the rebuttal – “this is where you get the jury fired up!”

2016-2017 Senior Lawyers Section

[www.wsba.org/Legal-Community/Sections/
Senior-Lawyers-Section](http://www.wsba.org/Legal-Community/Sections/Senior-Lawyers-Section)

Officers

| | |
|----------------------|--|
| Chair | Carole A. Grayson cag8@uw.edu |
| Secretary | Albert Armstrong III armstronglaw47@outlook.com |
| Treasurer | Ron Thompson renthomp@gmail.com |
| Immediate Past Chair | John G. Bergmann jbergmann@helsell.com |
| Newsletter Editor | Ron Mattson rcmattson@att.net |

Executive Committee Members

| |
|---|
| Brian Comstock brian@comstocklaw.com |
| Steve Crossland steve@crosslandlaw.net |
| Stephen E. DeForest sdeforest@riddellwilliams.com |
| Eleanor Doermann, YLC Liaison eleanor@pathwaylaw.net |
| Frederick O. Frederickson fofrederickson@aol.com |
| Jerry Jager jlj@seanet.com |
| Karen Klein karen@karenkleinlaw.com |
| Dudley B. Panchot anne1700@gmail.com |
| Jerome Scowcroft jscowcroft@hotmail.com |
| Morrie Shore mgs@stokeslaw.com |
| Thomas S. Wampold tswampold@aol.com |
| Emeritus |
| Philip H. De Turk hlipkruted@aol.com |
| Roy J. Mocerri roymocerri@gmail.com |
| BOG Liaison |
| Jill Karmy jillkarmy@karmylaw.com |
| WSBA Support |
| Julianne Unite julianneu@wsba.org |

Editorial

By Ron Mattson

As your Editor, I have not taken the liberty of using this 'bully pulpit' for any purpose other than introducing myself when first 'coming on board' as Editor. However, in case you were not aware, a dispute arose earlier this year which deserves further discussion.

A member of another Section was running for a BoG position. He wanted to put some information about his candidacy in his Section's publication. He was told by the Bar that he could not do that because it would be 'unfair' to other candidates who did not have access to or were not members of a Section by or through which they could publicize their candidacy. To me, that is utter and absolute nonsense with no basis in logic or rule. Does the millionaire candidate need to limit their candidacy or advertising because an opponent is NOT a millionaire?

The above is simply one instance that has caused me to seriously consider my continued membership in any Section (I pay dues for three, at last count). Think about it: you typically pay \$30 for membership in a Section (some more, some less). Of that, the Section you just paid to join gets \$11.25. The 40 percent taken off the top goes to the Bar to 'govern' your section and keep you "in line." Now, 'they' have added yet another insult: we need to amend our by-laws to conform with recently amended Bar Bylaws

which we are now required to adopt. It should not need to be mentioned that the twenty-eight (28) Sections in the Bar don't need or want uniform Bylaws nor do they need to spend the additional time to figure out how to revise their own bylaws to fit into the Bar's 'one size fits all' format.

It occurs to me that a possible remedy to this situation is simply to allow any such Section to lapse and, in its place, form a 'club', 'fellowship', or other entity which could provide its members with the same type of organizational structure that the Section form provided in the past. It certainly appears to me that such a format could certainly fulfill all the functions of the current Section format without the meddling of an 'overseer' that the current situation seems to have fostered.

One drawback to the 'non-Section format' might be that the ability to prepare and qualify Seminars/Presentations for CLE credits would be hampered. Off the cuff there are two possible answers: if the Bar requires CLE, wouldn't they be required to provide the same? (Sub question: if so, who are they going to use to do so?) If the newly-formed 'club' provided the same CLE presentation(s) that its predecessor Section did, it would seem unlikely that the Bar could justify refusing to certify such presentation(s). Just sayin'!

ADMINISTRATIVE
LAWALTERNATIVE
DISPUTE
RESOLUTION

ANIMAL LAW

ANTITRUST,
CONSUMER
PROTECTION AND
UNFAIR BUSINESS
PRACTICES

BUSINESS LAW

CIVIL RIGHTS
LAWCONSTRUCTION
LAWCORPORATE
COUNSELCREDITOR
DEBTOR RIGHTS

CRIMINAL LAW

ELDER LAW

ENVIRONMENTAL
AND LAND USE
LAW

FAMILY LAW

HEALTH LAW

INDIAN LAW

INTELLECTUAL
PROPERTYINTERNATIONAL
PRACTICE

JUVENILE LAW

LABOR AND
EMPLOYMENT
LAWLEGAL
ASSISTANCE
TO MILITARY
PERSONNELLESBIAN GAY
BISEXUAL AND
TRANSGENDER
(LGBT)LAW

LITIGATION

LOW BONO

REAL PROPERTY,
PROBATE AND
TRUST

SENIOR LAWYERS

SOLO AND SMALL
PRACTICE

TAXATION

WORLD PEACE
THROUGH LAW

Join a WSBA Section Today!

*Connect with others in your
area of the law.*

Why join a section?

Membership in one or more of the WSBA's sections provides a forum for members who wish to explore and strengthen their interest in various areas of the law.

Who can join?

Any active WSBA member can join.

What are the benefits?

- Professional networking
- Resources and referrals
- Leadership opportunities
- Being "in the know"
- Advancing your career
- Affecting change in your practice area
- Skill development in involvement with programs and the legislative process
- Sense of community among peers

Is there a section that meets my interest?

With 28 practice sections, you'll find at least one that aligns with your practice area and/or interest.

What is the membership year?

Oct. 1 to Sept. 30.

What about law students?

Law students can join any section for \$18.75.

What about new attorneys?

Newly admitted attorneys can join one section for free during their first year.

It's easy to join online!

Learn more about any section at www.wsba.org/legal-community/sections.

WSBA Sections



sections@wsba.org • www.wsba.org/legal-community/sections

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.

WASHINGTON STATE BAR ASSOCIATION
Senior Lawyers Section
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539
wsba.org/legal-community/sections/senior-lawyers-section

Nonprofit Org.
U.S. Postage
PAID
Seattle, WA
Permit No. 2204



Printed on recycled paper

If you're not already a member of the Senior Lawyers Section, join now!

Send to: Senior Lawyers Section
Washington State Bar Association
1325 Fourth Avenue, Suite 600
Seattle, WA 98101-2539

Please check one: I am an active member of WSBA
 I am not a member of WSBA

Enclosed is my check for \$25 for my annual section dues made payable to Washington State Bar Association. Section membership dues cover Oct. 1, 2016, to Sept. 30, 2017. (Your cancelled check is acknowledgment of membership.)

Name _____

Address _____

City/State/Zip _____

Phone # _____

Email address _____

WSBA # _____

Office Use Only

Date _____ Check # _____ Total \$ _____