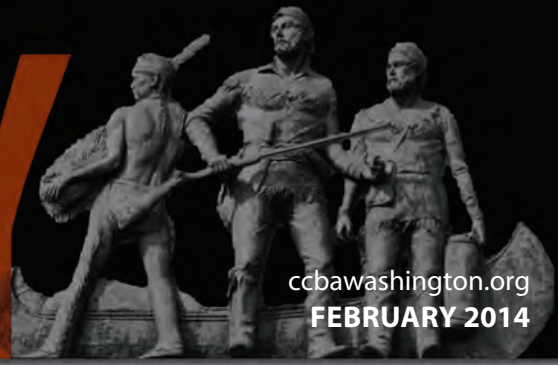


HEARSAY



ccbawashington.org
FEBRUARY 2014

OFFICIAL NEWSLETTER OF THE CLARK COUNTY BAR ASSOCIATION



A dónde vamos?

Where are you going?

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PRESIDENT'S MESSAGE



JANE CLARK
CCBA President

I received a message this week from an old colleague from the UK via Linked In. It got me thinking about my former life working as a “solicitor” in my home country. People frequently ask me about the differences in practice and also the differences between a “solicitor” and a “barrister” so I decided to use this month’s column to enlighten you all. Please indulge me!

Unlike the USA, many universities in the UK offer an undergraduate program in law (LLB or a BA in law). I therefore started by legal training at the age of 18 straight out of high school and graduated with an LLB in law from Leicester University 3 years later. During that 3 year training I completed the “core” legal subjects eg Criminal Law, Contract, Torts, Evidence and Administrative Law (note there is no Constitutional law as we have no Constitution!)

The second stage of legal training depends on whether you want to become a Solicitor or a Barrister. To become a Solicitor you complete one year at Law School (unless you have completed an undergraduate degree in something other than law in which case you take 2 years of law school covering the “core” subjects in your first year). At the end of Law School you take the “Solicitor’s Final Examination” which completes the academic portion of your training to become a Solicitor. However in order to get licensed as a Solicitor you still have to complete 2 years “on the job” training under the supervision of a licensed solicitor. This used to be known as “articles” so when I trained I was an “Articled Clerk”. Things are now more modern and trainees undergo a “training contract”. At the end of those 2 years, provided that you have gained experience in at least 3 substantive areas of law, you are licensed as a Solicitor.



Having compared the system in the USA to the English system, I have to say that the training in the UK in terms of preparing you for a career in law was probably superior to the system here. With 3 years academic grounding in law,

followed by a year of practical skills training in law school followed by 2 years “on the job” training I gained my license feeling totally prepared to advise clients and represent them in cases. I am not sure that newly qualified attorneys here feel so well prepared. However, maybe I am just biased.

To train as a Barrister, following a 3 year undergraduate degree in law, you proceed to one year of ‘Bar School’ followed by a one year pupillage or training contract (similar to the Solicitor’s training contract but geared towards the work of a Barrister. Barristers also have to eat a number of meals at the Inns of Court before they are qualified to practice - a throwback to some ancient tradition no doubt (and no I do not think eating finger foods and watching a skit at the Red Lion on the Third Wednesday of the month would qualify for those of you who attend our local Inns of Court meetings).



Yes it is the Barristers that wear the wigs and the gowns, although in fact if a Solicitor appears in Open Court (rather than in Chambers where many motions are heard) we must also wear a gown - but we are not elevated enough for the wig!

In terms of the differences between the two branches of the profession, the easiest way to explain it is that the Solicitors are most comparable to the attorneys we have here. We take on cases, advise clients and work up the case. Barristers are the “Trial

Lawyers” of the English legal profession and will handle most trial work, with some limited exceptions. However the system is a little odd in that barristers will also be brought in at certain points of the case to for example, draft the complaint or write an advice on liability or meet with an expert. Barristers are hired by the Solicitors and can only have direct communication with a client if the hiring Solicitor is present. This also applies to representation at trial. Many a time in my training, part of my job was to “sit behind counsel” which meant sitting in court with the Barrister while he or she advocated for my client.

I have to say that it became an increasing frustration to me that Barristers, who did not know my cases nearly as well as I did, were advocating in court for my clients and it was, in part, this frustration that led me to move to the USA where I could argue my own motions and represent my clients at trial.

The irony of the system is, at least in my area of practice which is Medical Malpractice, is that because of the rule in England that the loser pays the winner’s costs and attorney fees, very few cases ever go to trial. Parties will generally settle rather than take the risk of a verdict and a costs order against them in addition to having to pay their own attorney fees. In fact, the stakes were so high during my 10 years in practice in the UK, that almost all my medical malpractice clients had the benefit of legal aid - a government system funding the attorney fees for those with low disposable income. Although there are many critics of our Contingency Fee system and it may not always be just, but at least it allows greater access to justice.

On balance I much prefer practicing law in the USA. I think I am here to stay.

Messina Bulzomi Christensen is happy to announce the hiring of attorney Gemma N. Zanowski. Ms. Zanowski graduated cum laude from the University of Arizona James E. Rogers College of Law in 2010 and has undergraduate degrees in Journalism and Psychology.

Prior to joining MBC, Ms. Zanowski served as the judicial law clerk for Kitsap County Superior Court and completed a fellowship with the Northwest Justice Project.

"I am excited to start my position with Messina Bulzomi Christensen. The firm has a reputation for excellence and I will work hard to ensure that reputation is reflected in my work and my community relationships. I am looking forward to hitting the ground running and helping our clients receive the justice they deserve." ~ Gemma N. Zanowski

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CCBA General Meeting and Lunch

Wednesday, March 5, 2014
12:00 – 1:00 PM
Red Lion at the Quay
100 Columbia Street, Vancouver

- Family Law Section Report
- Young Lawyers Section Report
- Hearsay report
- CLE Committee Report
- Treasurer's report
- Proposed Changes to CCBA Bylaws

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who will give a 1 hour CLE presentation entitled

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1 CLE Ethics credit is available for this presentation.

Name	Lunch \$15.00	CLE \$25.00	Total Paid

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Presented by Lainie Hammond & Gale Kirsopp

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Lainie Hammond worked as a federal investigator for the U.S. Department of Labor working in ERISA compliance and enforcement. She has also worked overseas as an author for the Organization for Economic Cooperation and Development in Paris. Lainie worked most recently for the Washington State Bar Association as the IOLTA random auditor before moving into the Law Office Management Assistance Program as a Practice Management Advisor. She did work as Custodianship Counsel, where she assisted with the winding down of the practices of deceased and disbarred attorneys.

She has taught numerous CLEs on trust account rules and record keeping, and practice management skills. Lainie is a graduate of the University of Washington, School of Law, and is a member of the Washington State Bar Association. She obtained her Bachelor's from Washington State University, majoring in Sociology and minoring in history.



Gale Kirsopp established 4700Group five years ago to specifically serve small legal practices with outsourced accounting services, and now serves as its managing partner. Leveraging Gale's accounting expertise and experience with her passion for technology, Gale focuses on record keeping and compliance issues for solo and small firms with regard to IOLTAs and other financial matters. In addition to managing 4700 Group, Gale is also a national and international speaker/trainer, and an Advanced Certified Quickbooks expert.

Gale holds an undergraduate and two advanced degrees. She is a strong advocate of community, and has been a Rotarian for more than a decade.

Description of Presentation

Overview of selected Washington State Bar Association ethics opinions issued in 2012, and how they can be integrated into everyday practice. Particular note of opinions related to acceptance of credit cards for IOLTAs and charging fees back to clients, email communications with clients through work email, use of debit card from IOLTA, garnishments of IOLTA pursuant to court order, preparing documents for parties when acting as mediator, and the ethical considerations when using cloud computing. Gale Kirsopp will give an indepth look at what cloud computing actually is, and how practitioners can arm themselves with the knowledge necessary to do the due diligence required.

A dónde vamos? (Where are you going?)

Attorney, Rob Russell heads to Guatemala with a mission. . . and finds something quite unexpected.



HEATHER J. NORTON
Hearsay Special Correspondent

Guatemala. It's one of the poorest countries in the Western Hemisphere. Approximately 75 percent of the population lives below the poverty line. 50 percent of all children are malnourished and 45% of those over the age of 15 are illiterate. And yet, attorney Rob Russell recently made the trip. His objective: to do some good.

I was excited to talk to Rob about his trip, since I have long been interested in doing something similar myself. I was expecting to hear all about the progress that is accomplished on trips like these. What I wasn't expecting was how it would strike a chord inside me that would still have me contemplating our visit to this day. For me it was a mini "Tuesdays with Morrie" experience—with sort of an "old attorney, young attorney, and life's greatest lesson" twist to it.

I parked myself in Rob's office, which was strewn with streamers and balloons from his birthday, along with pictures from his 10 year old daughter. Excited to hear all about what he had accomplished, I launched in with my questions. What did he do? How long did it take? What was the objective? What was the final result? I was eager to hear all about the cleaner drinking water, or the plowing of an entire farm, or the newly built orphanage.

Rob educated me on their project—"The Shack Attack." On the outskirts of Guatemala City lies a series of old abandoned railway tracks. Known as "the tracks," it has become home to a large community of families (among the poorest in the city) who have built homes-- shacks, really—up and down the tracks. The objective of Rob's trip (among other things) was to join 5 other members of his church group and a local mission in building a home or two for a family (or families) in need. I was totally interested. Building a home for someone eeking out an existence in a shack made of corrugated metal? I want to do that someday. So Rob had my full attention.

But just as my appetite was growing for details about turning shacks into homes, I noticed Rob's attention turned to something else--a little girl. "Her name is Alejandra," Rob said as he pulled up a picture of her on his desktop. "She can't be more than 6 or 7 years old. And for some reason, she just attached



herself to me. She followed me everywhere. . . . walked with me, talked with me, sat with me. I don't know her whole story. But for some reason she glommed on to me. She became my shadow." Rob showed me pictures of Alejandra (whose smile would melt anyone's heart) as he told me all about her. I sensed the impact she had on him. He held up one of two bracelets resting on his desk. "She made this for me while I was there."

It was kind of funny, I thought, to see Rob Russell's big, hulk-like frame sitting behind his desk as he looked wistfully down at the tiny little bracelet. Funny . . . and very sweet. But my attention turned again to the purpose of his trip. What about the shacks? I was about to re-direct Rob's attention when he picked up the second bracelet.

Gaby was his next story. "It's just she and her mom, Irme." Again, another picture popped up on his desktop. And again, I found myself admiring her smile. "Irme has a health problem with her leg and has trouble walking. Despite this, she goes to the city dump to find stuff to sell to help provide for her and her family." He holds up the second bracelet. "I realized," he said, "that this bracelet is one of maybe two or three worldly possessions that this girl owns. And she just gave it to me." We both sat there. Staring at the lonely little bracelet on his desk, realiz-

ing the selflessness of the gift. But my attention drifted to the shack attack. I'd been in Rob's office now for half an hour, and I still hadn't gotten the details about the house that Rob built.

But before I could ask, Rob's attention turned to yet another person. And I realized my shack attack questions would have to wait. . . again. Person after person, picture after picture, Rob walked me through his personal show-and-tell about all the people he met, interacted with and grew to love in the short time he was there--people who have nothing, but who radiate joy and contentment. Like Daniel, a little boy who is "so smart, and has so much potential, you can just see it in him," says Rob. Or Rolando, a delightfully loveable and happy guy who, despite having so little, told Rob he can come live with him anytime. . . "rent free," Rolando said.

Each story was touching and inspiring. But I still had a story to write. So I interrupted Rob's reflections. "So how about the Shack Attack?" I ask. "How did it go?"

Rob sat back in his chair--contemplative. (I didn't think it was that difficult of a question. But I wait).

"From the time we landed," Rob explains, "I was really excited to get going. I had come to build a home for someone. The first day we got our bearings and saw where we would be working. We toured the area and figured out the lay of the land. That was understandable. But I wasn't there as a tourist. I was there to work. I wanted to get going," Rob says. I know a little Spanish. So I kept asking, "A dónde vamos? A dónde vamos? . . . Where are we going? I just wanted to get going!"

I was inwardly agreeing with him. I had an article to write and work to do at the office. I really needed to know how they finished the project so I could get going with all the work that littered my desk. Rob seemed to have a greater propensity for patience than me. So I squirmed in my seat a little—and listened.

"The second day we spent some time mixing mortar and moving cinderblock for a few hours. But the momentum of the project wasn't what I had envisioned. It just seemed to be moving so slowly, with so much down time and no real sense of urgency. I wanted to make sure I was being efficient and productive and



helping the people as much as we could with our limited time. I did not want to just stand around waiting and not being productive." Again, "A dónde vamos? A dónde vamos? . . . Where are we going?"

Rob walked me through the week which began as "The Shack Attack" and then

seemed to putt along, all the while plagued by his incessant questioning "A dónde vamos?"—where are we going? But interspersed between the story of the shack attack was Rob's continued story of people and the moments they had shared. (Along with my private thoughts about needing to get going with my to-do list).

And then. . . it happened. The "Tuesdays with Morrie" experience.

"It was my last day there," Rob said. On Sunday we went to church. Alejandra, the little girl who had become my shadow, was leaning up against me, and in this moment she just locked eyes with me and said "Me te quiero." I understood enough Spanish to know she was telling me she liked me. I thought 'Oh, isn't that sweet. She likes me. We're friends.' But later I mentioned it to our host. He said, 'Rob, that's not what she said. That's not what that means. She was conveying something much deeper than that. She loves you.'

Rob sat still, trying to find the right words. "It was one of those moments," he said, "when I saw that the whole time I had been asking, A dónde vamos?. A dónde vamos?. . . Where are we going, Where are we going? And I suddenly realized, I had been "there" the whole time."



“There was one day at the tracks that I was getting a little frustrated with our lack of progress. I was working to make sure I was doing everything that I thought needed to be done and could be done to move forward with the plan. I expressed my concern to another team member, that maybe we needed to get going to the next impactful task. She pointed out- and this will stick with me forever- that I was doing EXACTLY what I was supposed to be doing at that time. I didn’t feel like I was really doing anything. We were just hanging out with the kids and loving on the kids. She said, ‘Ya know, Rob. This is what people call being ‘in the moment.’” (Interestingly, at the very moment when I asked the question, I was giving Alejandra a hug.)

“I’m an attorney,” Rob explains. “So I like to be able to plan things, implement things-- see results. I like to be able to put everything on a spreadsheet. What I experienced in Guatemala completely changed things for me. I realized my trip wasn’t about building a house. It was about building relationships. It wasn’t about cinder blocks and cement. It was about people. It wasn’t about going. It was about being. It was about learning to sit still. . . to wait. . . to savor simple things. . . to allow things to unfold. It wasn’t about asking where are we going?, but rather savoring the “now.” It was about being “here.”

(Wait—what? “Are those tears?” I thought. “Is it okay to cry in another attorney’s office?”). I felt sheepish and humbled and grateful all at the same time. I had sat there in Rob’s office wanting to know “where we were going?” so I could crank out an article, and was now savoring a blissful “ah-ha” moment of inner peace.

Rob pulled up one more picture on his desktop. Julio--an older gentleman, probably in his seventies, standing at his front door. He was proudly holding a picture of his wife. I noticed he was literally beaming. “He lives in a shack that is literally no bigger than my office,” Rob explains. “His wife has an undiagnosed problem with her legs. Her legs are literally covered with terrible, painful sores. She can’t get up and even come to the door. He loves her and waits on her and takes care of her. That is his life. But would you just look at his smile!?” We both sat there in silence, admiring Julio. “He has nothing,” Rob said. “Just a shack, a bed ridden wife, and his picture of her. And he is happy. He’s not asking “where are we going.”

“As attorneys we are so focused on the future and protecting against what might come,” Rob continued. As a result, we often spend too much of the present not actually ‘in’ the present. We miss out on the joys and experiences of ‘right now.’ It can be scary to let go of our control of things. But at the same time, I’ve found it’s also a relief to think that I don’t have to control everything. The joy that is available for us to experience right now can be better than anything we could ever hope to experience by focusing too much on the future. Since my Guatemala experience, I am running things through a different filter. I see things totally differently now. I feel like a new door has opened for me.”

My phone buzzes for the umpteenth time and I finally check my messages. A blizzard is moving into Clark County and my husband and kids are frantically trying to reach me. School has been dismissed early. There’s no mom around to fetch the children. I say my quick (and heartfelt) goodbyes to Rob (I feel like we’ve bonded. . . crying in another person’s office does that to you). I get in my car and head toward home. Is my little girl worried because I’m not at the school to pick her up yet? I notice that I’m driving with a strange sense of peace and purpose. Normally I would be tearing across Mill Plain Blvd. like Cruella DeVille. But not today. I watch the snowflakes falling and find myself grateful I get to enjoy a beautiful moment. It has been a while since I saw snow. I walk into the elementary school and hear the bustling sounds of kids, bursting with excitement to get out early. I smile at the cheerful sound. I round up the kids and get them safely home. We make hot chocolate. I find myself strangely content.

Because of the blizzard I will fall behind at work. The bills on my home computer desk are asking if I’m going to pay them today since I appear to have the extra time. (ha, ha—nope). Where am I going? I certainly have some ideas about where I’d like to go. But somehow that doesn’t matter right now. Because I’m “here.”



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Family Law Section: Divorce and Death Conflicts for the Family Law Practitioner

MEREDITH MCKELL GRAFF

Secretary/Editor

The January Family Law Section meeting was presented by Dru Horenstein of our section, and Kathryn Holland of the Elder Law Section regarding the intersection of death and dissolution.

The first caution they mentioned was taking care not to represent one party in a dissolution matter after having worked with both to prepare the couples' estate planning. Ms. Horenstein and Ms. Holland advised a careful reading of RPC 1.7 regarding conflicts of interest with current clients. Not all situations may be adequately waived by one party to enable the attorney to represent the other party.

The second caution involved preparing a pre-nuptial agreement for both parties and believing that the attorney could adequately and ethically represent both parties' interests without a conflict of interest.

Another problem they identified had to do with retirement plans. Often, couples will agree, prior to consulting with an attorney, to divide up the community property without dividing up one or both parties' retirement plans. Or, one party has consulted with an attorney and the other has not, resulting in an agreement that may not be in the uninformed spouse's best interests. Retirement assets are more complicated when one member of the couple has served in the military and is entitled to military retirement benefits. Unless the military member elects the Survivor Benefit Plan prior to the dissolution, it cannot be revived after the dissolution if the uninformed member of the couple finds out after the divorce that a significant asset was "left on the table." This is especially problematic because only one former spouse may receive the SBP. If it is waived due to ignorance and the former spouse remarries, the new spouse will receive this benefit, even if the former spouse was married to the military member for many more years than the new spouse.

The speakers advised that practitioners who are not experienced in retirement issues to refer their divorcing clients to an attorney who specializes in dividing retirement assets and is familiar with how the Internal Revenue Code (IRC) and the Employee Retirement Income Security Act (ERISA) provide clear guidelines for the division of retirement assets. Many family law practitioners who do not work with retirement plan issues are not aware of the consequences if the qualified domestic relations order (QDRO) is not prepared and entered by the court at the

time of the dissolution. If the party who is the participant in the retirement plan dies before the court signs the QDRO, the person entitled to receive a portion of the retirement plan assets has no recourse against the plan. Having a provision in the dissolution decree that states that the plan will be divided is not sufficient for the plan to provide a benefit to the other party if their plan participant dies before the QDRO has been entered by the court. The malpractice consequences are great for the attorney who is tasked with preparing the QDRO and does not have it completed at the time the dissolution decree is entered by the court, and the plan participant dies before the QDRO can be entered by the court. Best practice is to enter all the court documents at the same time, and defer the entry of the dissolution until the QDRO has been preapproved by the plan so that when it is presented to the court with the dissolution decree, it is certain that it will be approved by the plan once the divorce is final.

Often, Horenstein and Holland cautioned, people fail to change their beneficiaries on their retirement plans, IRA accounts, bank and investment accounts after the dissolution is final. It doesn't even matter if the divorce decree stated that a particular financial asset was to remain with one party, if that party failed to change the beneficiary then later dies. The financial asset will go to the person named as beneficiary, even if that was not the intent of the dissolution settlement. Some discussion by section members occurred regarding this point because Holland suggested that parties change their beneficiaries before the dissolution is final if a party does not want the estranged spouse to receive financial assets if a death occurs prior to the dissolution. If the court has entered temporary orders, including property restraining orders, changing an insurance entitlement or a beneficiary to a financial asset may be a violation of those orders. Also, RCW 11.94.080 provides that a decree of dissolution revokes the designation of a spouse as "attorney in fact" in a durable power of attorney document for all divorces entered after July 22, 2001. However, this statute does not revoke beneficiary designations on retirement assets.

There is nothing in Washington dissolution case law or statutes that precludes a party from revoking a designation of "attorney in fact" for a medical and/or financial durable power of attorney or medical directive. Parties may wish to revoke their Community Property Agreement (CPA) upon deciding to divorce, which is best done on a reciprocal basis to avoid misunderstanding. RCW 11.12.051 establishes that all

provisions in a will providing for a former spouse are revoked upon dissolution of marriage, and the will is subsequently interpreted as if the former spouse predeceased the testator.

Horenstein and Holland also talked about how life insurance can be used to secure child and/or spousal support. RCW 11.07.010 allows for the automatic revocation of beneficiary designations naming the former spouse upon dissolution of marriage. For couples who wish to continue beneficiary designation of the other, primarily to secure child support, this must be re-affirmed after the dissolution is final by signing a new beneficiary designation form and submitting it to the insurance company. Nowadays, this form is available on the insurance company website and is usually easy for clients to print out. Using life insurance to secure child support is a great way to ensure there are enough funds for the children in the event of the death of the other parent. The best way to ensure the policy premium is paid and remains in force is for the other parent to own the policy and to pay the premiums. That way, the insured parent will not fail to pay the premiums because the beneficiary parent (trustee in trust for the parties' minor children) pays the premiums. The simplest way to be sure that there is not an excess of insurance is to purchase a level premium, decreasing term policy that extends to cover all the children up to age 18 or anticipated college graduation.

Some clients believe they are entitled to assets that may eventually be distributed to their spouse from their spouse's parents' estate, either before or after the spouse's parents' deaths. Generally, inheritances are not community property. Anticipated, but unrealized assets, are not assets in a dissolution.

If a party dies during the dissolution case but the dissolution is not finalized, the surviving party is considered the surviving spouse even if the parties were not residing together. If there is a CPA that has not been revoked, the death of one party does not revoke the agreement. If there is no CPA, there are still property issues to be determined and assistance from an attorney practicing probate law will be needed by the surviving spouse. Separate personal representatives can be appointed by the court, one to administrate the community property and the other, the decedent's separate property.

It was a great CLE and the Section appreciates Ms. Horenstein and Ms. Holland's expertise in the issues of dissolution, retirement assets, estate planning, and probate.

Terry Lee presented the case update report. The Schnurman case out of Division 1 clarified that the court has discretion whether to allow for a residential schedule deviation of the child support transfer payment, even when the parenting plan was an agreed 50/50 plan. The Langlan Estate matter, also out of Division 1, reiterated the presumption of quasi-community property in a committed, intimate relationship (previously known as a meretricious relationship) for property acquired during the relationship. The Buecking case presented the interesting issue of the "90-day cooling off period" from filing a petition for dissolution and entering a decree of dissolution. Here, the parties initially filed a petition for legal separation. After over a year, the parties filed an agreed petition for dissolution, amending their original petition. A trial was held and the court entered a decree of dissolution, 83 days after the petition for dissolution was filed. The court instructed, upon the husband's appeal based on statutory error that, "Petitions for marital dissolution are within the broad subject matter jurisdiction of the superior court. Failure to adhere strictly to the statutory framework governing such actions, including the 90-day waiting period, does not cause the court to lose its constitutional powers or render its decree void. Nor is such an error a manifest constitutional issue permitting review for the first time in this court." The court also noted that "when a petition for dissolution is filed, amending a previously filed petition for legal separation, it is unclear whether the statutes contemplate a new waiting period." Perhaps this case will be the first step to eliminating the 90-day waiting period when the parties are in agreement regarding the petition for dissolution, as has been the law in the State of Oregon for the past 14 years.

The next meeting will be held February 13, 2014 at the Hilton Hotel, beginning at 11:15 a.m. If you would like to be on the Evite list, please contact Matthew Blum, President, Family Law Section (matt@carolynmdrew.com).

CCBA Board Meeting Minutes

January 8, 2014

Clark, Nellor, McLeod, Fairgrieve, Darco present.

There being no quorum (flu sweeps the county), only informal discussions were held, and no official business conducted.

The next General Meeting of the CCBA will be held March 5, 2014. We expect to present updated by-laws to the membership for approval. Look for us at the Barrister's Ball on March 1.

SUPERIOR COURT BENCH/BAR COMMITTEE MEETING MINUTES

JANUARY 14, 2014



JOHN FAIRGRIEVE
Hearsay Special Correspondent

The meeting began shortly after noon. Persons present were Judge Robert Lewis, Judge John Nichols, Ann Christian, Jolene Sell, Emily Sheldrick, Heather Beasley, Curtis Welch and John Fairgrieve.

OLD BUSINESS:

1. Competency Evaluations and Western State Hospital (WSH): Ann Christian told the committee that notice was sent out on Friday, January 10 to twenty one psychologists and psychiatrists who provide services to indigent defendants in the local area to see if they would be interested in conducting competency evaluations locally for the state authorized compensation rate (\$800). The deadline to respond is January 31. Ann indicated that she had received two letters of interest so far.

Ann also told the committee that the State has drafted rules which are being reviewed internally on how to use a pool of evaluators and that Pierce County was already doing so. Ann mentioned that there were no rules published on reimbursements yet. She further told the committee that WSH is still having problems meeting the timelines set by the legislature to get competency evaluations conducted, and was only doing so successfully in six or seven counties.

2. Publishing Jury Selection Procedures: Curtis Welch told the committee that some of the information had been compiled but that he felt that the students had a couple more judges to finish with. He stated that as soon as the students are finished a draft will be sent to the judges for review and then it will be published.

3. Restoration of the Right to Bear Arms- Criminal or Civil Proceeding: The Judges told the committee that a local rule is still in the process of being drafted.

4. Jail Access. Ann Christian told the committee that she received a report last Sunday, January 12 that there were no contact rooms available for criminal defense counsel to meet with their clients due to a fight in the jail.

5. Readiness Docket: Judge Lewis reported that, due to the size of the readiness docket, it was divided into two dockets last week and would be divided into two dockets this week and next week.

He went on to state that the rest of the dockets in January are heavy and that February is beginning to fill up.

Ann Christian told the committee that there were a record number felony cases, 240, filed in the county in December 2013. Ann told the committee that a large number of the cases were assigned to the Children's Justice Center.

6. 2014 Mock Trial Competition: It was reported that there would be eight teams in the competition this year this year including two from the Skills Center. Attorneys interested in participating as raters or judges in the competition should contact Jill Sasser (jill.sasser@landerholm.com), who has agreed to serve as volunteer coordinator this year. Please provide contact information and the round or rounds you are willing to rate.

NEW BUSINESS:

1. New Proposed Civil Rule: Jolene Sell told the committee that a new civil rule has been proposed that would mandate service by electronic means. The proposed rule also authorizes counties to adopt local rules to mandate and implement the new procedures. Emily Sheldrick asked if a previous freeze on new local rules was still in effect. Judge Nichols replied that the freeze had expired. There was then a discussion about the many issues surrounding electronic filing and service. Emily asked if electronic filing and service was going to be adopted by the superior court in our county. Judge Nichols replied that there have been issues with implementing it here in our county and in Pierce County as well. Emily told the committee that she has had a good experience with the move to paperless practice in our district court.

2. Washington Supreme Court to visit Clark County in the spring: John Fairgrieve told the committee that the Washington Supreme Court has announced its intent to hear oral argument in a case this spring in Vancouver. Additional details will be provided as they become available.

3. Next Meeting: The next bench/bar meeting will be held on February 12, 2104 at 12:00 p.m. in Judge Nichols' jury deliberation room.

Respectfully submitted,
John Fairgrieve

CCBA CLE Calendar

Register now for any of our upcoming CLEs.

Brown Bag CLE – Dog Bite & Animal Law

David Nordeen & Denise Lukins

February 27, 2014

Noon – 1:00pm

Public Service Center Training Room

N&B – Working with Medical Experts

Jane Clark & David Nordeen

June 11, 2014

3:00pm – 5:00pm

Red Lion at the Quay

CLE – What’s New In Ethics

Lainie Hammond

March 5, 2014

12:45pm – 1:45pm (following the CCBA
General Meeting)

Red Lion at the Quay

N&B - Estate Planning and Charitable Giving

Jill Sasser &

Rafik Fouad, Financial Advisor

March 12, 2014

3:00pm – 5:00pm

Red Lion at the Quay

GAL Title 11 Certification

April 2, 3 & 4, 2014

Red Lion at the Quay

N&B - Employment Law Basics for the Business Lawyer

Emily Sheldrick

April 16, 2014

3:00pm – 5:00pm

Red Lion at the Quay

N&B CLEs: **\$50 for Members**
 \$70 for Non – Members

General CLEs: **\$35/Hour for Members**
 \$45/Hour for Non-Members

N&B - Immigration Law and its Impact in Criminal, Family and Employment Law Cases

Gretel Ness, Chris Anders & Tilman Hasche

May 14, 2014

3:00pm – 5:00pm

Red Lion at the Quay

Court of Appeals Division II bids Farewell to Judge Joel Penoyar

DON JACOBS

Hearsay Special Correspondent



Judge Joel Penoyar recently announced his intent to retire from his seat on the Washington Court of Appeals Division II. The Court hears appeals from courts in Clark County all the way north to Clallam County. Effective the end of February, Judge Penoyar will retire with an impressive record of serving the people of Washington for over 37 years, making him the longest active serving judge in the state. His long

career of public service began almost right out of law school. Upon graduation from the U of O he took a job with a private practice lawyer in South Bend. Almost immediately a seat came open on the Pacific County District Court. Seems like no one was all that interested in the job. Judges on the Pacific County District Court to this day only serve part time. He applied and to his surprise, was appointed by the County Commissioners. He ran for election the next cycle and the voters gave him the nod to keep the seat. In 1988, he was elevated to the Superior Court, a full time job. He served the people of Pacific and Whakiakum County in that capacity for the next 18 years. In 2005, he became Governor Gregoire's very first judicial appointment when she selected him to fill an open slot on the Court of Appeals, replacing Clark County's own beloved Judge Dean Morgan. His first election was hotly contested but Judge Penoyar came out on top followed by an uncontested election the next time around. When he retires the end of February, he'll have served as a Judge in District Court, Superior Court and the Court of Appeals for close to thirty eight years. A career stat not many can equal. During that career he's heard just about every case imaginable. And the experience left him with fond thoughts of our justice system in Washington. After he made the decision to retire in December, he penned a letter to the Columbian editorial page about his experience. An excerpt from the letter is worth repeating for all of us who continue to work in the justice system:

"People complain about individual cases they hear or read about, but in my 37 years of experience, what I see in the vast majority of cases is competent lawyers, jurors and judges and results that make sense. It is the aberrations that get attention, while many thousands of well-decided cases flow by un-noticed. In Southwest Washington, people should be proud of their local courts. Go and watch a session, and you will see what I mean."

I asked the Judge if anything in particular made him decide to retire. He told me turning 65 got him to thinking about it. Then the birth of his fifth grandchild came along and that was what

sealed the decision. He says he'll miss interacting with the other judges, something he found refreshing after having to make solo decisions for so many years on the Superior and District Court bench. He'll also miss the opportunity to help put some clarity into laws that are confusing for practitioners and county judges. He points to the recent decision of *Barrett v Loew's Home Centers* as an example. He hopes the decision helped clear up some of the murkiness in the assumption of risk doctrine. Of course, as anyone who's served as a judge will probably tell you, you have to suffer barbs from critics of your decisions as part of the job. The press, members of the bar and disgruntled members of the public all get to voice their displeasure over anything you do. But sometimes you get memorable mentions of praise as well. Judge Penoyar recalls one memorable quote from Seattle attorney Bill Hickman who authors *Reed McClure's Washington Insurance Law Newsletter*. It was about a case he decided involving the L&I parking lot exception. Bill called his reasoning "stunningly lucid".

Judge Penoyar grew up as a child of seven in Michigan where his father worked in the tool and die business inventing products. He graduated from the University of Michigan with a degree in English and acquired a teaching certificate in physical education. The Judge was always pretty athletic. In his youth he was a national championship rower and played rugby. He met his spouse Elizabeth in college and they both ended up at U of O Law School. She graduated a year behind him but they both got hired by a law firm in South Bend. They settled in for the duration and raised a family of five. Three of their kids are attorneys, the other two are doctors. This must make for some interesting conversations at Thanksgiving. His spouse Elizabeth is also a judge, now serving on the District Court in Pacific County.

Serving as a judge in Division II can keep you busy. Washington's appellate courts are recognized to be some of the busiest in the county, and Division II is noted to be the busiest in Washington. So what does a Judge do after 37 years of commendable public service when he retires to relax? Travel? Take up woodworking? Spend time with his grandkids and a rocking chair? Well, not exactly. Judge Penoyar talks about serving as a pro-tem and maybe acting as an arbitrator or mediator. Plus he'd like to actually practice a little law with his son in South Bend. Then there's his continuing duties as a longtime volunteer firefighter and first responder, and his steady gig as a high school track coach. Then there's his habit of long bike rides and cross Columbia River swims at Ilwaco. Yep. Sounds like he's ready to slow down!

The Clark County Bar Association is pleased to announce its

Thirty Seventh Nuts and Bolts Lecture:

Estate Planning and Charitable Giving

Presented by Jill Sasser and Rafik Fouad

Wednesday, March 12, 2014, 3:00 PM – 5:00 PM
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 speaker's prepared materials to download. There is an extra fee if you want to pick up the materials at the door.

→ *Eat. Drink. Learn.* ←

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 _____

~ Payment can be mailed to 500 W. 8th Street, Ste 65, Vancouver, WA 98660 or via credit card over the phone ~



Jill Sasser's practice emphasizes estate planning, trust and estate administration, and guardianships. She blends skilled professional representation with a commitment to compassionate personal service, often representing clients with trying family circumstances. Jill values the relationships she builds with her clients and enjoys using practical tools to solve problems and offer creative solutions. Her positive approach focuses on presenting options that achieve the clients' objectives.

Jill is a graduate of Pepperdine University and the University of Oregon School of Law. She is involved with the following organizations: Washington Women Lawyers, the Clark County Bar Association, the Southwest Washington Estate Planning Council, Trinity Lutheran Church, Friends of Doernbecher and the Clark County Mock Trial program.



Rafik Fouad, a Financial Advisor in Morgan Stanley's Wealth Management office in Vancouver, works primarily with retirees seeking the most efficient plan for distributing their assets in retirement. The opportunity to bring clarity and structure to what oftentimes are disparate uncoordinated financial dealings is one of the most rewarding aspects of his career. His mission is to create peace & laughter in all that he does, and he is amazed how often a little guidance can relieve much of the fear and worry retirees are facing. Rafik is constantly inspired by the charitable spirit he has found in his community, and has noticed that giving back is something many of his clients are passionate about. Guiding them as they seek to make their gifts create the most impact is, by far, one of Rafik's favorite endeavors. Rafik is a graduate of Western Washington University. He is involved with the following organizations: YWCA of Clark County, Life Pax, and Beautiful Savior Lutheran Church.

An outline of this presentation appears on the next page.

Estate and Charitable Planning—More Fun Than You Would Expect!

Presented by Jill Sasser and Rafik Fouad

Introduction to Estate Planning

- Understanding the Process
- Discussion of Estate Planning Documents and Tax Planning
- Determining Objectives
- Avoiding Pitfalls and Family Conflict

Charitable Aspects of Financial and Estate Planning

Strategies to Maximize the Value of Charitable Gifts

Opportunities to Create Tax-Efficient Income

Traps to Avoid in Charitable Estate Planning

George and Donald Simpson Inn of Court 2014



ELIZABETH CHRISTY

Inns of Court President

February is upon us and it's still not too late to join the Inns of Court. We are still garnering new members almost every week!



In January, Judge Johnson and Judge Gregerson's team presented. As shown in the photographs, it was a lively performance. The next meeting will be Wednesday, March 19, 2014 with Judge Clark and Judge Osler's team presenting to the group.

The meetings are always at The Quay, located at 100 Columbia Street, Vancouver, WA. They occur every third Wednesday of the month from 5:00 p.m. to 6:30 p.m. The meetings will continue

through the month of May so I'm still encouraging prospective members to get involved.

If you are interested in joining, please contact me at Elizabeth@elizabethchristy.com. For more information about the Inn of Court generally, please visit www.innsforcourt.org.



Washington Women Lawyers

MARK SAMPATH

Hearsay Special Correspondent

Washington Women Lawyers (the “WWL”) is a statewide group of attorneys, made up of local chapters, all working with the goal of operating and providing programming and support to women attorneys in the State of Washington. The overarching mission statement is to ensure equal opportunities to women attorneys, to prevent discrimination, and to foster and encourage the complete integration of women lawyers in the practice of law in the State of Washington.

One of the goals of this state organization is to offer CLE’s that are specifically targeted at some of the unique issues that women attorneys face in the practice of law. Another key goal of the state chapter is to create mentoring opportunities allowing newer attorneys to have someone to learn from. The organization also puts together and publishes quarterly newsletters with interesting articles that highlight issues and information that are helpful to women attorneys in the practice of law. As an example, the Winter 2014 volume has an interesting article highlighting the importance of the mentor-mentee relationship, not just to the mentee, but also to the mentor.

WWL currently has 12 chapters throughout the state, including one in Clark County. The goal of the Clark County chapter is to sponsor CLE and networking events and to allow the organization to benefit from the input of local members. Lucky for me, two of the Clark County chapter’s officers are both friends of mine and fellow residents of my office at the 1014 Franklin Suites: Emily Sheldrick, the Clark County Chapter’s Treasurer, and Rachel Brooks, its Secretary. Emily was gracious enough to spend a few minutes with me, describing in a bit more detail, the goals and focus of the Washington Women Lawyers.

Currently, the Clark County-St. Helens Chapter has roughly 40 - 50 members, and one of the Chapter’s goals is to increase its membership. While most of the members are women attorneys, the chapter is open to all attorneys who are interested in supporting the organization’s goals of creating a more diverse local legal community that ensures equal opportunities for women attorneys. First and foremost, there is a great deal of excitement about the new slate of board of directors. Meghan Williams is the chapter’s President; Kathryn Rasmussen is the Vice-President; Emily Sheldrick is currently the Treasurer and was both prior the Vice President and President, respectively; Rachel Brooks is the Secretary; and Jill Sasser chairs the Chapter’s Judicial Evaluation Committee (“JEC”).

The JEC serves a vital role as it relates to the appointment or election of local judges and commissioners. In fact, it is arguably the most important function that the chapter engages in. When an opening occurs in either the Clark County Superior or District Courts for a judge or commissioner, the JEC is the only local organization that performs an in-depth evaluation. The JEC is comprised of a committee of at least ten (10) local attorneys who practice in a wide variety of areas of law, all of whom are members of the WWL Clark County Chapter. The committee interviews all of the candidates, performs reference checks, and reviews the candidate’s application materials. The materials are submitted to the governor’s office for a judicial appointment, or in the event of an election, requested by the JEC. The chapter then conducts its own judicial evaluation where lawyers rate the candidates in a manner somewhat similar to the CCBA’s bar poll. All of this information is then provided to the Governor to aid in his or her decision in the event of an appointment. The overarching goal in this process is twofold: to assess judicial fitness generally, and to determine how strongly the candidates are committed to the WWL’s goal of creating a legal environment committed to the equality and diversity of the legal system and its members and whether they have demonstrated that commitment through prior behavior and actions.

The WWL’s Clark County Chapter has several upcoming events that may be of interest to those in our legal community. First, at noon on February 26, 2014, the chapter is participating in a call-in for the State WWL organization roundtable discussion on the issue of balancing a legal career with having a family. The discussion will take place at Miller Nash’s local office. Other planned events are roundtable/lunch discussions centered around (1) “Great Expectations,” a New York Times article exploring the issue of how the dreams, aspirations, and expectations of women law school students compare to the reality of their legal career in practice, and how can women attorneys bridge that gap between expectations and reality; and (2) the screening of a WWL documentary, “Her Day in Court,” which provides a historical perspective on some of Washington’s early female attorneys.

If you are interested in joining the Chapter or better yet, becoming a member, please contact them directly. Annual dues for the Clark County chapter are \$45. To contact them, you can check out their Facebook page; their website at: www.wwl.org/ClSt.H; or email the Chapter at: WWLsthelens@yahoo.com.



Meghan Williams
President



Kathryn Rasmussen
Vice President



Emily Sheldrick
Treasurer



Rachel Brooks
Secretary



Jill Sasser
JEC Chair

Notes from a young lawyer

Everything you wanted to know about the student debt crisis (but never wanted to ask).



JOSHUA POPS

Hearsay Special Correspondent

As a relatively young lawyer with a mountain of student debt, I have found that more experienced (aka “old”) lawyers were often shocked when they found out just how onerous the debt of a new lawyer truly is. I would not attribute this to any naiveté; rather, I think that young lawyers are afraid to talk about it, and older lawyers do not know to ask. As such, this article is a brief primer for experienced attorneys about just how large the young lawyer student loan crisis can be, a crisis where student loan debts are closing in on \$1 trillion and avenues of relief are few.

The cost of doing business

Rumor has it, in the good ol’ days, the aspiring attorney would pay for law school with gold pieces, cattle, or fealty to the law school dean in time of war. I cannot verify whether law school deans still require fealty; however, it takes more than a few gold pieces these days.

My law school, Willamette, currently has a cost of attendance of \$55,919 per year. Lewis and Clark does not give a full cost of attendance; however, crunching the numbers, it is \$62,692 total, and \$39,326 just for tuition. For a state resident at a public school, tuition is not the bargain one would think; at U of O, tuition alone for residents is \$29,458, not the bargain many attorneys fondly remember. UW has a total cost of attendance of \$49,734 in state, and \$62,775 out of state. Just to attend law school these days requires either a relative with astoundingly deep pockets, or, as is more common, a mountain of student loans.

As of 2012, the average law school debt at private schools topped \$125,000 and was up to \$75,700 for public schools. In 2001-2002, the average was \$46,500 for public schools and \$70,000 for private schools. Based on all my research, I am led to believe that up until the 90’s law schools paid you to go and all students received a ration of a carton of smokes at the beginning of every semester. The only thing scarier for a young lawyer than going to law school these days is paying the bill once it comes due.

The Big Payback

Usually, student loans are based on a payment plan of 10 years, though the length can be extended if you consolidate. For someone with small loans, this makes sense; pay now, free in ten years (more if consolidated). The problem with this plan is that there is no warm-up period, so to speak. A person goes right

from school to full repayment, and no accounting for the slow buildup of any person’s career. A plan like this only makes sense for a young associate if they are at a medium to large firm in a big city. An associate at a new firm, or heaven forbid a solo right out of law school, would be defaulting immediately under this plan.

The option that is coming into increasing use for people just out of professional schools is the income based repayment plan. Income based repayment, with certain qualifications, allows for payment amounts that vary based on income and family size. Under this plan there are 25 years to pay down the debt month by month until the soul crushing payments become more of a dull, numbing ache that never ceases. After 25 years, or 300 months of soul numbing, the amount left is forgiven. However, as with any hope to repay student loans these days, there is a catch. Any amount forgiven after 25 years is counted as taxable income for that year, and there could be a mighty big tax bill in 25 years.

Income based repayment, then, is a godsend at the beginning. It gives some breathing, and makes the payments feel manageable. However, interest is accruing the entire time. Consolidated loan interest rates are 6.8 for loans disbursed before June of 2013. The author has an interest rate of 6.50% locked in. With smaller payments at 6.5% interest, the balance can eventually grow so large as to be impossible to fully pay off. Manageable today, while growing into a career, but impossible when the career is fully formed.

When I bring up student loans, one of the frequent subjects people mention is the public service loan forgiveness program. Under these programs, a career in public service (or some limited private not for profit companies), with ten years of timely payments, can lead to forgiveness of the remainder of the debt. All this, of course, assumes two things: (1) that the lower income of being in public practice will make up the difference, and (2) that there are enough public practice jobs to go around.

While number crunching is left to the curious on point one, anecdotal evidence is that, even for those who want to go into public practice, with the glut of lawyers still not cleared up, and with governments still trying to make ends meet, there are nowhere near enough jobs out there for those who want to work

in public practice. From prosecutors to public agencies, jobs are scarce, and even then many starting jobs are in regions with smaller (and thus lower paying) populations.

Bankruptcy: the great escape?

Most (but not all) people are aware that student loans are not dischargeable in bankruptcy. After stories of doctors wiping out med school loans, the government began making changes in the 70's. Today, student loans are non-dischargeable save a showing of undue hardship. Student loans, in fact, can be garnished from paychecks or tax refunds, just like delinquent child support. Further, just like child support, there is no statute of limitations; even certain funds from social security income can be garnished for student loan debts. It can be frustrating for young lawyers in today's job market knowing that someone who blew their money on drugs or gambling is able to wipe the slate clean and move on, while they are servants indentured to Sallie Mae.

The undue hardship standard is known as the Brunner test, based on the well-known case of the same name, *Brunner v. New York Higher Education Services Corp.*, 831 F.2d 395 (1987). In that case, the court adapted the following test:

“(1) that the debtor cannot maintain, based on current income and expenses, a “minimal” standard of living for herself and her dependents if forced to repay the loans; (2) that additional circumstances exist indicating that the state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) that the debtor has made good faith efforts to repay the loans.”

This test has proven to be a nearly impossible hurdle to overcome, such that it is generally stated “don't bother trying to discharge student loans in bankruptcy.” The recent Hedlund decision, issued in May of last year, allegedly changes the game.

Michael Hedlund was thirty three when his bankruptcy began, a graduate of the Willamette University College of Law (my proud alma mater). Hedlund failed the Oregon bar twice. After his second failure, he lost a job as an intern with the Klamath County District Attorney. He then got a job as a juvenile counselor and prepared to take the bar a third time. On his way to the exam, he locked his keys in his car and missed the test. Hedlund made multiple attempts to work on a payment schedule for the over \$85,000 owed, and eventually filed for bankruptcy, requesting a discharge of his student loans.

The court's interpretation of the good faith prong of the Brunner test allegedly opens the door a bit for more attempts at showing undue hardship. It did not require a complete and utter minimization of expenses, and allowed things such as two cell phones, a reasonable car lease, cable tv, and children's haircuts. In addition, the fact that his wife was largely a homemaker was not seen as bad faith.

This case may be a boon to those whose lives since law school sound like an old country song. But what for those young lawyers who are doing just enough to get by, allegedly have opportunity earn more, and in the meantime are trapped?

What happens next?

In the dying days of the Roman Republic, one of the hottest political issues was the cancellation of debts. Some believed that the only way to save the Republic (which was beyond saving anyhow) was to cancel all debts owed at once, wipe the slate clean, and essentially start borrowing and lending fresh to prevent revolt. Law students might not be marching on the Senate anytime soon. However, it is obvious that some solution has to be done, otherwise those graduating from law school now will spend close to their entire careers behind the eight ball.



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WANTED!!!

The Hearsay is in search of new and exciting material and new and exciting contributors!
Please join us on the third Wednesday of every month at noon at the CCBA office!
If you have a great idea to share please don't hesitate to contact us.

Call Lisa in the CCBA office at 695-5975

The Clark County Bar Association is pleased to announce its
Thirty Eighth Nuts and Bolts Lecture:
Employment Law Basics for the Business Lawyer

Presented by Emily Sheldrick

Wednesday, April 16, 2014, 3:00 PM – 5:00 PM
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Since 1996, Emily has focused her law practice on employment-related disputes and providing advice to clients on employment matters. Emily advises clients on agreements, terminations, discipline, labor relations, and risk management. She represents clients in government and administrative investigations, including the Human Rights Commission, EEOC, and Labor & Industries. Emily also has extensive experience in litigating employment disputes, such as discrimination, unpaid wages, harassment, breach of contract, non-competition agreements, and retaliatory discharge in both Washington and Oregon federal and state courts, as well as arbitrations and administrative hearings. Emily also handles complex civil litigation, such as commercial and business disputes.

Emily is also active in local bar and community organizations. Emily is the Past President and current Treasurer of the Clark County Chapter of the Washington Women Lawyers. She is also a member of the Clark County Bar Association Bench-Bar Committee and received the bar association's Donald Simpson Award for Service to the Profession. Emily enjoys volunteering her time in the local schools and is the YMCA Mock Trial coach for Columbia River High School.

Emily Sheldrick received her undergraduate degree, *summa cum laude*, from Oregon State University and graduated with *honors* from the University of Washington School of Law.

An outline of this presentation appears on the next page.

EMPLOYMENT LAW FOR THE SMALL BUSINESS

Presented by Emily A. Sheldrick, Dunn & Sheldrick, P.S.

I. EMPLOYMENT LAW FOR THE SMALL BUSINESS

A. WAGE & HOUR BASICS

1. Wage Payment Practices
2. Liability for Failure to Pay Wages
 - a. Recovery of Attorneys' Fees
 - b. Availability of Double Damages
 - c. Officer/Vice-Principal Liability
3. Overtime
4. "Comp" Time
5. Overtime and Minimum Wage are Not Required for Exempt Employees
6. Rest and Meal Breaks
7. Pay on Termination
8. Leave of Absence Laws
 - a. Family/Sick Leave Laws
 - b. Pregnancy Disability

B. DISCRIMINATION/RETALIATION/WRONGFUL TERMINATION

1. Differences Between Washington and federal discrimination laws.
2. Washington Law Against Discrimination
 - a. Employer Liability for Sexual Harassment?
 - b. Employer Obligations for a Disabled Employee Under the WLAD?
 - c. Individual Liability of Supervisors/Managers
3. Federal Laws Prohibiting Discrimination
 - a. Title VII of the Civil Rights Act of 1964
 - b. Employer Liability for Sexual Harassment
 - c. Americans with Disabilities Act
 - d. Age Discrimination in Employment Act
4. Retaliation: The Other "Discrimination"
5. Disability Accommodation
6. Wrongful Termination in Violation of Public Policy

C. EMPLOYMENT BEST PRACTICES.

1. Hiring Practices
 - a. Employee Handbooks
 - b. Use of Independent Contractors
 - c. Non-Competition/Confidentiality Agreements
2. Personnel Management
3. Internal Investigations
4. Termination Practices
5. Litigation/Government Complaints

Short on CLE credits?

Did you know the Clark County Bar Association now offers pre-recorded CLE credit for several of our most popular CLE's? Earn credit at your leisure –at the office over your lunch break, or at home in your pajamas!

Choose from these three CLEs:

Breakin' All the Rules: A Case Study

3 Ethics Credits

\$105 CCBA Members / \$135 Non-Members

Presented by: Rick McLeod & Kurt Rylander

In the technical press, the name "Prenda Law" conjures images of the legal profession at its worst. Prenda (and persons associated with it) have been sanctioned by various courts due to its practices, and more sanctions are pending. In some cases, Prenda's "local counsel" (often newly minted attorneys) have barely escaped with law licenses intact. While Prenda may not have broken every single RPC, it ran roughshod over the legal systems in several states before one federal judge became convinced that Prenda had made the court a "patsy" of Prenda's fraudulent enterprise. This case study recounts some of the worst abuses that have been adjudicated on the facts that led to Prenda's lawyers being referred to the Dept. of Justice, the IRS, and state bar associations across the country.

The Implications of Legalizing Marijuana: All You Need to Know

3 General Credits & 1 Ethics Credit (4 Credits total)

\$140 CCBA Members / \$180 Non-members

Presented by: Hon. Richard Melnick, Dr. Jennifer Souders, Police Sergeant Tim Wilson, and attorneys Eric Hoffman, Andrew Wheeler, & Jeff Ott

Hour 1: Dr. Jennifer Souders discusses some of the issues and concerns that were present in the development of Washington's efforts to legalize marijuana usage.

Hour 2: Trained Drug Recognition Expert (DRE) Battle Ground Police Sergeant Tim Wilson demonstrates and comments upon the proper testing procedures for the Washington State Standardized DRE evaluations. Vancouver DUI defense attorney Andrew Wheeler addresses some of the major changes that I-502 brought into the world of DUI defense.

Hour 3: Jeff Ott examines the federal government's powers of legislation over the states in regards to marijuana laws and how it has responded through coercive action and AG enforcement.

Hour 4: Ethics Panel Discussion led by Hon. Richard Melnick, Eric Hoffman & Jeff Ott

Settlement Guardian Ad Litem Training

5.25 General Credits

\$130 CCBA Members / \$185 Non-members

Presented by: Erin Dunn, Evan Hull, Margaret Phelan, Hon. Robert Lewis, Jeff Jacobs, Grant Gehrman, Loren Etengoff, Doug Foley

SGALs fill an important and highly specialized niche that many attorneys have never heard of. Under the CCBA's new program, a list of qualified SGALs will be created and distributed to courts. This mandatory CLE is required for any attorney who wishes to be included on the list.

To enjoy any of these CLEs, simply call the CCBA office to make payment and receive your link and activity ID.

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- Bleu Door Bakery:** 10% off ~ **Roots:** 10% off lunch only, food only
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~Jane Clark

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~Elizabeth Arwood

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DOUBLE HEARSAY

What CCBA Members Are Doing About Town

RAISA JUDICATA
Guest Gossip Columnist



Elvis + Vegas = True Love!

Denise Lukins was a beautiful blushing bride last December 14th, marrying Ben Meyer in Las Vegas, Nevada. What would a Vegas wedding be without Elvis (the skinny good-looking one!) Denise knew she was doing the right thing when the day before the wedding the Michael Jackson King of Pop slot machine spit out \$52.00 when she only put in \$.40. Congratulations, and wishing you every happiness in the coming years!

Our Bench is losing another one ... Governor Jay Insee appointed Superior Court Judge Rich Melnick to the Court of Appeals. Look for more detail to follow in coming Hearsay editions. What will happen with his cases when his term begins March 10th? Stay tuned as the Judge roulette wheel spins again!



Where is my bench copy?

Speaking of Judges, another successful Mock Trial was held in the Courthouse the week of February 10th. One of many volunteers, Ben Shafton took to the black robe like a duck to water (judicial expression and all). Hey, Ben, job opening up!

Lawyers are always at the center of volunteerism in our community. LeAnne Bremer from Miller Nash LLP was recently elected to the board of directors of the Columbia River Economic Development Council (CREDC). The CREDC has developed quite a bit of clout in the region, as a partnership of private and public interests working to advance the economic growth of Clark County. CREDC is credited with creating over



28,000 jobs in southwest Washington in the last thirty years. LeAnne's term is for three years – let's see what she does!



LeAnne Bremer supports our local economy

Also on the volunteer path, Louis Byrd Jr. of Byrd Legal Services is a newly appointed board member of Dream Big Community Center, a non-profit group instituting programs within schools, organizations, and outside the box to encourage and empower teenagers to pursue their dreams. The institution's big push has been the "Make



Lou Byrd assists a worthy cause

Every Dream Count" fundraiser, seeking to raise \$100,000 to offer opportunities for teens to find their desired profession. Statistics show that approximately 900 Clark County students every year drop out of high school. Only 13% of students on average make post-high school plans while in school. Dream Big works with kids inside and outside the classroom to show them what is possible.

Good stuff! Check them out at <http://www.dreambigcc.org/> if you are interested in getting involved or learning more!



Blues Ranch – check 'em out!

Remember Don Jacobs' band, the Slicers, who graced our Barrister's Ball for many years? Don is now drumming with "Blues Ranch", which includes attorney Paul Henderson on keys! They will be performing at the new brew pub "Dirty Hands Brewing Co."

at Broadway and Evergreen on Saturday, April 19, 2014 from 8 to 11 pm. Good beer, good food, rockin' blues! Check it out and say hi to Don and Paul!

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.

MARIE TILDEN

HEARSAY PROFILE

Home: Now, Vancouver. I can claim to be a native because my grandparents homesteaded here in 1920. They planted a prune orchard...yeah, that's right, near Prune Hill! They really did used to grow prunes here. Tons of them, actually. Exported them all over the world. I was born here, but I grew up in the San Francisco Bay area. I've been back here, by a simple twist of fate, for over 20 years. I love it here.

Age: Really???? Old enough to wear purple whenever I want. And, I can remember key-punch cards, telephone numbers that started with letters, like PL7-0733 (my families' phone number when I was a child), the outrage that ensued when gas rose above \$1.00 a gallon and the introduction of color TV. Young enough never to have had to learn to use a slide-rule!

Profession: I've done lots of things in my life, ran an adoption agency, worked overseas in orphanages, was a franchise representative, but I've been a lawyer now for longer than anything.

Hobby: Outside of my girls (I have 4 daughters!) it's biking, hiking in the summers and cooking. I love to cook! I bike a lot in the summers (I can ride in the rain, yes, but that's not in the category of hobby, it's accidental.) I ride in many events around the area, Cycle Oregon and some of the century rides. I love to spend time with my kids and we have a blast. The youngest are 10 and 11, so we're pretty busy. And wedding planning! My oldest daughter is getting married this summer so we're planning. Having your first child get married is really a "where did the time go" feeling!



Marie in Belize!

Last Book Read: Tom Clancy: Threat Vector. I love spy novels. Cookbooks, too! Just got Nom Nom Paleo by Michelle Tam. Glorious, healthy eating!!!!

Legal Philosophy: People get themselves into jams. I like to help them out of them. I like to resolve problems and help create peace. Yep, I'm a child of the 60's!

Latest Accomplishment: Finished unpacking the last two boxes after moving into my new office in Don Jacobs building!

Why I Do What I Do: My practice has two parts: adoption and divorce/family law. I like getting children into families that want them. Knowing that there are babies and children growing up in the U.S. in loving families rather than in orphanages through my efforts gets me up in the mornings. I love the complexities of the various stakeholders and interests involved: birth parents, adoptive parents, governments, immigration authorities, child development experts, etc. Adoption is so much a balancing act among all the often competing interests while keeping in mind that at the very center of it all stands a child. It's inevitable that some people are going to get divorced. It's like the Buddhist saying "Pain is inevitable, Suffering is optional." I enjoy helping people through the divorce process with as little suffering as possible. I love feeling like I made a difference in people's lives.

Beverage of Choice: I'm addicted to Kombucha! Or, very nice red wine!

Clark County VOLUNTEER Lawyers Program

Susan Arney, Executive Director
Ashley Belisle, Program Coordinator
Administrative: 360-823-0423
E-mail: susana@ccvlp.org

The CCVLP has operated the Homeless Court for nine years. We are the only Homeless Court in the state of Washington and one of 26 nationwide. This specialty court allows homeless persons to convert misdemeanor fines to community service hours. The goal is to help the homeless person back to self-sufficiency. Homeless persons cannot pay these fines and eventually the fines are turned over to a collection agency. Then fees and interest are added on and the fine grows. At this time the person loses their driver's license. Now, it becomes a spiral as it is difficult to get a phone, a job or an apartment. By doing community service, the person pays their debt to society, helps a community service agency, has productive work to do and can get their driver's license back.

This is a great program to volunteer for. Volunteer attorneys meet with the homeless person and enter the order into District Court. They advocate for the person as they complete their community service. If you are interested, I will train you. Please contact me.

Thank you for volunteering.
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 DECEMBER

BANKRUPTCY
Anna Waendelin

DIRECT REPRESENTATION
Timothy Dack, Stanley Horak, Mark Carter, Robert Russell,
Susan Stauffer, Randy Stewart, Todd Trierweiler,
Anna Waendelin

YWCA SAFECHOICE DV CLINIC:
Sidney Dolquist, Marlene Hansen, Jeff Holmes

FAMILY LAW:
Marlene Hansen, Lincoln Harvey, Christine Hayes,
Deanna Rusch, John Vomacka

GENERAL LAW:
Peter Fels

HOMELESS COURT:
Chuck Buckley, Heather Carroll, Jeff Courser, Todd George,
Abby Powell, Diane Sweet,

HOMELESS SHELTER:
Peter Fels, Gavin Flynn, Dustin Klinger

HOUSING JUSTICE PROJECT:
Matt Crawford, Ed Dawson, Phil Foster,
Scott Matthews, Carolyn Simms, Scott Staples

HOME FORECLOSURE PROJECT:
Jeff Holmes, Rick Potter, Carolyn Simms

Statistics for DECEMBER

Cases Place for Representation	6	Volunteer Attorney Hours	19.
Clinic	# of Appts.	Clinic	# of Appts.
Family Law Advice Clinic	9	Family Law Paperwork Clinic	8
Bankruptcy Clinic	5	General Law Clinic	3
Homeless Shelter Clinic	2	Homeless Court Referrals	6
Housing Justice Project Clinic	7	Housing Justice Project Courthouse	12
Domestic Violence Clinic	5	Dependency Clinic	
Home Foreclosure Project	5	Non Parental Custody Clinic	3

Advertise in next month's HEARSAY
Call Lisa Darco at 360.695.5975 for rates and availability.

NEWS YOU CAN USE



LISA DARCO
CCBA Office Manager

New Address:

E. Susan O'Toole
Phelan Webber & Associates
502 E. McLoughlin Blvd.
Vancouver, WA 98663
www.phelanwebber.com

LAW LIBRARY NEWS



MARIA SOSNOWSKI
Law Librarian

After hours law library access keycards for current keycard holders is due by the end of January in the amount of \$36. If you do not have a keycard and are interested in obtaining one, please ask the law librarians for the application.

FOR SALE THROUGH MARCH, 2014

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

1. Washington DUI Practice Manual, 2011-2012, Wa Prac v 32
2. Washington State Court Rules, 2013
3. Beat Your Ticket, 6e, by NOLO
4. Qualified Domestic Relations Orders 2012-2013 by West
5. Washington Practice Motions in Limine v. 30, 2011-2012
6. Repossessions 7e with 2012 supp, NCLC
7. Everytrial Criminal Defense Resource Book, West, 2012

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

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- Print if ready or save to print later

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CCBA Member Spotlight

GRAY'S AT THE PARK



Hungry? Get great food AND a great discount at this month's featured member benefits vendor--Gray's at the Park. I chatted with Steven Nelson, Vancouver Hilton's Assistant General Manager, about this food "gem" of downtown Vancouver.

.....

What is Gray's history ? How did it come to be?

Gray's at the Park is named after Captain Robert Gray who was an American sea captain / explorer. One of his many accomplishments was in 1792 sailing up the Columbia River and was credited with naming the Columbia River after his ship "The Columbia". The Gray's at the Park restaurant is in such close proximity to Esther Short Park it seems a natural.

What makes Gray's special?

Our Northwest Bar & Grill. Always fresh. Always local. Never Ordinary. Great food, great staff. We serve locally crafted beers, regional wines and local spirits.

What sets it apart from other Vancouver restaurants?

With such a local standing history of really great food, consistently great food and service and rich yet casual atmosphere. Gray's at the Park is a local icon for being a memorable dining experience. Additionally, we can tailor events as intimate as a romantic dinner for two, to a large event of 100. Our Private dining room is perfect for business meetings, social gatherings and festive holiday events. Our dining room is also a perfect venue for wedding rehearsal dinners, baby showers, and birthday parties too. Gray's serves breakfast, lunch, and dinner daily and Happy hour daily from 4pm to 6pm.

.....

Does Gray's have a special dish that it is famous for?

We are famous for our steaks. We feature only all natural beef, aged 21 days from ranchers of the Pacific Northwest. We cook them in our 1600 degree Montague infrared broiler. For a quick meal, we have a lunch half sandwich combo, the best build your own omelets and our Chicken Mac n Cheese is rich and delicious.

What's your personal favorite dish at Gray's?

Rib eye steak with our Gray's signature Hazelnut crusted and roasted garlic potato--Chef Troy Lucio's inspiration that no one else has.

Any memorable stories from the restaurant you can share?

There are so many great stories and so many truly memorable occasions that the Gray's at the Park family have been a part of. The most memorable has been a surprise reunion of a husband and wife when the husband returned from being overseas during the Afghanistan war. For many birthdays, wedding anniversaries, marriage proposals, and family reunions, Gray's has been the place to meet, achieve, reunite and to celebrate over the years because Gray's is a member of the community and has been made part of the family.

UPCOMING EVENTS

SOCIAL

March 1, 2014

Barrister's Ball
The Heathman Lodge

MEETING CLE

March 5, 2014

General Meeting, Lunch & CLE
Red Lion at the Quay Noon - 2:00pm

SOCIAL

March 6, 2014

YLS Happy Hour
Location TBD

MEETING

March 11, 2014

Superior Court Bench/Bar
Clark County Courthouse - Noon

MEETING

March 12, 2014

CCBA Board Meeting
CCBA Office - Noon

CLE

March 12, 2014

Nuts & Bolts CLE: Estate Planning and
Charitable Giving
Red Lion at the Quay 3:00pm - 5:00pm

MEETING

March 13, 2014

Family Law Section Lunch
Vancouver Hilton - 11:30am

MEETING

March 17, 2014

CLE Committee Meeting
CCBA Office - Noon

MEETING

March 19, 2014

Hearsay Committee Meeting
CCBA Office - Noon

MEETING

March 19, 2014

Inns of Court
Red Lion at the Quay - 5:00pm

CLE

April 2, 3 & 4, 2014

Title 11 GAL Training
Red Lion at the Quay

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 219 CLIENTS IN THE MONTH OF JANUARY

Administrative Law	8
Bankruptcy	8
Business & Corp	6
Consumer	15
Criminal	13
Debtor/Creditor	19
Family Law	46
General Litigation	42
Labor & Employment	10
Real Property	27
Wills & Trusts	19
Worker's Comp	6

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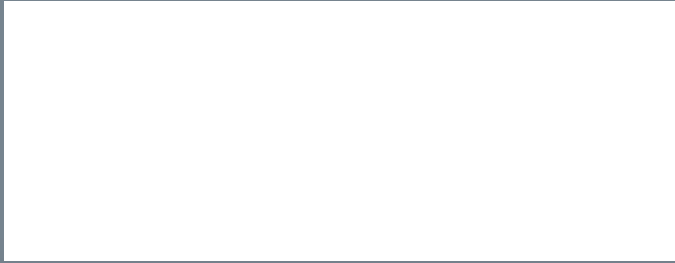
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