Top Stories!

LTO SNEAK PREVIEW (Don’t miss the event of the year! Oct. 21)  
WSBA BoG Corner: Fee Increase, Bylaws Amendments, etc.  
My Most Unforgettable Character—Poodle  
Demystifying Washington’s Civil Legal Aid Network  
Startups and Entrepreneurs: New Immigration Options Coming

Your Regular Favorites!

The Presidents Column—“Harmless Contrarianism”  
Classifieds—Jobs, office space & services!  
Pro Bono Connection—“LTO Sneak Preview”  
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Another Road Home—“Anatomy Of A Happy Ending”  
Rajeev’s Musings—“Year of Civil Litigation: End in Sight”  
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Bar Meeting Minutes—& Treasurer's Report

Special Announcements!

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Bar Lunch

On Oct. 5th! (2016) At High Noon!  
At Northwood Hall, 3240 Northwest Avenue, B’ham.

Guest Speaker:  
WSBA President-Elect, Brad Furlong. Re: The WSBA.
Harmless Contrarianism

Recently I received a large storage box from my mom – the big plastic tub type that has an interlocking lid used for stacking several in a basement or garage. It was the result of her packing up our family home as she prepared to put the home up for sale. Inside the storage bin, in a large manila envelope were all of my grade school pictures. For my Kindergarten pictures, at age five, and just 35 miles south of Pullman, I was wearing a Washington Husky shirt for school pictures. I was also somewhat surprised by the cool, retro factor it had in current college gear trends. There were no Husky fans in my house, nor really anybody affiliated with the UW, or Seattle really, in my family. In fact, two of my older brothers had stints at WSU in their college quests. My parents always claimed to not recall where the shirt came from – I have a few theories but never found out the truth.

I continued to adorn myself in Husky gear throughout my schooling until I ended up at in Seattle and attending UW at age 18. One thing that I really enjoyed growing up was being a Husky fan in Cougar territory, and the attention it would garner. For those of you that are not familiar, Coug fans loathe the Huskies; however, Huskies tend to view the Cougs as their little sibling – seeing the inferiority complex as completely understandable and sort of cute at times. Even that comment will rub Cougs the wrong way – sorry (sort of).

During my 6th grade year I was my class A.S.B. representative at the brand-new Heights Elementary school. The A.S.B. was tasked with nominating a mascot for our new school that would be chosen by popular vote of the students. Guess what? My friend Will and I mounted a campaign wherein “Huskies” won with something like 60% of the vote. That’s when I learned about adult veto power and how crooked politics were when adults were involved. Alas, “Hawks” became the mascot even though it polled miserably.

Later, during high school football, I got a hold of a UW practice jersey and began wearing it as my practice jersey during football practice. My friends still whine about that – I just stated I wanted to practice like a champion and my coaches just told everyone to try to hit me harder.

When I got to the UW, I eventually acclimated to western Washington’s somewhat different culture and climate, and credit my eventual settling in Bellingham to my decision to attend the UW. All in all, the UW was a good experience and I do credit a fair amount of that decision to the contrarian nature of being a Husky fan in Coug country my whole kid life. That contrarian streak that I was so fond of appears to be hereditary.
Now that college football season is in full swing my family knows that I get annoying on Saturdays and tend to plan my schedule around catching Husky games. At some point my kids have received an obligatory Husky shirt or two. The problem is this: my oldest son is an Oregon Ducks fan. At first I was puzzled as to how this could happen, but now I know that it happened because of my vocal disdain for the Ducks. He’s a contrarian, and that kind of makes me happy.

Oh yeah – the Ducks are 2-2, the Cougs 1-2 and the Huskies are 4-0. How about them apples?

Endnotes
1 - I am also a big fan of Notre Dame, but that has nothing to do with this story.
2 - He even thinks the countless uniform thing is cool.

President Lyden, Age 5

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BoG Corner, September 2016
By Rajeev D. Majumdar!, WSBA BoG Governor, District #2
Distributed to the Bar Associations of Whatcom, Skagit, San Juan, Island & Snohomish Counties

Continuing my first promise in running to represent District #2, here is my second report to you, and my first one after being sworn-in by the Chief Justice as your BoG representative. Unfortunately, everything I have to report about the September BoG meeting occurred before I assumed office.

I’ll try to keep things short and concise, but please be aware I am available to your phone calls or e-mail. I’ll do my best to respond or acknowledge receipt within 48 hours by e-mail, and if you call my office and I am unavailable at that exact moment, you can schedule a specific time when I can call you back:
rajeev@northwhatcomlaw.com ; (360) 332-7000

The Seattle Meeting – September 29-30, The major things that happened.

Budget Passage and Fee Increase:

Since the last referendum in which the membership asserted their right to control their dues, the WSBA has been running a significant deficit. As a solution, the BoG passed a significant dues increase, with a sole vote in opposition by Bill Pickett from District #4, who cited concerns from the membership over lack of time to review the proposal. A copy of the 2017 budget is here. And below, is a breakdown of the dues increase and the general fund reserve balance and projection:

Lawyer’s Fund for Client Protection Payout Increase:

At the request of the LFCP Board, and based on the health of the fund, the BoG voted to

(Continued on page 5)
increase the maximum claim from $75k to $150k.

**LLLT Resolution:**
Governor-Elect Furlong and Representative Jarmon authored and submitted a resolution on 9/21/16, and it was submitted for passage on a first reading. The resolution, supported the LLLT program generally, but also supported the investigation of allowing LLLTs appear in court and negotiate on behalf of their clients. It was passed, over the objections from the Family Law Section re: the shortened time and lack of feedback from the membership on such a resolution.

**Proposed GR 12 Amendments:**
A motion was made by Bill Pickett of District #4 and 2nded by Kim Risenmay of District #1 to table the proposed changes in order to give the membership more time to digest the potential changes was made, but did not pass. Amendments removing the proposed name change, as well as changing the word “exclusive” to “plenary” in reference to the supreme court’s ability to regulate the practice of law, were passed. Otherwise, the proposed changes were passed. Those changes prior to amendment can be found on page 209 of the public materials (large download).

**Proposed Bylaw Amendments:**
The biggest and most contentious issue on the agenda was the proposed amendment of the Bylaws page 233 to 607 of the public materials. Before the meeting, I, along with my fellow Governor-elects, Dan Bridges of District 9, and Christ Meserve of District 10, wrote a letter to the BoG requesting they postpone this matter given the widespread negative comments and objection submitted by the membership (page 607 of the public materials). A Motion was made to table the vote but not the discussion on the bylaws, that motion was supported by Governors Risenmay (Dist. 1), Pickett (Dist. 4), Hayes (Dist. 5) and Jarmon (Dist. 8), but it did not pass. I was disappointed by this, and would like to recognize and honor the members of District 2 that wrote letters of opposition, and also the San Juan and Whatcom County Bar Associations who also opposed the changes and submitted formal letters stating such.

A few items were removed however. Motion was made not to make changes to recall procedures of governors, and confirm that there would not be any changes to the referendum powers of the membership. I would like to particularly recognize the Governor Karmy of District #3, who successfully moved to leave the article that discussed License Fee Referendums as is [Article III(I)(6)], after it was made clear that the prior decision to take referendum issues off the table did not include this article.

The proposed changes to Articles I and II were passed. Article III, on expansion and classification of the membership, was passed, over the objections of Washington Women Lawyers who objected to rules regarding re-testing as an unnecessary barrier to attorneys who take time out of practice to raise children and then who wish to return to practice. I requested clarification as to whether judicial members would face barriers coming back to active membership, and legal counsel for the bar indicated that judicial memberships were not considered inactive memberships, and the re-testing requirement would not fall on them. These changes also included making the LLLTs and LPOs members of the WSBA.

(Continued on page 6)
Article IV, Governance, had a good deal of argumentative discussion around it. Governor Doane (Dist 7 South) moved that the proposed changes should be changed to require officers of the WSBA be lawyers. This passed. Governor Risenmay (Dist 1) moved that LPO/LLLT members should be empowered to elect their own BoG representative. This failed. *My own opinion is that LPO/LLLT members should be empowered to select their own representative rather than have one chosen for them by the BoG; it is more democratic and accountable representation in that way.* The BoG decided that the three additional non-lawyer members should be appointed by the BoG rather than stand for election or be appointed otherwise. *An idea I oppose as it is undemocratic and reduces accountability.* The proposed changes to Article IV were then passed, including the new ability of the Executive Director to appeal a dismissal to the Supreme Court on certain grounds.

Article V was passed, as was Article VI after Governor Doane (Dist 7 South) moved that BoG members elected from districts must be lawyers. Article VI was passed. Article VII, which reverses a WSBA prohibition on BoG secret voting, was opposed by Governor Pickett (Dist. 4) but passed otherwise. Article IX and X were similarly opposed solely by Pickett and otherwise passed. Article XII passed. Amendments to the APRs also passed.

Article XI was the only section that was successfully tabled for two months in order to give the Sections a chance to review and respond to the BoG as it affects their governance.

All in all, my opinion remains the same, especially after seeing the argumentation on the BoG over these changes and reading and listening to members, that these were not considered with appropriate due process and contemplation, especially in regards to their final form, which was released only in September and still required amendment and correction of the membership and BoG with only minimal review time.

**WSBA’s move to ban spiritual/cultural practices**

This was again tabled for further consultation with the membership.

I look forward to visiting with and talking to as many of you as possible over the next year, and I hope your local County Bars will make the effort to reach out to me as well. I have the pleasure in this upcoming October of attending the Skagit County Bar’s State of the Judiciary Dinner, and hope to see some of you there.

Warmly,

Rajeev Majumdar
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My Most Unforgettable Character—Poodle

By Michael Heatherly

I got on Google the other day to see if I could find out whatever happened to Poodle. I think I got the answer, and I’ll tell you in a minute. Poodle played rhythm guitar in our Seattle garage band in the late 70’s/early 80’s. I last saw him about 35 years ago but still think about him from time to time. Some people are like that, even if you can’t exactly say why.

Poodle was one of the humblest, kindest people I’d ever met. In the time I hung out with him he had fewer material possessions and less money than anyone I knew over the age of 12. But he didn’t care much as long as he could cover rent, food, guitar strings and beer. About the last item, in the two or three years I saw Poodle regularly I would estimate he was sober 35 percent of the time. That’s one reason I decided to look him up online, to see if the bottle had taken him down like it does a lot of good people.

Poodle was skinny, and his slimness was accentuated by a magnificent Garfunkelesque Caucasian afro. The hair was why we called him poodle. Q-Tip would have been another fitting nickname, but we weren’t clever enough to come up with that one, and it was taken by someone else a few years later anyway. Like all of us at the time, Poodle nearly always dressed in jeans and t-shirts. But for special occasions, like when we were hired to play a wedding reception, he would blow our minds by showing up in a bow tie and wingtips. Now that I think about it, he bore an uncanny resemblance to another whimsical musician, Harpo Marx.

During most of our time onstage Poodle’s guitar was out of tune, which was disguised by the fact that he was usually strumming the wrong chords too. I remember playing a wedding on Beacon Hill one time when Poodle’s dissonance got the best of me. In the middle of a song I crept over to his amplifier and turned the volume to zero. He didn’t notice, leading me to surmise that part of the problem was he couldn’t hear himself play. We gave him a good monitor and did everything we could to help him keep his guitar in tune, but it never really worked. Our fans, not that we had many, never complained. I liked to think they took the slightly atonal quality of our sound as avant-garde and loved us even more for it.

Another time, we had a gig at a Pike Place Market bar that should have been shut down by the authorities for any number of reasons long before. It was the kind of place where Poodle seemed most at home. At the beginning of a set he balanced a pitcher of beer on his vintage tube amplifier, only to bump the amp a few minutes later, sloshing brew down the back. The amp crackled and a plume of yeast-scented steam rose from the glowing tubes. It forced us to take a break while the amp dried out, which bothered neither us nor the audience, who hadn’t been paying much attention anyway.

Poodle lived in a small log cabin in a wooded part of the Delridge area of Southwest Seattle that at the time looked like it belonged in Appalachia. The neighborhood is probably either hipster condos or warehouses now, but Poodle paid something like $95 a month in rent, and his toilet would occasionally erupt in a bizarre hydraulic spectacle. Poodle did his shopping (Continued on page 9)
down the block at the kind of small independent grocery store that barely exists today. I’m not
taking about a gourmet foodie hangout. This was the kind of place where you had to step over
a sleeping dog and a squashed apricot to get in the door. When Poodle was short on cash at the
end of the month they would give him his groceries and write the total down on a piece of pa-
er at the register. When he got paid he would clear his debt and enjoy another month of the
lavish Poodle lifestyle.

Poodle was outgoing and inclusive to a fault, welcoming anyone to visit him at home. He once
had a bunch of us over to roast half a pig in his yard. He didn’t have much in the way of patio
furniture, so he dragged his inside furniture out. Of all the photographs I’ve taken and lost
over the years, the one I’d most like to have back is one I took that day of Poodle sitting at one
end of his couch grinning goofily at the camera, blissfully unaware that a stray ember from the
fire pit had popped onto the cushion on the other end, which was smoldering menacingly a
couple feet from him.

One of the first times we went to Poodle’s house we were astounded to see pictures of him in a
uniform. We wouldn’t have guessed it, but he was a U.S. Navy veteran, having served aboard
a frigate at the tail end of the Vietnam war. We tried to pry some war stories out of him but he
downplayed the whole thing. He insisted that the most perilous thing he endured was cleaning
wax out of his fellow sailors’ ears with a syringe.

The whole time we knew Poodle he had no transportation of his own because his driver’s li-
cense was suspended for drunk driving. His story about the last time he had driven was anoth-
er thing I’ll never forget. Lacking a license—never mind a car—he routinely hitchhiked from
his house to the nearest bar a mile or so away. At the end of the night he was usually able to
find a fellow patron to drive him home. But at closing time one night he realized he was the
last one left. He headed home on foot but stuck out a thumb just in case. Luckily someone
pulled over, and Poodle hopped in. But the driver immediately slurred, “Hey, it looks like
you’re more sober than I am. You’d better drive.” Poodle took the guy’s word for it and
switched seats. He figured it wasn’t too big a risk since they were just a few minutes’ drive
from Poodle’s house.

As soon as they got on the road the car was illuminated from behind by swirling lights. In oth-
er words, during the only five minutes he had driven a car in five years, Poodle managed to get
a DUI. Later when he finally qualified to get his license back we were at his house and I saw a
scribbled note on the coffee table: “Car: $500, Insurance: $1,500.” Even in those days, not
many cars were available for $500. Fortunately for Poodle there was a 1950s Nash Rambler
parked behind his cabin that belonged to the landlord. It appeared to have been there a while,
given that it was almost entirely overgrown by weeds. The landlord was glad to unload the
thing for $500.

Poodle had no automotive expertise whatsoever. But once he got the hood of the Rambler up,
even he could determine that a vague “carburetor problem” the landlord had referred to was
the complete lack of a carburetor. Poodle hopped a bus to the nearest auto parts store, secured

(Continued on page 10)
a rebuilt carburetor and summoned a couple of us to help him install it. We opened the box and found what purported to be the installation instructions. In fact, it was little more than a crude drawing entitled “typical carburetor.” Apparently, the Rambler used an atypical carburetor, as the one in the box had little in common with the model depicted.

Nevertheless, we managed to get the carburetor into place, put a gallon of fresh gas in the tank, charge the battery and try to start the rusty old beast. After what seemed like an hour of spinning the starter and pumping the gas the engine came to life. Well, “life” might be generous. The engine was running, but no more than one or two of the cylinders appeared to be firing. It was like when you get an unbalanced load in your washing machine—but slower. Even with three of us pushing on the bumper, the engine had barely the vigor to move the vehicle three feet. Eventually we persuaded our band’s lead singer/guitarist—the only one of us with genuine automotive proficiency—to come over and help. He figured out that the distributor cap was twisted 180 degrees or so, putting the ignition timing catastrophically out of whack.

The thing is, the Rambler incident was one of the most hilarious moments of my life. I can remember the sight of that shaky red wreck and the sound of the struggling motor like it was yesterday. And that was one of the last times I saw Poodle. I left the band not long after and returned to college, from which I had taken a musical hiatus. I never had the pleasure of seeing Poodle behind the wheel of that rig, if he ever made it there.

Then recently I was reminiscing about those days and Googled Poodle’s real name. Through one of those slightly creepy people-finder sites I found a matching name. It was associated with someone of the appropriate age, and living startlingly near where Poodle had lived at the time. I snooped a little more and found a link to a rudimentary Facebook page for a classic-rock cover band. It looked like the kind of group someone like me might join to play once in a while, half-seriously, at local venues. The page had just one photo, a small, low-resolution shot of four middle-aged guys rocking out, however gingerly. None of them looked particularly familiar, but one guitar player had a noticeable frizz to his hair. And I’m sure it was my imagination, but it just looked like his guitar was a hair out of tune. The page named some of the bands whose music they covered, and the list overlapped suspiciously with that of the artists whose music we used to emulate. Considering all the evidence, I concluded that good old Poodle had not only survived but was still rockin’.

Another old guitar guy who once drove a jalopy and is still rockin’ is Neil Young. Just a few years before Poodle and I became bandmates Young wrote an homage to his favorite old car, a retired Pontiac hearse he drove from Toronto to L.A. to begin his U.S. career. The song’s refrain goes like this:

Long may you run
Long may you run
Although these changes have come.
With your chrome heart shining, in the sun
Long may you run.

So join me in pouring one out (probably ought to be non-alcoholic) for Poodle.
ANOTHER ROAD HOME
Anatomy Of A Happy Ending

By Roy Martin

Following is an anecdote from a real dissolution of marriage. It’s intended to illuminate the way a mediated or collaborated case can unfold when all goes well. In the context of my last three-part article on the various approaches to mediation, what’s set forth below is an essentially transformative model. All three of the approaches detailed previously – evaluative, facilitative and transformative – can be used in both mediation and collaborative settings. I have of course omitted or changed identifying details to preserve confidentiality.

This was a collaborative divorce in which I was involved some years ago when I practiced in Tucson, Arizona. I represented the husband. The parties had plenty of money and neither was particularly materialistic. The husband had been successful beyond his dreams. Even though they were well off, they could have resolved the financial issues on their own. But they had a three-year-old daughter and were on the brink of hiring the most aggressive attorneys they could find to litigate parenting time. The mother was offering the father two days a week. The father was insistent on three days a week. Any suggestion of splitting the difference would have been met with outrage. Each expressed a willingness (initially bordering on eagerness) to litigate. Each expressed a desire to be “vindicated” or essentially die trying. My client said he could live with the result so long as he knew he had given it his all. It was a challenge to help him see that such an approach was likely to end badly. I’m sure the same was true for the wife. In fact, it was probably even harder to guide her to collaboration because on the surface, she appeared to have the better case. These two were really caught in their initial positions: three days a week versus two. If they were to settle collaboratively, we would have to delve into the interests beneath those positions.

As the attorneys helped guide discussions in a series of settlement meetings, the deeper (and as yet unexamined) interests slowly emerged. The father was eventually able to articulate that when his family was still residing together, though it was difficult to come home from work given his sadness over the emotional distance within the marriage, their daughter was always thrilled to see him. Her smiling face and eagerness to jump into his arms was like a ray of sunshine. If he came home after she was asleep, it was a joy to stand in the doorway of her bedroom and watch her slow, steady breath and angelic face.

Since the separation, his weekends with their daughter were wonderful, but for the five days between visits he was coming home to an apartment that he experienced as empty, dreary and lifeless. He had waited a long time to have a child and felt it unlikely he would ever have another. He was heartsick over the sense of loss now that he saw her so much less frequently. He realized also that his daughter would, in just ten years, be a teenager, far more interested in her friends than in spending time with daddy. So he saw himself as having a short window to share this wonderful quality of relationship (something he considered of enormous value to both his daughter and himself). This is why he felt so much intensity and urgency.

He knew that his daughter never wanted their weekend visits to end and protested having to go home. He felt that a third day, inserted right in the middle of his work week, would result in he and his daughter only going two days at a time without seeing each other. And while expressing an understanding that it was difficult for both of parents to not have their daughter around every day (as they had when the family still lived together), he shared his view that this three-day proposal would be so much better for both his daughter and himself.

The mother was able to hear all of this and even appreciate the father’s point of view. But she still felt that three days a week was too much. A similar excavation process revealed that, for her, the primary concern was the child’s emotional wellbeing. From where she stood, the father was married only to his work. She stated her view that this was why the marriage had failed. In his spare time, he would get obsessed with this hobby or that for a short time. But then his real obsession, work, would reassert itself. She called it his one true love. She spoke of the motorcycle rusting in the garage as proof. She also spoke of the boat they were selling at a loss and other hobbies that had been his passion for a time. She expressed an opinion that he needed to grow up but, when asked about the feelings underneath her strong judgment of her husband, she admitted she was speaking from a place of hurt.

(Continued on page 12)
Most important, though, from her point of view, was that while true that their daughter was always eager to see daddy and to jump into his arms, there were many nights when she had fallen asleep in mom’s arms, distraught, because daddy had promised to return in time to tuck her in and was not there. There were many times he would rush off in the morning without even saying goodbye. Mom felt that someone needed to protect their daughter from being continually disappointed by her loving but childlike and irresponsible father.

She felt that she was being generous, giving dad every weekend – since her attorney had explained that he was most likely to get every other weekend if the case went to court. She wanted him to have a close relationship with their child. She wanted that for their daughter too. But she felt that limiting him to two days a week kept dad focused on the importance of their time together and less likely to place his work interests ahead of the child’s needs. In other words, she saw the father’s sense of scarcity as a good thing. And she felt that her willingness to take all the school days and give him all the weekends (“the fun time”) was a huge concession – something he ought to appreciate.

Notice how, after hearing each of them out, it’s easy to stand back and think “well that makes sense.” For the clients this is often the first time they’ve heard the other around the issues discussed in a way that resonates as having at least internal logic. They often move from seeing the other as crazy or a bully or just plain unreasonable to being able to say something along the lines of “I get where you’re coming from.”

When the mother had gotten to her truth, the dad was able to acknowledge much of what she had said. He responded, “I have been too focused on work. And I have submerged myself in hobbies only to later lose interest. But our daughter is not a motorcycle. She’s everything to me. So much so, I’ve realized I need to take Wednesdays off.” The mother responded, “I don’t believe you. I don’t trust you. But I’d love nothing more than to be wrong.”

Consider for a moment what a huge step this is. Even though not a single agreement has been reached at this point, and even though they were still miles apart in terms of what would be best for the child, the character of the discussion had shifted. They saw a common landscape of reality. They both could align on a value that ideally dad would have a really close relationship with their daughter. They agreed he had been placing too much emphasis on his career at the expense of her needs and that this had at times been painful for their daughter. From this place, looking at their underlying needs as a family rather than their initial positions (three days per week versus two), they were able to see and approach the conflict in a new way – not as adversaries but as partners in figuring out what would be best for all of them as a family.

Only at this point, after all the work necessary to bring underlying needs into sharp focus, were we ready to begin looking at options for settlement. Had we tried sooner, it would have forced us to engage in an evaluative manner – slipping back into discussions over what a court might do or what a custody evaluation might reveal. Those sorts of discussions would have gone nowhere. My experience as a mediator and collaborative attorney has taught me that when discussions slip into an evaluative framework, it means we haven’t done enough to fully explore underlying interests and needs.

For this family, with each parent’s interests now in plain view, and with each able to see that what the other wanted was not necessarily standing in opposition to what he/she wanted, we could finally begin to have a productive conversation. This, more than anything, is the key to understanding the art and science of conflict resolution.

As we began to discuss possibilities, the parents agreed to meet with a child therapist whom the attorneys suggested – a professional for whom each attorney had great respect. Both parents would meet with him separately, and we would schedule our next settlement meeting for after that had happened.

At our next meeting, each reported a very positive experience. They both liked and trusted him to see the big picture and guide things forward in a wise manner. They chose together to engage him as the therapist for their
daughter with a specific purpose in mind. They agreed he would see the child every week for a specified duration, during which dad would have two days a week parenting time. They agreed that, after this specified duration, the therapist would decide on an ongoing basis how much time dad would have within the following parameters: No less than two days and no more than three days per week.

Both parents were extremely satisfied with this agreement and the balance of their settlement quickly came together. Looking at it from the level of interests, one can see why. Dad got the opportunity to have the kind of meaningful relationship with his daughter that he wanted. He would have to place the child’s needs ahead of his tendency to get compulsive around work, and he would be held accountable, but that was actually a really important benefit in his view. The mother received assurance that the emotional needs of their daughter would come first. In fact, their daughter’s needs would be front and center.

Interestingly, each actually got more than he/she had initially wanted in that each also received something of importance that the other had been holding. Mom received the possibility that their daughter would get the kind of close relationship with her daddy that she, the child, had longed for. Dad received a coach in the form of the child’s therapist to make sure he remained mindful of his daughter’s needs.

This is a shining example of a win-win result. Notice how creative the resolution was and how far afield it fell from anything a court would have ordered had the case gone to trial. The gavel would have fallen and the result would have felt arbitrary to both parties. Even if one [most likely the mother in this case] had “won,” it still wouldn’t have felt good for very long because the deeper issues would have been neither touched nor resolved. There would have been resentment on the part of the “losing” party, which would have complicated their relationship going forward.

Let’s stay with this case a bit longer because it represents one of the very few happy endings in the relocation context that I’ve encountered in almost 20 years of practice. Relocation tends to be win-lose by its very nature because the child either stays or goes. Thus, it’s unusual to reach negotiated settlements that both parents can embrace fully. This case, however, proves that such a result is possible.

A couple of years after the divorce was final, the mother wanted to move to San Diego. She was in a new relationship, engaged to a man she purported to love very much. My client had met the man and thought him both stable and likeable. He just had concerns about being away from his daughter.

The law in Arizona at the time, unlike that in Washington now, permitted a non-residential parent to prevent a residential parent from relocating unless the residential parent could prove to the court’s satisfaction that the move was in the child’s best interest. Proving that a child would benefit when taken from the only daddy she would ever have was an almost-always losing proposition. In other words, the father almost certainly could have vetoed the move. Had the case originally been litigated, dad would have become an every-other-weekend father and, when mom wanted to leave, he would have stopped it. When practicing in Arizona, I witnessed broken engagements and relationships ended entirely because a non-custodial parent would not agree to a relocation. In this case too, it wasn’t clear there was a way forward. But since the divorce had been so successfully resolved through interest-based negotiations, the parties agreed to return for more.

The child’s therapist came to the settlement meeting to offer his insights. His involvement turned out to be crucial as he was able to keep the focus on the child’s needs. The mother spoke of the beautiful home in which they would live, the school she would attend, the neighborhood and its resources, and also her opportunity to further her own career. She spoke also of her desire to remarry. The father, after careful deliberation, chose to agree to the move. He said something along the lines of, “You didn’t roll over me when you could have. I want to reciprocate by recognizing that this could actually be great for our daughter. I will rearrange my life so that I can follow you.”

He spoke of how, with their daughter in school, he felt ready to transition to something new. He could see the advantages for their daughter and didn’t want to prevent his ex-wife from getting remarried. He expressed his

(Continued on page 14)
appreciation for what she had done for him as well as gratitude for the opportunity to return the favor.

In those days, there were cheap shuttle flights between Tucson and San Diego. It was agreed he would visit every weekend he could make himself available until he could follow. His work, though intense, could be conducted in a mostly remote manner. We took a short break so the mother could make a quick call to her fiancée. She then agreed to let the father stay in the guest room of her new husband’s home. She also offered to let him keep a car at their home until he had a place of his own.

For the next several years, I received an annual Christmas card from my client. He had managed to follow the mother to San Diego. Each year, he told me of how they had celebrated Thanksgiving and Christmas together. He reported on the joyousness of those occasions. One of the cards said something along the lines of, “Our daughter has a mom and two dads.” The client expressed gratitude for the help of each of the professionals (by which he meant the child therapist and both attorneys). Consider for a moment the possibility that a client could see both counsel as allies to both parties.

As an attorney, the satisfaction of receiving a card like that is way more compelling in my view than even the biggest courtroom “win.” Following a big litigated triumph, my ego might feel good for about twenty minutes. Then I would notice how hungry I was plus the pile of mail sitting on my desk and all the calls that had to be returned. I might enjoy thinking about the case from time to time for another day or two and maybe telling a few people who were kind enough to listen. But that’s about as far as the satisfaction went. And of course one doesn’t always win. I found it really hard to face my own disappointment on behalf of clients who didn’t obtain favorable results, let alone theirs.

It’s particularly interesting to contrast the challenges of dealing with former clients in the litigation context, who are so often unhappy, with the typical experience of dealing with former clients after a successful win-win resolution. I’m the same guy who used to get his share of disgruntled clients and the occasional bar complaint as a litigator. Now it’s very rare for clients to express anything but appreciation. Clients often comment that they selected me because of the many positive online reviews they’ve read. Nothing about my character has changed. Only the focus of my practice. And it of course goes without saying that this type of practice is so much more personally rewarding. It truly helps people and knowing that one is making a positive difference in the world feels great.

I’m told there is well corroborated research showing that personal satisfaction, once one has adequate resources to pay basic living expenses, rises far less with additional income than with one’s sense of meaning and purpose. I can attest to the anecdotal reality of such findings in my life.
Demystifying Washington’s Civil Legal Aid Network

By Kay Frank, Board Member, Endowment for Equal Justice
David Burman, Board Member, Campaign for Equal Justice

This article is the second in a two-part series exploring the growing need for civil legal aid in Washington, how our state’s civil legal aid network operates, and how it aims to address this crisis.

The Challenge: Rapidly Increasing Civil Legal Needs of Low-Income Washingtonians

Unlike in criminal cases, the U.S. Constitution does not guarantee the right to legal representation for people facing civil legal issues. Many people must face the judge without a lawyer, and a civil legal problem often spirals into a series of complex and interconnected challenges to the health, safety, and financial security of low-income individuals, families, and communities. Washingtonians may be facing a looming foreclosure or eviction, the trauma of domestic violence and child custody issues, or the challenge of reinstating a driver’s license to get and keep a job.

The number of people living in poverty who cannot access legal aid is exploding, as Jay Doran of the Legal Foundation of Washington emphasized in the first part of this series, highlighting the results of the 2015 Civil Legal Needs Study (CLNS). A staggering 18% of Washington’s population lives in poverty. However, the one bright spot in the study confirms that the civil legal aid system does work effectively for those who do get support: over 60% of those who receive legal help secure some resolution to their problem. So how do we meet the demand of people needing legal help?

Unfortunately, there are simply not enough resources and capacity to meet our state’s increasing demands. Only about 24% of those living in poverty receive the legal assistance they need to address their potentially life-altering civil legal issues. The gap between those who need services and those who get them is largely due to inadequate financial support for legal aid organizations and related programs and services.

“We are only reaching a fraction of the Washingtonians who need our help, and the needs are growing exponentially,” wrote John McKay, former U.S. Attorney for the Western District of Washington, in the February 2016 issue of NW Lawyer. “The doors to the courthouse are closed to the poor and the powerless.”

Addressing the Need: Our State’s Civil Legal Aid Network in a Nutshell

There are more than 20 organizations that provide civil legal aid to low-income individuals and families throughout the state. The size of these organizations, the services they provide, and the people they serve varies. The Northwest Justice Project (NJP), our state’s largest provider of civil legal aid, employs more than 100 attorneys at 17 offices across the state, and operates our state’s centralized legal aid hotline CLEAR and legal aid website WashingtonLawHelp.org. NJP relies on restricted federal and state dollars directing the type of work and clients they can serve (e.g., no class actions, cannot represent undocumented or incarcerated people).

Partly as a result of these restrictions, several “specialty” legal aid providers work with targeted low-income populations to meet their needs. A few examples:

- TeamChild is a statewide organization working with youth to provide the legal support necessary to keep them on track, housed, safe, and in school.
- Seattle Community Law Center works exclusively with people with disabilities who are homeless or low-income to assist them in accessing federal benefits.
- Columbia Legal Services is a statewide provider focused on systemic advocacy, using policy reform, litigation, and innovative partnerships to end practices and procedures that keep people in poverty.

(Continued on page 16)
Additionally, there are 17 volunteer lawyer programs (VLPs) covering nearly every corner of our state – from Spokane County to Vancouver County to Whatcom County – which work with private attorneys who donate their time and expertise to help low-income individuals and families with their civil legal needs. VLPs vary in size and function, but generally speaking, these organizations are part of a community’s local bar association (e.g., King County Bar Pro Bono Services), have staff that recruit volunteer attorneys to assist clients at scheduled legal clinics, and have staff attorneys or volunteer attorneys provide volunteers with oversight and mentorship.

Our civil legal aid network is efficient and effective but grossly underfunded. NJP, the specialty providers, and the VLPs all work collaboratively to deliver services. However, as the CLNS illustrates, the need is immense and expanding. Even with this highly coordinated infrastructure of services, only 24% of those in need of legal aid are able to get some level of assistance with their civil problems.

How is the Civil Legal Aid Network Funded?

While state and federal funds and lawyer pro bono time are essential in the provision of civil legal aid, they fall far short of meeting current and future demand. Recognizing this shortfall, the Washington Supreme Court created the Legal Foundation of Washington (LFW) 30 years ago to distribute the Interest on Lawyer Trust Accounts (IOLTA) funds. Today, LFW is the largest provider of unrestricted private civil legal aid funds, raising money from a variety of sources, including the legal community, foundations, and individuals. LFW has also been the recipient of cy pres awards from class actions. LFW pools all these funds and makes annual operating grants to specialty providers and all 17 VLPs. In 2015, LFW granted a total of $6.9 million to these programs (which can provide up to 90% of their budget).

LFW grantees offer legal expertise that encompasses all aspects of civil legal needs – healthcare, consumer, employment, housing, family, and more – while covering every corner of Washington.

LFW stewards these grants responsibly and efficiently by providing financial oversight, analyzing client service data, conducting site visits, and working with the civil legal aid network to ensure best practices and coordination of services.

LFW has the expertise to distribute grants where they are most effectively deployed while providing autonomy to local agencies to anticipate and identify the greatest needs on the ground.

However, the Great Recession and the subsequent dramatic and extended drop in interest rates took IOLTA revenue from $9M to $2M a year, significantly impacting LFW’s budget and ability to plan for the future.

Unanticipated cy pres awards and rainy day funds have allowed LFW to maintain its critical grant making around the state, but new sources of funds must be found to meet current and future needs. Even without a financial crisis, IOLTA and cy pres funds are inherently unpredictable and variable, offering little sustainability. Given that IOLTA funds are unlikely to return to pre-recession levels anytime soon, LFW is diligently working to grow its private unrestricted funding base.

Private Unrestricted Funds Make a Difference between Hope and Despair

(Continued on page 17)
Attorneys from around the State stepped up to meet this challenge by creating two vital philanthropic funding sources that are essential for meeting the civil legal needs facing our communities: The Campaign for Equal Justice and the Endowment for Equal Justice.

In 1984, LFW and its grantees forged a unique and unified funding collaborative known as the Campaign for Equal Justice. The Campaign is the only statewide fundraising drive that solicits major support from law firms, individual attorneys, and the public to support 23 civil legal aid organizations that help thousands of low-income Washingtonians in need. It is the one-stop-shop for funding legal aid, making it easy for donors to support all 23 organizations with one contribution to the unified campaign.

The Endowment for Equal Justice, established in 1991, was created to provide a stable, permanent source of funding for civil legal aid. In 2014, it made its first annual disbursement of $394,000 to LFW. The Endowment today stands at $15 million and is intended to provide a stable funding source for future generations.

These two statewide fundraising efforts, the annual Campaign for Equal Justice and the Endowment for Equal Justice, are the backbone of civil legal aid’s private funding network and together have a powerful impact in every community in Washington.

Campaign and Endowment funds are unrestricted, but are not supported by public resources. The private funds we raise not only fill part of the gap but allow civil legal aid organizations the flexibility to engage in high impact litigation, advocacy, and community outreach – essential tools to achieve systemic changes that confront the root causes of poverty.

Even if the amount of government funding were sufficient, restrictions on its use would curtail who we could serve and limit our impact. After all, our justice system was meant to work for all of us, not some of us.

Unrestricted funds provide advocates with the opportunity to serve vulnerable communities such as undocumented immigrants and people who are incarcerated, plus bolsters crucial legislative advocacy that steers public policy and funding toward justice.

Washington’s civil legal aid network is robust and effective – it simply needs sufficient financial support. Fully funded, the network has the expertise and structure to provide low-income people in every community in Washington with access to vital legal services they could never afford on their own.

Toward this end, the Endowment for Equal Justice will launch an ambitious campaign to increase the endowment from $15 million to $20 million by 2020, which will increase our disbursement to LFW to $1M a year. This would significantly increase the resources available to help people stay in their homes, gain employment, access healthcare, secure citizenship, protect their children from abuse, and meet other civil legal needs.

“Ultimately,” says Washington Supreme Court Justice Charles K. Wiggins, “[The 2015 Civil Legal Needs Study Update] challenges us to work all the harder to secure the investments needed to deliver on the promise embedded in our constitutional history and our nation’s creed – that liberty and justice be made available ‘to all.’” Help us make justice for all a reality in Washington by supporting the Campaign and/or the Endowment. It is a smart, results-oriented investment with a priceless return.

Find out more at: https://legalfoundation.org/about-giving/
Startups and Entrepreneurs May Get Another Immigration Option Soon

U.S. Citizenship and Immigration Services recently proposed a rule which may help entrepreneurs better access the U.S. market for immigration purposes. This is good news. The U.S. immigration system has a myriad of rules which can confound entrepreneurs as they attempt to establish businesses in the U.S. Presuming the rule goes through, it will help entrepreneurs—particularly in the tech sector—to start and incubate businesses in the United States, despite the immigration hurdles presented by the H-1B shortage and other deficiencies in the U.S. immigration system. The rule proposes granting an initial two year period of stay (aka parole) where certain funding is in place. For example, a foreign national who is able to procure at least $345,000 in funding for a startup will have a basis to seek parole for two years.

We routinely meet with Canadians who are seeking immigration options to help them with expanding or starting up businesses locally. We review a limited list of options, such Intracompany Transfer visas, Investor visas, Trader visas, and professional occupation visas. Often, the rules just don’t fit the circumstance. This new option has great potential for some, such as the young tech gurus who have angel funding and a good idea, but no funds of their own to get the company started here.

Based on the current federal-state conflict of laws, the startup parole would not be granted for a business directly engaged in the marijuana industry, though it is an interesting question, considering program’s emphasis on growth potential.

The comment period on the proposal ends in 45 days. The rule has the look of possible future legislation, and so could become part of an immigration reform package down the road. Here are excerpts from the announcement:

WASHINGTON—U.S. Citizenship and Immigration Services (USCIS) is proposing a new rule, which would allow certain international entrepreneurs to be considered for parole (temporary permission to be in the United States) so that they may start or scale their businesses here in the United States.

Read the advance version of the notice of proposed rulemaking: International Entrepreneur Rule. Once the notice of proposed rulemaking is published in the Federal Register, the public will have 45 days from the date of publication to comment. To submit comments, follow the instructions in the notice.

“America’s economy has long benefitted from the contributions of immigrant entrepreneurs, from Main Street to Silicon Valley,” said Director León Rodriguez. “This proposed rule, when finalized, will help our economy grow by expanding immigration options for foreign entrepreneurs who meet certain criteria for creating jobs, attracting investment and generating revenue in the U.S.”

The proposed rule would allow the Department of Homeland Security (DHS) to use its existing discretionary statutory parole authority for entrepreneurs of startup entities whose stay in the United States would provide a significant public benefit through the substantial and demonstrated potential for rapid business growth and job creation.

Under this proposed rule, DHS may parole, on a case-by-case basis, eligible entrepreneurs of startup enterprises:

- Whose startup was formed in the United States within the past three years; and
- Whose startup has substantial and demonstrated potential for rapid business growth and job creation, as evidenced by:
  - Receiving significant investment of capital (at least $345,000) from certain qualified U.S. investors with established records of successful investments;
  - Receiving significant awards or grants (at least $100,000) from certain federal, state or local government entities; or
  - Partially satisfying one or both of the above criteria in addition to other reliable and compelling evidence of the startup entity’s substantial potential for rapid growth and job creation.

Under the proposed rule, entrepreneurs may be granted an initial stay of up to two years to oversee and grow their startup entity in the United States. A subsequent request for re-parole (for up to three additional years) would be considered only if the entrepreneur and the startup entity continue to provide a significant public benefit as evidenced by substantial increases in capital investment, revenue or job creation.
Ramblings of a Small Time Country Lawyer
~By Rajeev!

Year of Civil Litigation: End in Sight.

Subtitle #1: “Never stir up litigation. A worse man can scarcely be found than one who does this.” ~Abraham Lincoln

As I’ve mentioned on innumerable occasions, I love the width and the breadth of the law—as history, as a concept, as a construction and as an endlessly multi-faceted endeavor. Some people talk about shortening law school to two years, and I respond saying that is foolish: a law student barely knows what they might be interested in or what law even has to offer by the time they have their third year, if anything it should be a four year degree. When I took the Bar Review courses, I was so angry at all the very interesting topics that came up that I previously did not even know existed: maybe if my 1L Contracts Class mentioned how cool Secured Transactions were, I could have pursued that. Or if my Criminal Law class mentioned that there is something called Criminal Procedure, my life would be different (Seriously though… how is criminal procedure not required and civil procedure is? It seems that our most vital liberties and lawyers’ traditional role as the safeguard against government overreach would put that higher in priority).

So despite its many drawbacks, the eclectic practice of a general practitioner out in the country suits me quite well. I like to think I have become a decent general counsel to my business and individual clients, able to point out where we need a specialist or need to bring on expertise that I don’t have. That being said, I think it is important to get as deep a grasp of things as possible, so for the last couple years I have tried to drive my intellectual and practice ambitions with a different theme each year. While I do everything all year round, I try to take extra cases and do extra work in particular practice areas. Last year was corporate governance and transactions, next year is a planned focus on criminal litigation (more jury trials!). This year, however, my focus has been civil litigation—this means, I have been taking cases where negotiation has already failed in many cases, or where discovery issues are a little more complex than I would normally like. These are things that I usually don’t take and that I refer out, but this year I have turned my rudder directly into the storm of hard work and training.

And let me tell you, it has been a storm of a year; in addition to trying to take harder cases, the cases have generally slipped sidewise with freakish issues of first-impression or ambiguity… as if Lady Justice in her blind wisdom decided to lash me with the full fury of an educational lesson. While I appreciate the sentiment that we don’t learn from easy tasks, I have to say that I am increasing looking forward to re-focusing on criminal litigation. Civil litigation is all smiles above the table, and knives out underneath. I feel that criminal law is much more… civil.

It’s been enjoyable in other ways though, I brought a pro bono case I have been working on for a long time to a contested but triumphant close in a case with more discovery complications and intransigence that I thought possible outside of a surreal sadomasochistic litigator's fantasy. The client in question was uneducated, old, abandoned, foreclosed on, made homeless, car repossessed and begging for old food. She had a few things going for her, that let me help her with her case though; she happened to be incredibly intelligent, had a steel-trap-like memory and wasn’t afraid to do her own investigations and research with her limited means. Those are all ideal traits in a client, but her issues were (Continued on page 20)
so complex, and the litigiousness of the case so hot, it is not the kind of pro bono case I would normally have charged forward on except that I had vowed to focus on doing that very thing. So, I appreciate holding myself to the fire, because educational advantages aside, I at least helped a very worthy person who got a raw deal. And while I try to do as much pro bono work every year as I can, I am not sure many lawyers would have taken her case forward in the state it was in (including myself). So this year’s focus has been good, but exhausting and frankly: painful, stressful, depressing, draining and time-consuming. It reconfirms for me some things I knew coming out of law school.

I knew that I didn’t want to work downtown conducting complex discovery actions in cases that lasted years-on-end, and where trials involve hundreds and hundreds of file boxes in court. But I also felt that every lawyer should have the skills and understanding of civil litigation to back up their own work, advise their clients when needed, and know how to step into a ring of litigation and fight with honor. So I have always striven to improve my abilities in that regard, and if I had a tip for younger lawyers, it would be to find a mentor and do the same. If I had more tips (and I do!) it would be: 2.) Read the Civil Procedure Corner in this Journal; and 3.) follow Lincoln’s advice on litigation:

“Discourage litigation. Persuade your neighbors to compromise whenever you can. As a peacemaker the lawyer has superior opportunity of being a good man. There will still be business enough.”

Well, actually I mean to say I will follow that advice “when possible.” The real reason we have attorneys, is because peacemaking is not always possible—because humans are both rational and irrational creatures at their core. When peacemaking is not possible, however, I intend to be ready.
Message from Attorney Jim Hoogestraat

I need to make contact with any attorney who is representing farmers making claims against Whatcom Farmers Co-op for damage to raspberry fields from the use of the herbicide, Callisto.

Please contact Jim Hoogestraat at 360-671-1551 or by email at jim@pemhooglaw.com
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TREASURER'S REPORT - September 2016
For period 6-1 through 8-31-2016

Beginning of period cash balance $ 24,126.19

**Deposits/Credits:**
Bar meeting lunches (aside from those paid with Dues) 90.00
Advertising revenue 1,580.00
CLE Fees Received
Membership dues received this period -
Copier Income
Interest Income - Checking
TOTAL DEPOSITS: 1,670.00

**Checks/Expenses:**
Accounting Fees
Northwood Hall - Bar Lunch 648.00
Honorary, Plaques, Holiday Tip
Internet & Copyright 136.01
Meals & Entertainment -
Post Office Box Rental (annual) -
Postage and Supplies -
Newsletter Stipend (Annual) -
Taxes and Licenses 13.04
SUBTOTAL EXPENSES: 797.05

**Donations:**
Law Advocates 2,500.00
Law Library 1,250.00
Teen Court 500.00
High School Mock Trial Team
TOTAL DONATIONS: 4,250.00

TOTAL EXPENDITURES $ 5,047.05

**END OF PERIOD BALANCE** $ 20,749.14

End of Period Checking Account Balance 14,253.26
Petty Cash 100.00
Operational Reserves CD - including interest 6,405.88

$ 20,749.14

WBCA MEMBERS 169
12:15 pm Meeting called to Order by President Tom Lyden. **Introductions**

Guests introduced.

Judicial Officers were recognized.

June 2016 Meeting Minutes approved

Treasurer’s report approved (copy attached)

**Upcoming Events:**

Michael Heatherly reminded everyone of Lawyers Take Orders event scheduled for October 21, 2016 at the Bellingham Golf and Country Club. Invitations are forthcoming!

Don’t miss the upcoming CLE’s!

Law Advocates Volunteer Drawing

**Old Business:** None

**New Business:** Lively discussion of WSBA Bylaws changes.

**Speaker:** Justin D. Farmer, Esq. President and founder of Private Practice Transitions Inc. provided a talk on how to Prepare your Practice for Sale and actually Sell it!

Adjourned at 1:20 pm

Submitted by: Lisa Saar, WCBA Secretary
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