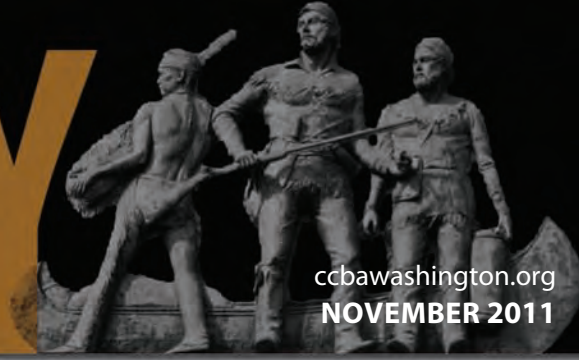


HEARSAY



ccbawashington.org
NOVEMBER 2011

OFFICIAL NEWSLETTER OF THE CLARK COUNTY BAR ASSOCIATION



The CCBA Has Talent!

page 6

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CCBA OFFICE HOURS: Monday through Friday, 12:00 p.m. to 4:00 p.m.

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PRESIDENT'S MESSAGE



JOHN FAIRGRIEVE
CCBA President

Dear fellow bar members:

I have been a lawyer now for over seventeen years and, except for a brief period of time working for a small general practice firm in Portland, I have been a prosecutor. While the focus of my practice has been in the area of criminal law I have looked for opportunities to broaden my perspective of our profession. One such opportunity occurred a bit over four years ago when Bob Vukanovich, a former president of our association, asked if I would be interested in applying to be on our board of trustees. Another came in the form of an announcement by the Washington State Bar Association (WSBA) in May of 2010 soliciting letters of interest from members of the bar interested in serving on the American Bar Association (ABA) House of Delegates (HOD). I submitted a letter of interest and resume and the following month I was informed that I had been selected by the WSBA Board of Governors (BOG) to represent the WSBA as a delegate to the ABA HOD.

The ABA, with nearly 400,000 members, is the largest bar association in the nation and claims to be the largest voluntary professional association in the world. It has twenty two sections, six divisions and six forums spanning practice areas ranging from administrative law to taxation. The HOD is the policy making body of the association, elects its officers, and administers the ABA. The HOD meets twice a year and considers resolutions which, if passed, become the policy of the ABA.

I have now attended two meetings of the HOD, the mid-year meeting last February and the annual meeting last August. The topics addressed by the resolutions the HOD voted on ranged from animal law to civics education to securities law. Of particular concern to criminal law practitioners like me has been the continued focus on the discovery obligations of prosecutors, with the HOD passing a resolution at the mid-year meeting urging criminal courts to adopt a procedure whereby they shall

disseminate to the prosecution and defense a written checklist delineating in detail the general disclosure obligations of the prosecution under *Brady v. Maryland*, 373 U.S. 83 (1963), its progeny and applicable ethical standards. The HOD followed up this resolution by passing a resolution at its annual meeting urging governments to adopt disclosure rules in courts requiring the prosecution to obtain from its agents and to make timely disclosure to the defense before the commencement of trial or a guilty plea all information known to the prosecution that tends to negate the guilt of the accused, mitigate the offense charged or sentence, or impeach the prosecution's witnesses or evidence, except when relieved of this responsibility by a protective order. While I am not aware that either of these resolutions has been acted upon by local courts or governments, Brady issues are a frequent topic of conversation in our courtrooms.

The ABA publishes copies of the resolutions that the HOD will be voting on in the month prior to each meeting. You can find them on its website, www.americanbar.org. While the WSBA BOG has occasionally directed its delegates to vote in a certain way on certain resolutions, it doesn't do so the vast majority of the time and individual delegates are allowed to vote as they choose. With that in mind, please feel free to contact me if you would like to discuss any pending resolutions.

My service as a member of the WSBA delegation to the ABA HOD thus far has exposed me to a national-level dialogue about issues facing our profession and the perspectives of key decision-makers concerning those issues (the Chief Justice of the Canadian Supreme Court addressed the HOD at its August meeting). Additionally, it has given me the opportunity to discuss these issues with other delegates who have vastly different legal experiences than my own. I have enjoyed both experiences and would urge any member of the bar who is interested to apply to be a WSBA delegate as positions become available in the future.

*Congratulations to the 585 candidates who passed
the Bar Exam administered in July 2011!*

We will be holding a swearing in ceremony on November 10, 2010 for those new attorneys who call Clark County home. Please join us at 4:00 pm in the courthouse to celebrate their achievement!

The Clark County Bar Association Presents a CLE:

~ ETHICS ~

by Judge Roger Bennett (Ret.) and Attorney Linda Frischmeyer

**Tuesday, December 6th, 9:00 – noon (Sign In at 8:45)
Public Service Center, 1300 Franklin St, 6th Floor Training Room
⇒ Beverages and Pastries Provided! ⇐**

3.0 Ethics Credits are offered at \$35.00 per credit for a total of \$105.00.
(For non- CCBA members, the price is \$45.00 per credit, for a total of \$135.00).
Oregon credits pending.

There is an **Early-bird discount** of \$5 per credit for those registering on or before Tuesday, November 29th.

To register: call the CCBA at (360) 695-5975, OR email: cle@ccbawashington.org, OR

FAX this flyer to (360) 737-6891 with your BAR NUMBER _____,

NAME _____ PHONE # _____,

and EMAIL (if you want to download the materials) _____.



Judge Roger A. Bennett, (Ret.) received a BA in Sociology from the University of Washington in 1973. At the time, he was also involved in teaching at the University in the physical education department, and was employed by the United States Treasury Department as a “sky marshal,” enforcing the federal anti-skyjacking laws. After graduation, he enrolled in the brand new University of Puget Sound School of Law in Tacoma. In December, 1975, Judge Bennett graduated number 7 out of 217 and began his legal career with the Clark County Prosecuting Attorney’s Office in Vancouver. In 1981 he was promoted

to the position of Chief Criminal Deputy, and in 1984, to the position of Chief Deputy. Judge Bennett, while a prosecutor, supervised and handled thousands of felony cases, and personally tried over a hundred jury trials, including a dozen homicides, and one capital case, all resulting in convictions. In 1990, Judge Bennett was appointed to the bench by Governor Booth Gardner, and has been elected six times without opposition. At the time of his retirement from the bench, he was the Assistant Presiding Judge for Clark County Superior Court. He has presided over more than 500 jury trials, and over a thousand bench trials and contested hearings.

Judge Bennett has lectured extensively on the topics of Trial Practice and Procedure, Discovery, Ethics, Evidence, and Criminal Law. He is the senior partner (in age that is) in the firm of Dimitrov, Senescu, and Bennett, PLLC.



Linda Frischmeyer assists with strategies that address employment situations, often working to resolve especially difficult or long-standing situations, and represents clients before federal and state agencies (EEOC, Human Rights Commission, Labor & Industries, etc.). She has worked extensively with nonprofit boards of directors, is a frequent speaker about employment laws, provides supervisor training, and is available as a fact finder in workplace investigations or as a mediator for employment matters.

Linda received her JD from the University of Iowa College of Law, with distinction, in 1981, clerked for the Judges in Iowa’s 7th Judicial District for one year, then worked as an attorney with Katz,

McHard, Balch, Lefstein & Fieweger, P.C., of Rock Island, Illinois, from 1982 through 1997, and as an adjunct professor in the MBA Program at St. Ambrose University, Davenport, Iowa from 1990 through 1997. She currently practices employment law at Landerholm P.S. in Vancouver, Washington. She is admitted to practice in Washington, Oregon, Iowa, and is voluntarily inactive in Illinois.

ETHICS CLE AGENDA

Judge Roger Bennett and Attorney Linda Frischmeyer

“Settling In” and Introduction

Credibility and RPCs

Responsibilities ALWAYS

RPC 1.1 Competence

RPC 1.2 Scope of Representation and Allocation of Authority Between Client and Lawyer

RPC 1.3 Diligence

RPC 1.4 Communication

Responsibilities in our COUNSELOR role

RPC 2.1 Independent, Professional Judgment, Candid Advice

Responsibilities in our ADVISORY role

RPC 3.1 Meritorious Claims

RPC 3.3 Candor toward Tribunal

RPC 3.4 Fairness to Opposing Counsel

RPC 3.6 Trial Publicity

RPC 4.1 – 4.3 Truthfulness with Persons other than Clients

“White lies” and other Circumstances under the RPCs? (**Discussion**)

RPC 3.3 Candor toward Tribunal

RPC 3.4 Fairness to Opposing Counsel

RPC 4.1 Truthfulness in statements to others

Break

Zealous Representation – where is it now and what does this mean?

RPC 1.3 Diligence

How we (human beings) function and communicate; information that may help us understand

(1) choices we make

(2) how others (counsel, clients, persons other than clients) react to us

(3) how others experience our zeal or diligence.

Video about Research: “soft-wired for empathy” (11 min.)

Identifying and dealing with challenges and tensions

The adversarial system and our soft-wiring

The adversarial system and our RPCs

How we **change behaviors** (*if you decide you want to...*)

What contributes to being effective and ethical? (**Discussion**)

Attendee experiences that worked!

The CCBA has Talent!

A Tale of Two Bass Players



DON JACOBS

Hearsay Special Correspondent

Welcome to the first in a continuing series of articles devoted to spotlighting the musical talents of CCBA members. The original idea from the tireless Kurt Rylander was to devote just one issue highlighting CCBA members with musical talent. Sort of like our previous issues on attorneys with dogs, attorneys with motorcycles, attorneys with military service, etc. You get the picture. It makes for a nice theme to a Hearsay issue.

Theme issues are popular and spotlighting members with other things going on in their lives helps the readership get to know other members a little better. Sounds like a great idea! I mean, what could go wrong with spotlighting groups of CCBA members based upon shared similarities? Well, OK, maybe we shouldn't go with an issue spotlighting attorneys with bar complaints, or attorneys who've been through rehab. Sometimes these theme ideas can go a little awry. But spotlighting musicians seemed like a no brainer. Being assigned to this project I had to agree. That is until I started the research. I soon discovered the CCBA is awash with musicians. We even have a couple of drummers. It seems nobody could make money as a musician, so they all took up lawyering to pay the bills. Yet playing music is much like riding a bicycle. You never really give it up once you learn how much fun you can have. Plus it's a great stress release from the trials and tribulations of practicing law.

We have people in our midst that run the whole spectrum. From former professional musicians who actually did it for a living, to guys like my mother's son who use it as a hobby for fun and relaxation. Sort of like a bowling night. Musicians all seem to have this urge to play. They've got something in them they have to get out. Sort of like those movies with Sigourney Weaver. But depending on skill level, what comes out can be momentary magic or that crab like alien that scrambles off into a corner. Either way, although it may not be fun for the listener, it's always fun for the person playing the instrument. And playing with others is a treat that just can't be beat. So we have lots of musicians by night and attorneys by day running around the Couve.

We start the series not with the predictable guitar players. That would be expected. Of all the musicians out there guitar players are the most numerous. In the ancient hormonal quest for females, lots of teenage boys gravitate towards the guitar. I mean, how many girls think a guy playing the euphonium is hot? And most of the guitar players are male. It seems the teenage



girls were getting piano lessons and learning scales, while the boys were dreaming of smoking hot leads and shredding a Stratocaster. As a result, guitar players outnumber the rest by far. The Portland area is known for its overabundance of talented musicians. It's been said you can't swing a dead cat without hitting a guitar player in Portland. (Try it sometime, see what happens.) So the first instrument we highlight is the bass. I know, it's technically a guitar but bass players are few and far between compared to lead or rhythm guitar players. They are also a sought after commodity. Guitar player's need a rhythm section and with so many guitar players, well, peruse the Portland Craig's List for musicians wanted sometime. Lots of postings for bass players.

We also are blessed to have two very talented bass players in the CCBA. The first is long time CCBA member Ben Shafton. Some of you old dogs may remember Ben playing with a group called "Legal Tender" back in the early 1980's with Steve Horenstein on sax, Marty Wolf on piano, Judge Morgan on trumpet and Dick Gorini, formerly of the Port of Vancouver, on drums. Somewhat newer to Vancouver than Ben but also very talented is former prosecutor now private practice attorney Mike Green. A talent who actually did make his living playing bass for many years before becoming a lawyer.



We start with Ben. Ben's current project is "Fadin Before 9". As Ben is in his seventh decade, this is especially true if he has to play on weeknights. "Fadin Before 9" is a blue grass band covering 60's rock and roll in a blue grass style, doing original tunes

and traditional blue grass numbers. These guys are great. Even if you don't like bluegrass you find your foot tapping fairly quickly when listening to the group. Check out their remake of the classic Grateful Dead hit "I Know You Rider" on YouTube. Their "Sinai Mountain Breakdown" is also a treat. They even have some cutting edge social commentary going on with one of their originals, "Too Big to Fail", also available on YouTube. Along with the Misty Mamas, the guys recently packed the new Kiggins Theatre for a benefit. The band consists of an elementary principal, a reading specialist, a volcanologist and Ben. Although they all have day jobs, this band actually makes money. Sales of their first CD are going well, with over 500 sold. They've already made back all the studio expense and cleared a profit. For those of you interested in hearing more, check out the band's website at fadinby9.com.



Ben started out with piano lessons at the tender age of five and took up the guitar at eleven. He played rhythm guitar in college in rock and roll bands. Since then he's been in 15 to 20 bands. The one with the most memorable name? How about the "Steamin Heap". Sounds like a rock and roll band that had to be cleaned up after.

He's played in rock bands, blues bands, country western, pop and even a Glenn Miller Dance Band doing 40's music to people who actually know how to foxtrot. In the early 70's, Ben did solo acoustic guitar gigs to make a living. These were instrumental only though, Ben says he's no crooner. However, he does do some harmonies with Fadin Before 9. Law school was rock and roll and folk. He also played guitar in a blue grass band called the Cashew Brothers. When asked about the name the standard band joke was that the Allman Brothers was already taken. In 1975 a country western band's drummer asked Ben to play bass. He's focused on the bass guitar ever since.

When Ben first came to Vancouver he landed a job as a public defender. He then worked a couple of years as a solo before joining the Morse and Bratt firm. There were times as a solo when he was essentially working two full time jobs. He played out five nights a week while working as a lawyer all day. This was when he realized how difficult it would be to support himself as a musician. Still, when asked if he would rather be a professional musician than a lawyer, Ben replies without hesitation. "Unquestionably" he says. Ben's passion for music is obvious. When he's on stage he says time seems to stand still. Ben says that even rehearsing produces moments of magic that are hard to replicate practicing law. If you'd like to witness some of this magic, check out Ben's next gig November 10th at the Old Liberty Theatre in Ridgefield. Fadin Before 9 will be playing another benefit open to the public.

We turn next to CCBA member Mike Green. Although like most bass players Mike also plays guitar, his true love is the bass. Mike started playing bass at age 19. A week later he formed a

band with his college roommate. From that moment on he's always been in at least one band, sometimes two at a time. After grad school Mike played full time professionally. He did live gigs, was a studio musician and a studio mastering engineer. In 1999 he moved to Portland. He continued gigging in Portland with one minor break during his third year of law school. Mike's resume includes over 25 bands, with about half during originals and the rest covers. My favorite band names off the list are "Fun with Matches", "Cheesebrokers" and "Peace Frogs". A law school band, "The Lark" included fellow CCBA musician and songwriter Jack Green from Green & Ritchie.

Mike's current project is the band "Big Electric". They've played at the Thirsty Lion Pub, Roots Brewing, The Bounty Hunter Saloon and the Brick House in the Couve. These guys rock and sound a little like a cross between Steve Earle and the Dukes and John Hiatt. Check them out at <http://www.myspace.com/big-electric>. Another CCBA musician and Mike's former law partner John Terry also plays with the band. Mike's got quite an impressive resume. Playing as a studio session musician in Atlanta really honed his skills. With studio time so expensive he had to be able to lay down the bass tracks in one take. He's also played some pretty big venues. Twice he's had to play for crowds in excess of 25,000 people. The biggest was a music festival in Birmingham Alabama.



I asked him about stage fright for an audience that big. Mike says it didn't seem to rattle him. He says once you play for a crowd over 2,000 anything bigger just becomes a sea of faces. Yikes. Mike has appeared on many recordings and is also a songwriter. I asked about his most embarrassing moment performing in public. He reflected a moment and said it had to be the time he did an unintended acrobatic flip off an elevated stage. No, he wasn't crowd diving. He was getting a little amped up and accidentally walked off the edge of the stage. He was about four feet off the ground at the time. He ended up doing a complete forward flip and landing on his feet, still holding onto his guitar and still hitting the notes! The audience loved it! A truly memorable moment! And Mike acted like it was all part of the act. What a showman! That is until he tried to get back up on stage. He walked up the steps and tripped at the top. He fell flat on his face and his guitar went skidding across the stage. Fame can be fleeting.

Barristers' Ball Announcements:

CATERING THE BARRISTERS' BALL

Members will be excited to learn that the Clark County Bar Association has changed the catering for the Barristers' Ball at Pearson Air Museum from Roots, to Beaches. This change comes about because Roots believed it would have no problem getting on the approved caterer's list for Pearson Air Museum--- and Pearson Air Museum had a different, and definitive opinion. Among the many choices, Beaches Catering stood out as the best. We are also pleased to use a catering service that gives so much back to the community. The Barristers' Ball at the Pearson Air Museum with the tasty offerings of Beaches Catering is going to be a one of a kind event that the Board is excited to share with our membership.

NOMINATE YOUR FAVORITE ATTORNEY

Every year at the Barrister's Ball, The Donald Simpson Award for Professionalism, the Ken Weber Award for Service to the Community, and the Alan Harvey Courtroom Bloopers Award, are given to acclaimed and deserving local attorneys. Who will receive these awards this year? What acts of service, of consummate professionalism, of courtroom acrobatics deserve the ultimate recognition. Inquiring minds want to know. You can nominate one attorney for each award, or potentially even one attorney for all awards (which would really be something). Please nominate your candidates by contacting Lisa at ccbaman-ager.com@ccbawashington.org.

Mark your calendars!
The 2012 Barristers' Ball is coming!
February 25, 2012 • Pearson Air Museum



We will also host a charity silent auction. If you would like to donate to our auction, please contact our auction chairperson, Josie Townsend at jctownsend@aol.com or call her at 360-694-7601. All donations are tax deductible.



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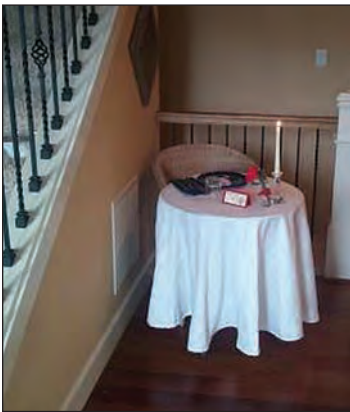
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Honoring Veterans



LORI VOLKMAN
Hearsay Special Correspondent

As Veteran's Day approaches I'm reminded how I felt a year ago when my husband was deployed to the Middle East. There was special meaning in that holiday for us, and we celebrated by erecting a small white table in our foyer. If you're not familiar with this tradition, most formal dining events in the military contain a small white table, chair tipped inward, perfectly set with a few symbolic items, but never occupied. Even those who don't understand the significance of each item on the table can appreciate its iconic value once they see it.



I got the idea after watching a Veteran's Day assembly at my daughter's school. I was sitting next to her as the image of the white table projected onto the screen. I grew up a military brat, and I knew immediately what was to come. But I knew my little eight year-old did not fully understand. Not yet. As I looked down at her over the tears that were already welling up in my own eyes, I thought about my lecture over break-

fast. I had just waxed eloquent about how we shouldn't be sad all the time because Daddy would want us to be happy and healthy until he returned. At the thought of my own words I gave her a pained, fake smile. She clearly wasn't fooled. And as I attempted a friendly wink, a tear I had been holding back took the opportunity to pop out. My cover was blown.

She squeezed our family signal into my hand three times: once for "I," once for "love," and once for "you."

And then one by one, children read lines from a page and deposited various items on the table: a white linen for purity of motive; a slice of lemon for the bitter fate of the missing; a pinch of salt for the tears of their families; an inverted glass for the missed meal; a red rose for the hopes and prayers of those awaiting their loved one's return; a red ribbon tied to the vase for our

determination in finding them; a black napkin for the prisoners of war; and a lit candle, to remind us that America is a light in a world of darkness.

By this time there was no hiding the tears that were clearly streaming down my face. All I could do was turn slightly away from my daughter, who was very clearly looking to me to be the glue that held her own little moment in place. I couldn't even hold my own together, with the "what ifs" of my husband's deployment flooding into my mind. I offered instead four gentle squeezes of the hand: "I love you, too."

Later I couldn't decide what had overcome me most. I was honored by my heritage, thankful for my husband's life and safety, and appreciative of those who had sacrificed theirs. But I was also guilty for feeling happy about having my husband in one piece, sorry for my children's involuntary sacrifice, and lonely - all at the same time. What I came away with that day was wanting to remember the great feeling of pride for all of the selfless acts made by servicemembers on behalf of each of us, and my own realization that the best way we can return the favor is to be truly thankful for all that we have. Veteran's day really is a great lead-in to Thanksgiving. Both are uniquely American holidays that give us an entire season to be grateful for our lives.

I'd like to encourage every CCBA member to take the time to set up a white table, even if only in your own mind. We've decided to leave ours up through Thanksgiving dinner. After all, that's when we can honor our Vets by reviewing the long list of blessings around us, particularly those we tend to take for granted. If you have served your country or supported someone who has, thank you for your sacrifice. I am thankful for my life and my freedom, and I accept your gift with a responsibility I never fully understood before this year. Thank you, Veterans.

Lori Volkman is a CCBA member, deputy prosecutor, mom, and the wife of a Naval Officer who returned from his one year deployment just one week ago. She writes about her military experience at www.wittylittlesecret.com and will be featured in the December issue of Reader's Digest.

Visit us online at: ccbawashington.org

Nuts & Bolts Trial Skills Series Coming Soon in 2012



JANE CLARK
Hearsay Special Correspondent

The CLE committee is pleased to announce that, starting in January 2012, we will be offering a 4 week Trial Skills series as part of our successful Nuts and Bolts curriculum.

As usual, these 2 hour seminars will be held on the second Wednesday of the month from 3-5pm at the Quay in Vancouver. Drinks and refreshments will be provided and are included in the price. We will continue to offer our Nuts and Bolts seminars at the discounted rate of \$50 for CCBA members.

The final program, with schedule and speakers, will be announced in the next few weeks. Training will be provided by experienced judges and criminal and civil trial lawyers. Speakers will include retired Judge Roger Bennett, former prosecutor James Senescu, civil trial expert Don Jacobs and Jane Clark.

We will be covering a wide range of topics relating to trial practice with instruction and insights offered on jury selection, opening and closing statements, direct and cross examination, examination of experts, trial motion practice, use of exhibits, jury instructions and preserving issues for appeal.

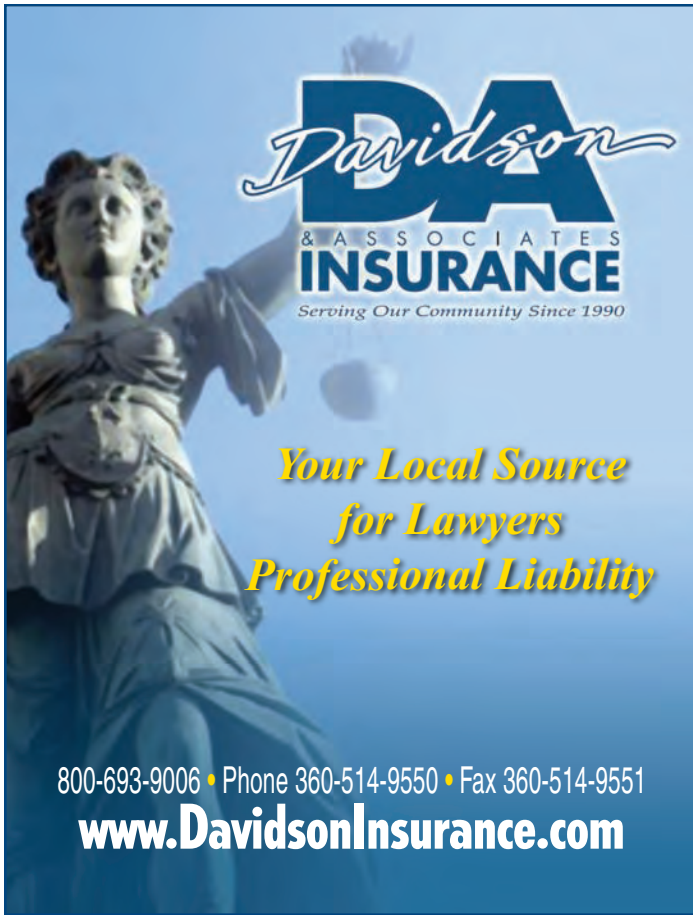
The 4 session series will run January to April on the second Wednesday of the month. At the conclusion of the series, we will be offering a one day Practical Skills Training allowing participants to practice their trial skills in small groups with an experienced lawyer or judge as a mentor. This will provide an invaluable opportunity for practitioners to practice their trial skills in a safe and supportive environment. Spaces for this one day training will be limited and offered on a first come basis. Details of the date will be announced with the full curriculum with opportunity to sign up starting at the first seminar in January. Priority will be given to those individuals attending at least one of the 4 monthly Trial Skills seminars.

This series will benefit trial attorneys of all skill levels and will appeal to attorneys doing both criminal and civil trial work.. You are never too old to learn or practice your skills!

Further details will be announced shortly but if you want more information in the meantime or are interested in participating in the program as a speaker or a mentor, please contact Jane Clark at jane@janeclarklegal.com

Upcoming CLE Schedule

Date	Area of Law	Topic	Speakers	Committee Chair
December 6, 2011 9:00am – 12:00pm	Ethics		Judge Roger Bennett Linda Frischmeyer	Jane Clark
December 12, 2011 1:00pm - 2:00pm		Intro to Condo & HOA's	Michael Simon	Jane Clark
January 17, 2012 9:00am – 12:00pm	Federal	Federal Court Civil Procedure	Kurt Rylander Steve Joncus Rick McLeod	Rick McLeod



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Judge Stahnke Settles In



DON JACOBS

Hearsay Special Correspondent

So, sit back and imagine that someday you, yes you, decide to be a judge. Then let's imagine that it actually happens, that you get appointed to the Superior Court bench. After you've basked in the congratulatory wishes from your friends, loved ones and colleagues you're sworn in. That's when you get to ask yourself Can I actually do this?

Can you just walk up there, put on the black kimono and actually be a competent judge? Do you have the correct demeanor? The patience? The ability to make correct rulings? How about the capacity to not look bored and exasperated while listening to tedious legal arguments from attorneys who seem to relish interrupting each other?



In other words, you have to ask yourself Do I know what I'm doing?

Well, I mean, you are a lawyer, right? How hard can it be? You know a bunch of evidence rules (well, most of the major ones anyway). Plus you've seen *Caddyshack* and *My Cousin Vinny* several times. Besides, they probably send you to some judicial college where you learn the tricks

and get some training before you actually have to make any important rulings.

Such was not the case for our newest Superior Court Judge, Dan Stahnke. The county elected to give him on the job training instead. For his very first trial he was summarily thrown into a multi-week jury dispute involving millions of dollars and complex insurance law issues. This was a trial with lots of crossclaims and counterclaims, lengthy motions in limine and rarely encountered legal issues like tortious interference and spoliation. The experience sounds more tortuous than tortious. Welcome to your first trial, your honor. No mock trials for you!

Fortunately Judge Stahnke had the good fortune to inherit Judge Bennett's long time judicial assistant Kim Nigg; someone he



now calls his lifesaver. Oh, and that aforementioned judicial college? Well, he gets to go to that in Reno in mid-October.

So Judge Stahnke survived his first trial and he actually seems to really like his job. When asked what he likes best about it so far, he said it was the ability to read cases and do his own research; something he wasn't able to do much of as a commissioner. When asked what he liked the least he paused for a moment. "Nothing", he said quite frankly. He said he finds it truly fascinating. Although he does admit the days are long and he has a lot to learn.

Judge Stahnke is still getting used to being addressed as "Your honor". Even though he now occupies a position of stature in the community, he notes his wife and kids don't give him any more respect than they did previously. That's probably because his son is an attorney and his daughter teaches full time. All they do now is tease him more.

Judge Stahnke was a Vandal at the University of Idaho in his college days and played on the baseball team. He earned his law degree going through night school at Lewis and Clark while also working full time for Clark County as a jailer. Then he put in almost five years as commissioner before he wound up on the bench.

Although he has to suffer through an election next November, the Judge is looking forward to many years of service to the people of Clark County.

CCBA Monthly Board of Directors' Meeting



DAVID GREGERSON
Hearsay Special Correspondent

Board members in attendance: J. Fairgrieve, K. Rylander, S. Clark, J. Clark, J. Nellor, A. Dunn, D. Gregerson. Staff in attendance: L. Darco

1. Call to Order, 12:04 PM. New board member A. Dunn is given new board member notebook and welcomed to service.

2. Approval of previous meeting's minutes: Secretary Gregerson presents minutes from prior board meeting. With correction added to note the attendance of S. Clark at said meeting, on motion duly made, seconded, and passed unanimously, the meetings from the September 9, 2011 meeting are APPROVED.

3. Treasurer's Report: Treasurer J. Nellor presented balance sheet and profit and loss statement. Cash position is strong after actions taken previously in the calendar year, and because of the inflow of annual member dues. L. Darco will report at next meeting to assess the percentage of existing members who have renewed, and to explore strategies to round up outstanding renewals applications. J. Fairgrieve noted that the prosecutor's office had changed its policy to pay for the dues for CCBA deputies, which should increase. On motion duly made, seconded, and passed unanimously, the treasurer's report is APPROVED.

4. Old business:

a. Budget – The board suggested moving the “Kaiser” bank accounts into the general account for purposes of consolidation. Signature cards at Key Bank need to be changed to give check signing authority to J. Nellor and J. Fairgrieve. On motion duly made, seconded, and passed unanimously, the board RESOLVED to consolidate the bank accounts and execute the necessary bank signature cards to reflect board authority for J. Nellor and J. Fairgrieve to conduct all banking on behalf of CCBA.

b. HEARSAY receivable – D. Gregerson agreed to continue discussions with a vendor who apparently owes several hundred dollars for advertising in HEARSAY magazine and to report to the board at its next meeting.

c. Barrister's Ball. L. Darco reported that an event deposit to Pearson Air Museum was made and the date was set for February 25, 2012. Josephine Townsend will chair the auction again. Further logistical details and preparations will be made (includ-

ing liability insurance and liquor event permit), and volunteers sought to assist the committee. On motion duly made, seconded, and passed unanimously, the board RESOLVED to approve Roots restaurant as the event caterer, and to approve Safe Choice DV women's shelter of the YWCA as the recipient of the charity auction proceeds, along with an invitation for them to attend and participate at the Ball.

5. New business

a. Long distance/phone service in attorney conference rooms at courthouse. J. Fairgrieve noted that the CCBA pays for the phone service. The board feels that the pervasiveness of cell phones and other options justify terminating this expense. On motion duly made, seconded, and passed, the board RESOLVED to discontinue phone service in the courthouse attorney conference rooms.

b. HEARSAY hardcopy subscriptions. J. Fairgrieve noted that at least one out of town attorney expressed interest in subscribing to HEARSAY without a full CCBA membership. The board feels that an appropriate policy is to charge 150% of the printing cost, which comes to \$72.00 per year. On motion duly made, seconded, and passed, the board RESOLVED to adopt the aforementioned policy.

c. Section membership without general membership. The board discussed continuing issues with the Family Law Section. Continued liaison and clarification with the FLS leadership is suggested.

d. FLS – CLE attendance. The board noted continued issues with compliance and accurate and complete reporting by the FLS in order to get WSBA approval of CLE. L. Darco will prepare a “checklist” for the FLS to use at each of its CLEs so that all steps are completed, thereby reducing confusion and administrative burden. The board generally is disinclined to offer refunds for registrants who do not attend, absent extraordinary circumstances. Future policy may be presented and voted upon.

e. Quickbooks – A. Dunn and J. Nellor offered to help and be the “go to” persons for L. Darco with completion and filing of various tax reporting to federal and state departments.

6. There being no more business before the board, on motion duly made, seconded, and passed, the board meeting was ADJOURNED.

CLARK COUNTY SUPERIOR COURT BENCH/BAR MEETING MINUTES

OCTOBER 11, 2011



JOHN FAIRGRIEVE
CCBA President

The meeting began shortly after noon. Persons present were Judge John Nichols, Ann Christian, Suzan Clark, Heather Beasley, Emily Sheldrick, Jolene Sell, Michael Shinn, Todd George, Tom Phelan and John Fairgrieve.

OLD BUSINESS:

1. Competency evaluations being conducted on criminal defendants by Western State Hospital (WSH): Ann Christian told the committee that as of October 3, 2011 there were no out of custody evaluations pending for superior court cases. However, there is still a waiting list for evaluations in district court cases

Ann told the committee that she had recently had a conversation with Dr. Tara Fairfield, a representative of WSH. Dr. Fairfield told Ann that evaluations ordered by the court to be conducted in the Clark County jail would be finished within twelve days of receipt of the order by WSH. However, such examinations are done by a single evaluator and the parties must agree to waive the normal two-examiner requirement to have the examination done in the jail. The alternative is to have the defendant transported to WSH for evaluation by two examiners. It is currently taking WSH three to four months to complete such examinations. The principal reason for the delay is a lack of facilities at WSH to house defendants while they are undergoing their evaluations.

2. Jail Contact Rooms: Ann Christian told the committee that she had recently queried attorneys on the indigent defense contract about this issue and there were no complaints. However, Suzan Clark reported that she was still often forced to use non-contact rooms when meeting with her clients in the jail due to the lack of contact rooms.

3. Clark County Local Rules: Emily Sheldrick reported that the 2012 West version of the Clark County Local Rules does reflect that local rules 56 and 59 are in effect. She also asked whether the local rules should be reviewed or revised, and whether we should review other counties' local rules to see how they are addressing the same issues that we face. Suzan Clark stated that a sub-committee of the Bench Bar Committee had been used in the past to review the local rules.

Emily also asked about whether the clerk's office was going to adopt electronic filing in superior court in the near future. Judge Nichols stated that he would speak to Jeff Amram, the superior court administrator, to find out what the current plan for electronic filing is and what the time frame for adoption is.

NEW BUSINESS

1. Maximum sentences for unranked felonies: John Fairgrieve brought to the attention of the committee that section 11 of chapter 96 of the Laws of 2011 changed existing law to read that any sentence of one year or more shall be served in the Department of Corrections (DOC). Previously only sentences exceeding one year could be served in the DOC. However, RCW 9.94A.505(2)(b), which states that unranked felony offenses may include a sentence up to one year of confinement, was not amended. This means that maximum sentences for unranked felonies (i.e. 365 days) will now be served at DOC. It has been common practice for plea offers to unranked felony offenses where the defendant has substantial criminal history to include a provision requiring the defendant to stipulate to 12 months plus one day to allow the sentence to be served at a DOC facility instead of local jail. The change in the law reflected above seems to do away with that requirement.

2. Jury selection in child sex abuse cases: John Fairgrieve reported to the committee that in a recent criminal case alleging sexual abuse of a child that the court cut off the State's voir dire of potential jurors after only 45 minutes. John explained that the deputy prosecuting attorneys (DPAs) assigned to the Children's Justice Center feel that 45 minutes is not enough time to adequately question potential jurors and requested that the superior court judges consider giving both parties additional time to question potential jurors in such cases. Judge Nichols stated he would raise the issue with the other judges.

3. Jury selection procedures in superior court: John Fairgrieve relayed the experience of another DPA in a recent trial where the members of the jury venire were not in numerical order. The result was that once the parties began to exercise their preemp-

tory challenges it was impossible for them to know which jurors would move into the first twelve positions. This made it hard for the parties to effectively use their peremptory challenges. There was also some discussion about the lack of a uniform jury selection procedure in superior court, and the problems created when litigators have to deal with different jury selection procedures depending on which courtroom they are in.

John asked that the superior court judges consider adopting a uniform procedure for selecting jurors, at least to the extent that it allows for attorneys to predict which potential jurors will rotate into the jury box as others are stricken for cause or stricken by the use of peremptory challenges by the parties. Judge Nichols stated he would discuss the issue with the other judges.

4. Use of bail schedules in criminal court: Ann Christian announced that members of the prosecuting attorney's office and criminal defense bar representatives had met recently to begin discussing whether they could agree on a bail schedule that the parties would then forward to the superior court (and perhaps district court) judges for possible adoption.

5. Interpreter issues in criminal cases: Ann Christian discussed this issue in general, and told the committee that there were problems periodically, particularly in providing interpreters for individuals who speak uncommon languages. Ann then confirmed with the committee that the current local policy was to

put the burden for arranging interpreter support for defendants in criminal cases on defense counsel. She questioned whether this was the best policy, and told the committee that in Oregon providing for interpreters is a court obligation once the court has been notified of the need. Ann also mentioned that the increased need for interpreters has outpaced the budget to pay for them. Ann pointed out the need to preserve resources, and suggested that attorneys in cases requiring interpreters notify the court and the interpreter coordinator of changes in the need for interpreters (i.e. a cancelled hearing) at the earliest possible time.

6. Standards for indigent defense services: Ann Christian handed out a matrix of recommendations made by the Washington State Bar Association to the Washington Supreme Court concerning standards for indigent defense services to which attorneys must certify. She noted that the comment period on the recommendations ends on October 31, 2011. Copies of the matrix can be obtained from Ann or John Fairgrieve.

7. Next Bench Bar committee meeting: The committee will meet next on Tuesday, November 8, 2011 at noon in Judge Nichols' jury room.

Respectfully submitted,
John Fairgrieve

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CLARK COUNTY BAR ASSOCIATION CLE SERIES

Nuts & Bolts: What Every Practitioner Needs to Know

The Clark County Bar Association is delighted to announce that it will host a CLE series geared to the new members of the legal community titled ***Nuts & Bolts: What Every Practitioner Needs to Know***. The series will vary from one to three hours every second Wednesday of the month. Each session will feature knowledgeable attorneys in a particular area of practice, and focus on the basic issues and procedures confronting an area of law. The current list of dates and topics are as follows:

Date	Topic	Speaker	Committee Member
November 9, 2011	Bankruptcy	Stan Horak	Scott Matthews
December 14, 2011	Collecting on Judgments		Mark Beatty
January 11, 2012	Trial Skills		Jane Clark
February 8, 2012	Trial Skills		Jane Clark
March	Trial Skills		Jane Clark
April	Trial Skills		Jane Clark

Each one of the series is on \$50 or you can purchase a discount card and attend 6 of the 12 events for \$250. We'll meet at the Quay at 3:00 and be done in time for happy hour. Materials will be provided free for download for those who register three days before the seminar, or for a modest fee at the door.

Call 695-5975 to register

For firms with new associates, this series is a great way to support your local bar association and provide new associates with an introduction to the community and a broad set of useful legal skills and information.

JOB OPPORTUNITY

The Clark County Bar Association is seeking a replacement for Kaitlin, who is travelling to Japan. We will miss her. In the meantime, we need to find a replacement. A large part the job is answering the phone and returning voicemail messages, and also supporting Lisa Darco, the office manager. The job is 20 hours a week with some evening and out of office work on events. Please send your inquiries or referrals to Lisa Darco at the Bar Offices. The Bar association does not discriminate against any applicant on any prohibited basis. We are a full equal opportunity employer.

District Court Bench/Bar Meeting Minutes

Present: Judge Darvin Zimmerman, Judge Kelli Osler, Judge Sonya Langsdorf, Commissioner Kristen Parcher, Doug Wall, Sharron Walker, Bernita Brumbaugh, Nancy Adkins, Sandy Slyter, Linda Shaw, Rebecca DeMoss, Attorney sign-in sheet for CLE credit.

Guests: Carla Weaver, Washington Department of Licensing

Records Overview Presentation (slides available on request):

- o Ignition Interlock Device
- o Ignition Interlock License

- o Occupational Restricted License
- o Proposed Legislation
- o Minor In Possession
- o New online tool for drivers with a suspended license.

Next meeting: January 2012, TBA

Location: TBA

Note taker: Rebecca DeMoss (397-2424 ext. 4171)

Family Law Section Meeting



CHRIS BOYD

Family Law Section President

The Family Law Section held a “town hall” meeting on Wednesday, October 12, 2011 at the Family Law Annex. The entire Family Law Bench graciously gave up their respective lunch hour to field questions from the FLS membership. Special thanks to Judge Rulli, Judge Poyfair, Judge Nichols, Commissioner Schienberg and Commissioner Liebman.

We discussed In re the Marriage of Fahey, the new Division II relocation case, and its implications on Clark County relocation matters. The Bench also indicated a willingness to consider a new “local court rule” visitation schedule. It was also suggested that the Pre-Trial Settlement Conference rules will be closely followed to insure compliance. There was some discussion of basic discovery being implicated as a local rule. It was suggested that a subcommittee could propose possible revisions to these local rules. Those interested should contact me.

The Bench reiterated prior comments about courtesy notifications for hearings to be struck or setover from a family law docket. Please contact JA’s to save the Bench from unnecessary reading. This directly affects the closed dockets we family law attorneys are now facing.

Our meetings are in the reserved lounge section of Tommy O’s, 801 Washington Street, Vancouver. Typically, these are on the second Wednesday of the month. Our next meeting will be Wednesday, November 9th. The cost of the meeting will be \$13.00 for lunch plus \$5.00 for one CLE credit for CCBA FLS members. If you are not a member of the CCBA and FLS the cost is \$13.00 for lunch and \$10.00 for the CLE credit. Please RSVP by the Friday just prior to our Wednesday meeting by sending your payment to our section’s Treasurer, Meredith McKell Graff, 3214 NE 42nd Street, Suite B, Vancouver, WA 98663.

Our officers are: President, Chris Boyd; Treasurer, Meredith McKell Graff; Secretary, Stephanie Ellis.

If you would like to attend a CCBA FLS meeting and do not currently receive the email updates, please email me at cboyd@vancouverlaw.net.

Remember to visit the blog for updates and announcements: <http://ccbafamilylawsection.blogspot.com/>

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UPCOMING GENERAL MEETING FOLLOWED BY CLE: DECEMBER 12, 2011

The next Bar Association General Meeting will be held on December 12, 2011 from 12-1 at the Red Lion Inn at the Quay. Members will hear a report on the status of the bar. We will also bring for a vote a change to the By-Laws regarding the number of General Meetings required to be held each year. Following the General Meeting, Michael Simon will present a one hour CLE on issues surrounding Home Owners Associations.

Benefits of CCBA Membership

**HEARSAY Monthly Newsletter
(and discounted advertising rates)**

**Free copy of the Membership
and Resource Directory**

**High-quality CLEs at discounted member
rates; saving you travel time and money
on your annual educational requirements**

**Access to the Southwest Washington
Lawyer Referral Service**

**Social and networking opportunities
throughout the year: quarterly membership
meetings, annual Golf Tournament,
Winter Social, and the Summer Barbeque**

**The opportunity to participate in
committees and sections pertinent
to your interests and practice**

Call 695-5975 to become a member!

The Clark County Bar Association is pleased to announce its

Fifteenth Nuts and Bolts Lecture:

WORKERS' COMPENSATION

by Attorney Doug Palmer

Wednesday, December 14th, 3:00 – 5:00 PM, at the Red Lion at the Quay

The cost is \$50 for CCBA members, \$70 for non-member attorneys, and \$25 for non-attorneys. This will get you 2 CLE credits and the speakers' prepared materials to download. There is an extra fee if you want to pick up the materials at the door.

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To register: Call the CCBA, (360) 695-5975, OR email: CLE@ccbawashington.org, OR

FAX this flyer back to the CCBA at (360) 737-6891 with your

NAME _____,

PHONE # _____, BAR NUMBER _____,

and EMAIL ADDRESS _____.



Douglas M. Palmer graduated from Andrews University (B.S. '97) and from Northwestern University School of Law (J.D. '00). After graduating, Doug worked at Wallace, Klor & Mann, P.C., a 15-attorney firm in Lake Oswego specializing in representing employers in Oregon and Washington Workers' Compensation claims. Doug became a member of the State Bar in Oregon 2001 and in Washington in 2004. Doug has practiced exclusively in Washington Workers' Compensation since 2004, leaving Wallace, Klor & Mann in August

2010 to join Busick Hamrick, PLLC. Doug now exclusively represents injured workers before the Department of Labor & Industries, Board of Industrial Insurance Appeals, and Washington Courts.

An outline appears on the next page.

CCBA MEMBERSHIP STATISTICS

Last year the Bar Association had 415 members. This year there are 271 who have returned their membership packets. Members are often slow to get their packets in. The earlier members get their packets in, the better it is for the Bar. Do it now.

THE NUTS AND BOLTS OF WORKERS' COMPENSATION

I. BASIC DEFINITIONS

- A. Industrial Injury v. Occupational Disease
- B. Temporary Total Disability & Loss of Earning Power
- C. Permanent Partial Disability
- D. Permanent Total Disability

II. DEPARTMENT OF LABOR AND INDUSTRIES

- A. Filing a Claim
 - 1. Statute of Limitations
 - 2. Provisional Benefits
 - 3. Claim Allowance
- B. Medical Treatment
 - 1. Attending Physician
 - 2. Medically Necessary & Proper Treatment
 - 3. Curative, Rehabilitative, and Palliative Treatment
 - 4. Approval of Specific Treatment Modalities
- C. Vocational Rehabilitation
 - 1. Light Duty/Early Return to Work
 - 2. Ability to Work Assessment
 - 3. Plan Development
 - 4. Plan Implementation
 - 5. Vocational Dispute Resolution Office
- D. Procedure and Practice
 - 1. Fee Agreement
 - 2. Notice of Representation
 - 3. Getting a Copy of the Claim File
 - 4. Protest and Appeal Deadlines
 - 5. Contacting the Claims Manager
 - 6. Getting Around the Claims Manager
 - 7. Self-Insurance Penalties

III. BOARD OF INDUSTRIAL INSURANCE APPEALS

- Appeal
 - A. Initial Appeal – Stay of Benefits on
 - B. Mediation Conference
 - C. Scheduling Conference
 - D. Discovery
 - E. Hearings
 - F. Proposed Decision & Order/Petition for
- Review
 - G. Interest

IV APPEAL TO SUPERIOR COURT

- A. Filing and Perfecting the Appeal:
Statutory Parties
 - B. Pre-Trial Procedure
 - C. Trial
 - D. Judgment, Attorney Fees, & Costs

Possible GAL CLE

Earlier this year, Clark County sent out a call to strengthen the Title 13 Guardian Ad Litem registry, and the CLE committee wants to know if we can help make that happen. The Title 13 GAL represents dependent children at the direction of the court. State law sets some significant minimum training prior to appointment -- 28 hours -- and so offering that type of CLE is a big time investment for everyone involved.

We are considering an intensive workshop over 4-5 days in February 2012 (likely two weekends), but we need your input.

Some of the curriculum includes mandatory non-CLE topics, so this won't be 28 hours of actual CLE credit. If you are interested in being eligible for Title 13 appointments, please contact us and tell us that you want to take this training. Also, keep in mind that Title 13 GALs do not have to be lawyers. Thus, if you know other people that you think might be willing to participate, let them know, too.

If you want more info, please contact Rick McLeod at: rxm@klarquist.com.

What CCBA Members Are Doing About Town

RAISA JUDICATA

Guest Gossip Columnist

The last rays of Summer burned brightly at the Cedars Golf Course on September 23, 2011. The drink cart girl was doing double time to keep everyone hydrated as the battle for the coveted winner's jackets became fierce. At one point the teams were three deep at the par-3 on Hole 11. The winners, Barry Brandenburg, Jim Mayhew, Jim Senescu, and The Honorable John Nichols, may have had a little edge as Jim Mayhew was spotted the day before the tournament getting a little instruction from a golf pro at Vanco Golf Range. With the changing of the guard on the golf committee, it is rumored there will be a 100 page rule book introduced for next year's tournament with a chapter devoted to pre-tournament training restrictions.

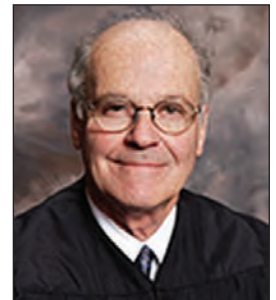


Brian Gerst makes sure the score is accurate for the "C" team at the CCBA Golf Tournament.

Many of us have had the good fortune to meet with and get to know Supreme Court Justice Gerry Alexander, as he made a point of frequently visiting Clark County and getting to know us. Justice Alexander turned 75 earlier this year and based on the



State Constitution is required to retire the end of 2011, although he still has one more year on his term. There is no official word yet on appointment of a replacement, but perhaps following in Justice Alexander's lead, on October 4, 2011, Judge Steven González from King County visited with some local practitioners at the home of Loren Etengoff, outgoing WSBA Governor for our district. It is rumored that Judge González is a contender for appointment. He has an impressive list of credentials and is a brilliant man. Keep your ears open for an announcement.



Justice Gerry Alexander is forced to retire this year.



Peter Fels tops the charts in lawyering.

The King and Queen of Evictions have been supplanted according to the on-line legal rating system, Avvo. A check has not been performed of the Court statistics, but it is likely that Bob Bennett has filed more evictions for Landlords over the years than many other lawyers combined. And while she may not have as much volume, Jean McCoy has a "best of" list of evictions that are cringe-worthy (the 80 year old in a leg cast and wheelchair

that couldn't get through the doors of the courtroom; the deaf woman who refused a sign-language interpreter and screamed at Judge Nichols; and the biker/gang-member where the SWAT team was called in, just to name a few). But neither of these practitioners can beat the rating afforded to Peter Fels according to the Landlord/Tenant ratings compiled by Avvo. For those of

you that don't know, Avvo is a lawyer rating service that apparently relies on statistical data, as well as "client reviews" to rate certain lawyers in various areas of the law from one to ten. It is not clear from the site exactly how ratings are acquired, other than if you "claim" your bio, and people "rate" you, your score can increase, up to a perfect "10". Peter is the top lawyer in Vancouver in the Landlord/Tenant category with some very nice reviews from some of his clients, and probably doesn't even know it. Kudos to Peter – should we dub him Eviction Prince?

BFFs Zach Stoumbos and Gerry Wear spent some time in Las Vegas recently, kicking back and doing a little gambling on the side. Nothing had to be hocked, and there were reportedly no

brushes with the law or large white tigers. Zach did find himself with a Royal Flush at the poker table. A quick internet search (of course such searches are reliable – all my best forms come from the internet) provides that the odds of getting a royal flush at the Vegas tables with your initial hand is 1 in 649,740. We always knew Zach was special! He still didn't win enough to quit his day job.

Your esteemed colleague Raisa Judicata can't be everywhere. If you have a tidbit of news you would like the world to know, send a note to raisajudicata@gmail.com. Raisa usually checks in the first Monday of every month. Remember, it is your ethical duty to support your member organization with juicy gossip and goings on.

Inns of Court

The Inns of Court November meeting will be held November 16, 2011 at Little Italy's from 5:00 p.m. to 6:30 p.m. Judge Melnick's group will be presenting. Inns of Court meets every third Wednesday of the month. Dinner is provided and members

receive CLE credit. Please contact Kristen Parcher, kristen.parcher@clark.wa.gov or Scott Horenstein, scott@horensteinlaw.com for membership information.

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GETTING TO KNOW: J.D. NELLOR

"Getting to Know" is a monthly feature designed to better acquaint the membership with our local attorneys, judges and other people of interest to the Clark County bench and bar. This month's subject is Attorney, and CCBA Trustee, J.D. Nellor.

If you had it to do all over again, would you still have gone into law? Why or why not?

Probably. I know it is fashionable grumble about the profession after a few years. And the business of being a lawyer can get be wearing. But really, as a profession, I just don't see any other line of work that opens as many opportunities or that stays as interesting for as long.

What would you be doing if you were not an attorney?

Probably an architect.

Who inspired your practice style or courtroom demeanor?

Trial and error. It didn't take long to figure out that trying to act like someone other than myself didn't work.

Is there one case which really affected or changed you in a profound way? If so, which and why?

Almost every case leaves a lasting impression. What we do affects peoples lives and it is hard to forget that.

An couple of cases come to mind with some regularity, so I guess they left lasting impressions. Here is one that will probably sound a little odd: I handled a divorce case many years ago. I don't remember who the adverse attorney was. What I do remember is that the only thing holding up a settlement was the couple's dog, but with a twist: The wife insisted that the husband keep the dog and the husband insisted on the wife keeping the dog. I could not get my client to budge nor the other side to relent, no matter how often I used the words "ridiculous" and "irrational". We almost had to go to trial to have the judge rule on which one of them would get to force the other to keep the dog! (As an aside, Judge Skimas was the trial judge... let's just say this was an issue I didn't want to have to present to him). Finally settled the case less than a week before trial by me taking the dog. I later found it a very nice home.

The case was one of several over the years that helped teach me that as lawyers we may be at our best when we turn off advocacy from time to time and turn on problem solving.

Is it possible to be friends with opposing counsel and why?

Absolutely. In many ways it is hard not to be friends with opposing counsel. Notwithstanding our myriad personalities, lawyers have kindred spirits. We all have a job to do, and I particularly admire the ones who do that job well, no matter what side they are on. Maybe I am just lucky, but by and large I find the attorneys I deal with to be smart, focused, interesting people. There are way to many ways to get stressed out practicing law than to waste a bunch of energy making enemies of opposing counsel. Besides, cases come and go pretty quickly and the relationships we form with other lawyers last careers.

What are the best and worst aspects of practicing in Clark County?

The quality of the lawyering and the collegiality of the bar have always been high points. I have had the opportunity to practice in many different jurisdictions and have no doubt that our bar consistently stands with lawyers anywhere. Most local lawyers I have had the pleasure of dealing with over the years have mastered the fine art of being combative without being offensive. The bad part: Not everyone fits into the above.

What advice would you give an attorney beginning a practice?

Get to know your fellow lawyers. Admit it when you make a mistake... and you will make them. The case you are working on belongs to your client, not you, so don't frustrate yourself by trying to put more into his, her or its case than he, she, it are willing to put into the case. Don't make things up... it's okay to say you don't know. No client is worth your ticket to practice law.

If you could change on thing about the local court system, what would you change?

A local rule that makes mandatory reference of all civil cases to alternative dispute resolution (mediation) early in the case.

How has the practice of law in Clark County changed since you started?

A lot more lawyers. I did some work for a local law firm before I went to law school and there were just over 60 lawyers in practicing in Clark County. When I returned there were about 300. Now there are almost 600 lawyers hanging around. It makes it harder to get to know other lawyers on a personal level and it makes it harder for the newer attorneys to mix with the older attorneys. There is a lot to learn from attorneys who have been practicing for decades and the opportunities to get to know them and learn from just being around them are fewer and farther between.

What is the best piece of advice you have received along the way?

Be yourself.

What has been the biggest lesson of your legal career?

Listen to what people or saying. If you are talking you can not be listening.

What do you know now that you wish someone had told you 10 years ago?

How quickly time passes. I probably would not have believed them, but it is amazing just how quickly time passes by. So, if you want to do something, go do it. Now. Don't wait.

How do you balance work with the demands of having a family?

Probably not very well. But I have a very understanding wife and two great daughters that have helped me along the way.

What would you attempt to do if you knew that you could not fail?

I don't really fear failing. I don't like to fail, but I am not afraid to fail. Fear of failing gets in the way of moving forward. The only way to not fail is to not try something.

What childhood event shaped or scarred you the most?

My parents thought it was important that I learn ballroom dancing. So, I had the distinct pleasure of being a 13 year old boy in an Arthur Murray Dance class full of 18 year old girls. For 6 weeks! Felt like I was at an audition for Bad Girls.

What activities do you enjoy in your spare time?

Pretty much anything other than yard work.

Recently returned to music after a hiatus of more than 20 years. I played clarinet, saxophone and a little flute in college and for awhile after college until I settled into practicing law and raising a family. A small band talked me into coming out of retirement and joining them a couple of years ago.

I do all of the lawyer things, play golf (or, what some might call golf) from time to time, and the things that make living in this part of the country so incredible.

I donate a lot of time on community service activities: Lions club, Walk And Knock Food Drive, Washington School for the Blind Foundation.

I really have no problem finding things to do to keep me busy.

Tell us your favorite joke.

Two shipwreck survivors were adrift in a lifeboat. After several days of nothing but the vast expanse of the ocean one of them spotted what appeared to be an island way off on the horizon. The two started paddling furiously with their hands toward the spot of land. Finally, near exhaustion, they got near enough to shore to see a man walking on the beach. "Where are we?" shouted one of the castaways to the man. "Your in a boat," the man on the beach shouted back. The two castaways looked at each other and one finally said "That man is a lawyer". "How do you know?" the other replied. Said the first: "Because what he just said was absolutely accurate, and completely useless".

Do you have a desert island "top 5" books or music albums?

Pink Floyd—Dark Side of the Moon
Led Zeppelin—Boxed Set (probably cheating here since it's 5 or 6 CD's)
Stan Getz, Joao Gilberto—Getz/Gilberto
Michael Brecker—Two Blocks From The Edge
Weather Report—Heavy Weather

Describe a few pet peeves of yours.

Sanctimonious lawyering—I hate to break the news to you, but your client is not better, more righteous, nicer, or more holy than mine, so don't waste my time trying to tell me otherwise.

Short notice—We are all busy and have tight schedules, and not everything you or your client wants to do is an emergency. This is right up there with citing a case for hearing when you know the other attorney is out of town, on vacation, or in trial on another matter. Attorneys cooperate more and get better information to the court when they have time to prepare.

Ad hominen arguments—Really? Do you really think attacking the attorney is going to win your case?

Supporting the Campaign for Equal Justice:

A Smart and Simple Choice to Ensure Justice for All



LOREN ETENGOFF

Hearsay Special Correspondent

Civil legal aid programs are there for people in need when they have nowhere else left to go. Take for instance the “Taylor” family who got caught up in the foreclosure crisis. The Taylors had been renting an apartment with a valid lease and a clean rental history never missing a rental payment. When their landlord defaulted on his mortgage, a bank stepped in and attempted to evict the Taylors on short notice. Fortunately, the Taylors got in touch with legal aid where they received the help of a volunteer attorney. The attorney was able to quickly assess the situation and identify that new state and federal foreclosure-related eviction laws had not been followed. The volunteer attorney successfully negotiated to get the Taylors adequate time to find affordable housing and some funds to cover relocation costs. Thanks to legal aid, the family avoided a crisis situation, and our community avoided instability and spiraling social costs.

The availability of help for urgent civil legal problems like the Taylors’, through programs like the Clark Co. Volunteer Lawyers Program and the Northwest Justice Project, is particularly important as more and more families are finding themselves in poverty for the first time and facing increasing family stress and strife as they struggle with unemployment, the fallout of the foreclosure crisis, and consumer abuses that prey upon the most vulnerable.

More than twenty legal aid programs in our state are committed to ensuring that effective legal help is available for the increasing numbers of those facing civil legal problems that affect their most basic human needs. But Washington’s state-of-the-art, nationally-recognized civil legal aid system is threatened as its funding is getting hit hard.

Civil legal aid funding is comprised of state and federal dollars, Interest on Lawyer’s Trust Accounts (“IOLTA”), and charitable contributions. Federal, state and local budgets are stretched to the brink, and IOLTA funds have dropped 79% since their high water mark in 2007 with annual revenues falling from almost \$10 million to less than \$2 million — and remaining there for the past three years. With the Federal Reserve committed to low interest rates through 2013, we know IOLTA funding will not be able to meet the skyrocketing demand for legal aid in the next couple of years. As a result, charitable contributions are more important than ever for bridging the funding gap for legal aid.

Requests for legal help to avert the disasters of homelessness, hunger, and unsafe living conditions that destabilize families and our communities have skyrocketed since 2008:

- **Help for seeking unemployment benefits is up 711%**
- **Foreclosure cases are up 445%**
 - **Requests for food stamps are up 433%**
 - **Requests for help in situations involving domestic violence is up 90%**

The Campaign for Equal Justice is the Washington legal community’s collaborative effort to provide charitable support for more than 20 legal aid programs, including the Clark Co. Volunteer Lawyers Program and the Northwest Justice Project. The simple thought behind the unified Campaign for Equal Justice is that together, as a profession, we can raise much more support as a team than our small, resource-strapped legal aid programs possibly could raise on their own. Plus, some counties have a clear advantage when it comes to raising charitable support. The Campaign helps equalize access to that funding. For example,

last year, 166 attorneys and two judges in Clark County contributed \$11,522 to the Campaign. In turn, \$36,167 was granted back to the Clark Co. Volunteer Lawyers Program. That means for every dollar contributed here in Clark Co., more than three dollars came back to our local pro bono program. So in addition to playing our role as guardians of the justice system by helping provide free legal help to our community’s most vulnerable, our charitable contributions to the Campaign for Equal Justice are smart investments, to boot.

Last year the Campaign for Equal Justice “Rainier Cup” was created to celebrate those communities who have made access to justice a priority by supporting statewide legal aid through the Campaign. Our goal is to achieve 100% participation of lawyers and judges in Washington state in the Campaign each year, and this Stanley-Cup style trophy is awarded each year to the county with the highest legal community participation rate. Whatcom County was the inaugural winner of the Rainier Cup, with 49% of the local legal community contributing.

This year, to date, Clark Co. is in second place in the race for the Rainier Cup. Clark County has 704 legal community members. To achieve 50% participation, which should put us in contention for the 2011 Rainier Cup, we need just 352 attorneys and judges to contribute to the Campaign for Equal Justice. We can get there—but not without you.

We have made giving to the Campaign simple. You can make a tax-deductible contribution securely online today at

www.c4ej.org, via the mail at “The Campaign for Equal Justice, 1325 Fourth Ave., Ste. 1335, Seattle, WA 98101, or perhaps easiest of all, when renewing your WSBA license between now and February 1.

We all support many worthy causes this time of year, but ensuring access to justice is our home turf as lawyers and judges. Especially in these difficult times, every dollar for legal aid is critical. I hope you will join me in supporting the 2011 Campaign and help families and individuals in crisis return to safe and productive lives with the help of civil legal aid. Thank you.

Loren Etengoff is a member of the Clark County Bar Association and is a solo practitioner in Vancouver, WA. Following his three year term on the WSBA Board of Governors, Loren has continued his work to achieve stable financial support for civil legal aid statewide by joining the Board of Directors of LAW Fund, which oversees the annual Campaign for Equal Justice.

Sea Change in Patent Law



KURT RYLANDER
Hearsay Editor-In-Chief

On September 16, 2011 President Obama signed into law the Leahy-Smith America Invents Act (AIA), Pub. L 112-29, making the most significant change to U.S. Patent law since 1952. The law included numerous changes to the way patents are applied for and litigated, and many unclear aspects will be significantly clarified through litigation over time. One of the most newsworthy changes was the change to the U.S. patent system from a “first to invent” system to a “first to file” system, bringing U.S. patent law into alignment with the rest of the world.

Previously, where two competing inventors had filed patent applications on the same invention, the invention would (theoretically) be awarded to the first-in-time inventor through an agonizingly slow and expensive process called a patent interference. Another large change is the addition of expanded third party pre- and post-grant review procedures, giving competitors and other third parties additional tools and weapons to challenge applied for and/or issued patents. One change having the most

immediate effect in a whole slew of lawsuits is the sharp curtailment of “false marking” lawsuits. False marking claims previously could be brought by any third party under a private attorney general standing provision, against a company who had left a patent number on a product after the patent had expired. The damages were statutory in the amount of \$500 per occurrence. Because the Federal Circuit had ruled per occurrence meant per each individual mark, this meant that, for example, if a company manufactured 10,000 cups, and put, or left, an expired patent number on the cup, the company could be liable for \$500 X 10,000, or \$5 Million dollars. The AIA sharply limits this—making such suits all but dead on arrival. The third party has to have actual standing, real harm suffered, and can only sue for compensatory damages, which would be all but impossible to prove.

These are only some of the numerous changes made to U.S. patent law. Numerous patent commentators have in fact labeled the law the “Full Patent Lawyer Employment Act of 2011.”

We are all part of the same bar

Some attorneys have been paying family law section dues only, and not their CCBA membership dues. The CCBA has formally decided this issue in the past. An attorney is NOT allowed to be just a member of the family law section, and not a member of the CCBA. Attorneys must be a member of the CCBA to be a member of the family law section, and must pay dues for both.



Clark County
VOLUNTEER
 Lawyers Program

Statistics for September include 52 clients seen in advice clinics, 25 in Family Law, 12 in Family Law paperwork review clinic, 5 in the General Law clinic, 4 in the Bankruptcy Clinic and 18 in Housing Justice Project clinic. We also saw 24 clients at the court house for the Housing Justice Project, and 7 clients at the Homeless Shelter clinic. We placed 6 cases with an attorney for direct representation. There were 126 hours of volunteer attorney time donated.


We would like to send our sincere thanks to Everest College and Clark College for your cooperation, and help through your paralegal students who volunteer for us. We truly appreciate the help in the office. As a result, we are becoming well staffed and in return are more effective to the community.

Attorneys: If you are searching for an entry level Paralegal or Legal Assistant, we would be happy to make a recommendation to you.

Thanks, Susan

**MANY THANKS TO ALL THE ATTORNEYS AND
 PARALEGALS WHO STAFFED THE ADVICE CLINICS,
 HOMELESS CLINICS, PROVIDED REPRESENTATION,
 AND VOLUNTEERED IN THE HOMELESS COURT IN
 THE MONTH OF SEPTEMBER**

*Matt Blum, Bill Brendgard, Chuck Buckley, Mark Carter,
 Tresa Cavanaugh, Elizabeth Christy, Jeff Courser, Ivan Culbertson,
 Erin Culver, Ed Dawson, Daniel Divittorio, Sidney Dolquist,
 David Evans, Peter Fels, Lori Ferguson, Gavin Flynn,
 Theresa Foster, David Gregerson, Robert Gregg, Marlene Hansen,
 Lincoln Harvey, Paul Henderson, Vickie Kesala,
 Dustin Klinger, Michael Langsdorf, Christie Martin,
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LAW LIBRARY NEWS



MARIA SOSNOWSKI
Law Librarian

FOR SALE Through NOVEMBER, 2011

The law library is taking blind bids on the following items:

1. Law of Torts by Dobbs, 2 volumes.
2. Civil Jury Instruction Handbook, 2009-2010.
3. Washington Elder Law Handbook, 2009.
4. Civil Rights and Civil Liberties Litigation, pages without binder, 2010.
5. Washington Court Rules 2011.
6. Litigating Employment Discrimination Cases CD Rom, 2010.

Give your bid to the law librarian through the end of November. Bids must indicate your name, phone number, amount, and item(s) on which you are bidding. Winners will be notified in early December. We reserve the right to withdraw an item from bidding.

ATTORNEY BOOKKEEPING TIPS



EMANUELA SANDRI
Attorney Bookkeeping Services, Inc.

CREDIT CARD STATEMENT NOT ENOUGH

F, who was self employed, deducted numerous expenses on his Schedule C. His proof for many of the write offs was his American Express credit card statements, which listed the payee, date and amount of each transaction. He also deducted the card fee.

The IRS denied a significant number of the deductions, including the card fee. The case ended up in court.

Held: For the IRS. A credit card statement is not proof of the business purpose of an expense. This requires receipts or other evidence that serve to demonstrate the exact nature of the purchase and why it was ordinary and necessary for the business. Just showing that a payee is an office supply store or other vendor of items or services, most of which are ordinary and necessary for the business is not enough. Nor is the taxpayer's general recollection of the business purpose of the expense likely to be sufficient proof of business purpose. [Fessey v. Comm., T.C. Memo. 2010-191]

Tip: Keep related receipts with credit card statements to show both the fact of payment and the purpose of an expense.

NEWS YOU CAN USE



LISA DARCO
CCBA Office Manager

NEW CONTACT INFORMATION:

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Millie Roberge
Attorney at Law
306 E. 16th Street
Vancouver, WA 98663

Attorneys who would like to participate in the Moderate Means Program through CLEAR/Northwest Justice Project can find an application on the WSBA website. <http://wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Moderate-Means-Program>

LEGALLY DRAWN



"Sometimes, you have to rely on your business acumen to advise clients against pursuing bad ideas."

© Vasanth Sarathy, 2009

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UPCOMING EVENTS

MEETING

November 2, 2011
 CCBA Hearsay Meeting
 CCBA Office – 11:30am

MEETING

November 2, 2011
 CCBA Board Meeting
 CCBA Office – Noon

MEETING

November 8, 2011
 Superior Court Bench/Bar Meeting
 Courthouse – Noon

CLE

November 9, 2011
 Nuts & Bolts CLE: Bankruptcy
 Red Lion at the Quay 3:00pm to 5:00pm

MEETING

November 10, 2011
 Family Law Section Meeting
 Tommy O's 11:30am

MEETING

November 15, 2011
 CLE Committee Meeting
 CCBA Office 12:00pm

MEETING

November 17, 2011
 CCBA Web Site Committee meeting
 JD Nellor's Office

CLE

December 6, 2011
 CLE: Ethics
 Public Service Center 9:00am

CLE

December 12, 2011
 CLE: Intro to HOA's & Condo's
 Public Service Center – Noon

CLE

December 14, 2011
 Nuts & Bolts CLE: Workers Comp
 Red Lion at the Quay 3:00pm to 5:00pm

CLE

January 17, 2011
 CLE: Federal Court Civil Procedure
 Public Service Center 9:00am

SW WASHINGTON LAWYER REFERRAL SERVICE

The CCBA's Lawyer Referral Service is a program designed to help the general public find attorneys appropriate for their needs, while at the same time providing a source of new client business exclusively to our members.

To participate, members pay a small one-time annual fee. (The service is free to the public.) For more information, call the CCBA at 360-695-5975.

THE SWLRS REFERRED 302 CLIENTS IN THE MONTH OF SEPTEMBER

Administrative Law	20
Bankruptcy	9
Business & Corp	6
Consumer	21
Criminal	17
Debtor/Creditor	2
Family Law	62
General Litigation	88
Labor & Employment.....	22
Real Property.....	36
Wills & Trusts.....	12
Worker's Comp	2

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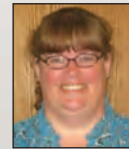
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*Calling All
Social Volunteers*

The Barrister's Ball committee is desperately in need of volunteers to help with the planning, setup, and running of the Barrister's Ball.

We also need people to help canvas businesses for charity donations to be auctioned.

The charity this year to receive the funds will be the YWCA SafeChoice Program.

Call Lisa Darco at 695-5975

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