



WHATCOM COUNTY BAR JOURNAL



2020

www.whatcombar.org

NOVEMBER

2020 WCBA Officers

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BAR LUNCH



Coronavirus Cancelations Continue. But....

December 4, at Noon ... our First Virtual Meeting! See Page 3.

Superlative Disclaimer:

The information & various articles contained within this publication have not been checked for accuracy. All opinions expressed are those of the authors and do not reflect the opinions of the Bar Association, the Journal, or the agents thereof.

The President's Column

By Matt Conner, WCBA President 2020

The Year of the Zoom a Zombie Horror Story



Imagine if being on zoom turns us into zombies? What if this transformation follows the great zombie movies Night of the Living Dead, Dawn of the Dead, Day of the Dead, and Sean of the Dead? Zoom like these movies begins slowly, insidiously. Family and friends find a way to connect for bingo, drinks, and book clubs. Seems harmless enough and the pros of connecting and seeing each other outweighs the cons of the initial learning curve, poor sound and video quality. We didn't know better and we were all looking for an escape.

Zoom moves into the work space starts to take over our outlook calendars. What a boon to connect to our co-workers, our clients, and everyone else. Tales of zoom bombings abound but zoom responds by improving security. By now we are kicking ourselves for not having the wherewithal the invest in zoom on day 1 the pandemic – who knew? We start to realize that we either like zoom or hate it. There is always one person who drones on and on dominating the zoom conversation, why is that? There is always a cat's butt appearing on our screen or a dog barking in the background.

At work we use zoom for arbitrations, depositions, mediations, and court hearings. We learn to schedule meetings, use the chat feature, and change our backgrounds. Who has not experienced the booting off of the zoom, the video freezing, the staccato voice garbling every word coming out of our speakers? We try to speak slowly and enunciate each word. Some users are virtuosos attending two zoom meetings at once. Zoom trials begin across the country. We realize that the ability of jurors to connect and feel like a cohesive unit is often lost on zoom. Jurors do not get to know each other and so awkward icebreaker questions are posed to them. Jurors boldly work to adapt and reach just results without establishing true connection and trust among peers.

Zoom no longer brings us together but instead reminds of our continued separation. The get togethers in our free time on zoom dwindle and disappear and depression sets in. We are caught in this undesirable situation with no way out.

Meanwhile, the zoom epidemic continues by taking over our televisions. We are looking into people's kitchens, bedrooms, and living rooms. We decide to move our cameras and angles to better light ourselves and hide the clutter of our lives. Some people paint rooms and rearrange furniture. We have zoom headaches with stiff necks and frozen shoulders. A zoom background requires no sudden movements. We never make eye contact as we listen but we see our phones and emails call our attention. Our children begin attending school on zoom or some similar platform. There are few and far between spared from the zoom nightmare. Along the way we have the "poor Jennifer" video and the "Toobin" incident. We have all seen too much that we would rather not see. With zoom we have difficulty turning away. When will this zoom nightmare end? We are all turning into zoombies whether we like it or not.

For all our sakes, we need to limit our time on zoom and save ourselves. I hope everyone has a safe and Happy Halloween.

December Bar Meeting & Free Ride on Bar Dues!

Good Day to you Whatcom County Bar Members,

At noon on December 4, 2020, the Whatcom County Bar will be hosting its first Zoom meeting to wrap up the business for the year. We will be taking care of the following agenda items and voting on some matters that may be of interest to you:

1. Installing the new executive team
2. Approving the Minutes from our March Meeting
3. Approving the Treasury reports from March- December
4. **Making 2021 free to members who paid in 2020**
5. Report from Law Advocates on the State of the Organization and the continued need for volunteer lawyers!!!!

I look forward to speaking with you all,

Best Regards!
Matt Conner

To Join Zoom Meeting on December 4th at Noon:

Web Link: <https://us02web.zoom.us/j/86242208970>

Meeting ID: 862 4220 8970

One tap mobile

+12532158782,,86242208970# US (Tacoma)

+13462487799,,86242208970# US (Houston)

Dial by your location

+1 253 215 8782 US (Tacoma)

+1 346 248 7799 US (Houston)

+1 669 900 6833 US (San Jose)

+1 301 715 8592 US (Germantown)

+1 312 626 6799 US (Chicago)

+1 929 205 6099 US (New York)

Find your local number: <https://us02web.zoom.us/j/86242208970>

Whatcom County Bar Association Officers

The Whatcom County Bar Association is seeking officers to fill the positions of Secretary and Treasurer for 2021. If you are interested in serving as an officer for the Whatcom County Bar Association, please email Matt Conner: mconner@brettlaw.com.

Slightly-Morbid Slightly-Late Spooky Halloween Whatcom Bar Trivia



Submitted by the New Skagit County Law Librarian, Maren Anderson!

This is a slightly morbid random fact, but did you know that the last legal execution to occur in Washington State outside the confines of the state penitentiary at Walla Walla occurred at the Whatcom County Courthouse in 1902? It's a legitimately interesting story: <https://www.historylink.org/File/10004>

The hunt for local legal trivia continues ...



CLASSIFIED ADS

Free to all WCBA members & firms in which all members
have paid their membership dues. \$15 otherwise.

e-mail ad copy to:

rajeev@northwhatcomlaw.com

by the 15th of the preceding month

Office Space Available – Bellingham Towers - 119 N. Commercial Street – downtown! Just down the street from City Hall, the Court House and the Federal Building. If interested please call 360-647-1916 x 112 or email: robbi@hollanderinvestments.com. Conference room available for Rent to Tenants and Non-Tenants.

Looking for a fun dance band for your next party, fundraiser or other event? Lemon Creek performs songs by great women rockers and popsters of the last 4 decades. From Fleetwood Mac to Amy Winehouse—Sheryl Crow to Lady Gaga to Garbage—with some interesting and fun detours along the way. From the irresistible dance grooves of Blondie and Kylie Minogue, to the drama and intensity of Concrete Blonde and The Cranberries—you will get up and dance! Lemon Creek is Lesley Rostrom, Jon Grover, Mike Rostrom and Doug Hyldahl. Check us out at <https://www.gigmasters.com/rock-band/lemon-creek> and <https://www.facebook.com/pg/lemoncreekrock/about/>

SPACE FOR LEASE. Looking for additional office space or a new location in Skagit County? Space available in business center with ample parking and on main arterial road in Burlington, 5 min. from I-5. Remodeled spaces of 1,100 ft² or 3000 ft² now available. New carpet, LED lighting, signage. Rates from 22 to 25 per ft/year, plus NNN. 720 -790 S. Burlington Blvd., Burlington WA 98233. For more information: 360.853.3287. Edward-Berger Properties, LLC.

Part-time Assistant Wanted. Part-time legal assistant needed for law office. Independent contractor (not an employee). Duties include organizing files, on paper and on the computer, creating templates, editing documents. Helping to close out 2020 and create new systems for 2021. Detail-oriented, quick learner, and a pleasant person to be around. If interested, please send a text to Maureen Toomey at 360-599-0697.

ACROSS THE LINE: BORDER & IMMIGRATION UPDATE

By Scott Railton

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Here are some of the latest updates from the world of U.S. immigration.

Border Closure. The U.S.-Canada border remains closed to non-essential travel, as has been the case since March. Alas. The latest closure will last until at least November 21st, but I think most think the border is unlikely to open this year. Commercial traffic continues to be allowed to cross, and indeed has increased according to on customs broker. Essential workers also continue to be allowed to travel, including TN, H-1B, L, E, and O status holders. All border travelers receive more scrutiny these days, in part because of the 97% reduction in ordinary visitor travel. The economic and family impacts of the continuing border closure have been tough, no doubt. Entering by air continues to be a workaround for persons coming south. Canada's 14-day quarantine rule continues to be a challenge for those going north. Some exemptions have developed over these months, but Canada and Prime Minister Trudeau have been vocal about limiting traffic. On the recent extension, Acting DHS Secretary Wolf said, "We are working closely with Mexico & Canada to identify safe criteria to ease the restrictions in the future & support our border communities."

Aside from the continuing border closure, the big news in immigration continues to be the Administration's systematic efforts to severely restrict most types of immigration. The Administration has fast-tracked a number of immigration regulations in recent weeks, which make immigration processes less available, more costly for employers and individuals, and more complicated. Typically, a rule is proposed, and not too long after, the Government is sued for not following proper administrative procedures and for other flaws in the specific rule.

H-1Bs and Prevailing Wages. In particular, the Administration has once again focused on the H-1B program. The Department of Labor has issued a rule which elevates prevailing wage calculations (85 FR 63872, 10/8/20). On the same day, USCIS issued a rule which redefines the specialty occupation category, places stringent limits on off-site employment, and otherwise guts the H-1B program (85 FR 63918, 10/8/20). The Administration expedited the publication of these rules without going through the ordinary public comment process, and now several lawsuits are pending in federal court, contesting the regulations. In my view, the new prevailing wage rule is a mess and inaccurately reflects employer wages. The USCIS rule seems to be out of step with the Immigration and Nationality Act, and such major changes should be left to Congress. We'll watch the litigation for updates. Several major universities and employers are litigants.

Family Based Immigration and Public Charge Rules. Family-based immigrant petitions are running into many roadblocks during the COVID crisis. The Administration issued a Proclamation restricting the grant of immigrant visas abroad, along with other travel bans. The Field Office closures delayed many adjudications, and now adjudications are processed amidst COVID protections for applicants and adjudicators (e.g. video screens in some cases). Additionally, the Administration has implemented complex public charge rules which limit immigration, while making the process much more complicated. E.g. 85 FR 62432, 10/2/20; *Inadmissibility on Public Charge Grounds*, 84 FR 41292, 8/14/19. These rules too have been the continued subject of litigation. Before everything is

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through, I anticipate the Supreme Court will weigh in on some of these rules.

Filing Fee Increases. The Administration has also endeavored to price people and employers out of immigration. A rule was published raising filing fees for petitioners by a weighted average of over 20% and limiting fee waivers. The price of a nonimmigrant waiver application rose to \$1400, from \$585. This rule too is on hold due to pending litigation. Meanwhile, Congress authorized an increase in premium processing fees, which allows petitioners to pay for faster adjudications. I've always questioned the essential character of this program. Setting that aside, the bad news is the maximum price will now be \$2500, up from \$1440. The good news is Congress authorized extending this program to a wider range of immigrant benefits, which should end up being helpful for those who need an employment authorization document fast, but previously were stuck waiting.

Refugee and Asylum Restrictions. The Administration has been very tough on all forms of humanitarian relief for immigrants. It has recently issued rules further limiting the U.S. asylum program, going further than the much publicized numeric limits placed on accepting refugees. The measures add several mandatory bars to asylum claims (e.g. certain convictions, illegal re-entry, fraudulent documents. The existence of post-conviction relief in State courts is also to be largely ignored. See, e.g. *Procedures for Asylum and Bars to Asylum Ineligibility*, 85 FR 67202, 10/21/20, effective November 20, 2020; see also, *Joint EOIR and USCIS Proposed Rule on Procedures for Asylum, Withholding of Removal, and Convention Against Torture Protection*, 85 FR 30264, 6/15/20) (DOJ, DHS).

Expedited Removal Expansion. The Administration has also expanded its use of expedited removal, to bypass immigration court proceedings in cases where persons have been in the United States for less than two years. We have been seeing CBP use this authority more expansively at Sea-Tac and Blaine over the past year.

COVID Travel Restrictions. Several immigration proclamations remain in effect related to COVID. Additionally, nonimmigrant visas bans are in place ostentatiously due to the labor downturn related to the pandemic. Exceptions exist for certain persons and industries, and the Department of State continues to update guidance. Each case has to be reviewed individually.

Investor and Traver Visas. In better news, the Canadian Consulates, and in particular the Toronto Consulate, are processing E Investor/Trader visas again. For months, the E visa process was stalled out. E visas are available to Canadians and nationals of other countries with qualifying treaties, who substantially invest in a U.S. business, or who do substantial trade principally with the United States. This is one immigration device for routinely helping Canadian cross-border businesses establish and maintain a presence in the U.S. During the summer, with consulates closed, we were beginning to see real issues develop for Canadian business owners with expiring visas and substantial interests in the U.S.

We're happy to discuss any of these matters in further detail. Also, there are many ways to be involved in advocacy. I will suggest supporting Northwest Immigrant Rights Projects and the International Rescue Committee. Additionally, submitting comments on these rules can be helpful, sometimes. Wishing all my colleagues here the best in health and well-being. - Scott

Quick Look: September 2020 Washington Supreme Court Opinions

Michael Bersch

michael@michaelbersch.com

Indian Child Welfare Act and Washington Indian Child Welfare Act

In re Dependency of Z.J.G. & M.E.J.G., slip op No. 98003-9, September 3, 2020

At a shelter care hearing for Z.G. and M.G., testimony by the Department of Children, Youth, and Families indicated the children's grandmother was a member of a tribe, and the mother was eligible for membership in a tribe. The mother testified she was eligible for tribal membership, and the children were eligible for membership. Despite this testimony, the trial court held that the Indian Child Welfare Act (ICWA) did not apply because, based on the evidence presented, the court did not have reason to know the children were Indian children. Applying the non-ICWA emergency removal standard, the trial court then ruled that there was a showing of serious risk of substantial harm to the children. The court placed the children in a licensed foster home even though there were culturally appropriate placements available.

The father moved for review of the shelter care order. The Court of Appeals affirmed the trial court's ruling stating "that a trial court has **reason to know** a child is an Indian child when the court receives evidence that the child is a tribal member or the child is eligible for tribal membership and a biological parent is a tribal member. The court concluded that in this case, at the time of the shelter care hearing, good faith investigation had not yet revealed evidence a parent or a child was a tribal member, so the trial court did not err in concluding there was **no reason to know** the children were Indian children." (p. 8-9 emphasis added, internal quotes and cites deleted.) The father sought and was granted review by the Washington Supreme Court.

The Court noted that ICWA's (and its Washington counterpart, WICWA) heightened standards for removal and placement preferences are triggered when a court knows or has reason to know that the child is an Indian child. The Court reversed the lower courts stating that to protect tribal interests and prevent the improper removal of Indian children an expansive interpretation must be given to the "reason to know" standard. The Court held "that a court has a "reason to know" that a child is an Indian child when any participant in the proceeding indicates that the child has tribal heritage." (p.40)

(Note: Although moot by the time of the appeals, both the Washington Supreme Court and the Court of Appeals opined as an issue of continuing and substantial public interest.)

Arbitration – Availability of Judicial Review

Burgess v. Lithia Motors, Inc, Wash. slip op No. 98083-7, September 3, 2020

Burgess brought a discrimination, harassment, and wrongful termination suit in Spokane County Superior Court against Lithia Motors but moved to arbitration under the terms of an arbitration agreement signed as a condition of employment. During arbitration Burgess filed a motion in Superior Court to vacate an arbitrator's order and terminate arbitration. The court denied the motion but granted a request to certify the matter for review. The certified question essentially asked whether the superior court had jurisdiction to intervene in binding arbitration or whether the court's jurisdiction was limited issues before and after arbitration.

The Washington Supreme Court held that where parties elect to resolve a dispute through binding arbitration under the Federal Arbitration Act, "courts are generally limited to determining enforceability disputes before arbitration begins and reviewing arbitration awards when arbitration is complete [the "bookends" of arbitration]." (p. 13)

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Equitable Grace Period – Option to Purchase

***Borton v. Burbank*, Wash. slip op No. 97690-2, September 10, 2020**

Burbank Properties LLC (Burbank) purchased 164 acres of agricultural land in 2012. Burbank farmed early season potatoes on the property and rotated the potato crop with hay every two to three years. Because of financial troubles, Burbank sold the property to Borton & Sons Inc. for \$1.55 million (below market), subject to a three-year lease and option to repurchase agreement. The repurchase agreement contain a “time is of the essence” clause and required Burbank to exercise the purchase option by December 31, 2017, via registered or certified mail. Burbank inadvertently failed to meet the December deadline and mailed the Notice of Exercise of Option (Notice) on January 4, 2018, by regular mail. Upon receiving the Notice on January 8, 2018, Borton notified Burbank that the option was terminated for failing to timely exercise. Burbank contended the Notice was valid and enforceable. Borton then initiated a declaratory judgment action. The “trial court ruled that Burbank was entitled to an equitable grace period based on the potential timothy hay loss and the loss in equity of the property.” (p. 3) Borton appealed. The Court of Appeals reversed holding “that an equitable grace period is available only when substantial improvements are made to the property such that the lessee would suffer an inequitable forfeiture if a grace period were not granted, and since Burbank made no such improvements, Burbank failed to demonstrate that it would suffer an inequitable forfeiture.” (p. 4) Burbank was granted review by the Washington Supreme Court.

The Court noted that generally an optionee must exercise an option within the time and in the manner agreed to or all rights and consideration under the contract are forfeited. “However, special circumstances may justify the grant of an equitable grace period when a lessee fails to timely exercise an option to renew or buy contained in a lease. *Wharf Rest., Inc. v. Port of Seattle*, 24 Wn. App. 601, 610-11, 605 P.2d 334 (1979)” (p. 8) *Wharf* “outlined a five-factor [*Wharf* factors] test to determine whether a lessee is entitled to an equitable grace period to exercise a lease option: (1) the failure to give notice was inadvertent, (2) an inequitable forfeiture would have resulted had equity not intervened, (3) the lessor did not change its position and did not suffer prejudice, (4) the lease was for a long term, not a short term, and (5) there was no undue delay in exercising the option.” (p. 10) Burbank contended that the “Court of Appeals erred in holding that valuable permanent improvements to property are required before granting an equitable grace period.” (p. 10) The Court disagreed, stating Burbank made no permanent improvements to the property; thus no inequitable forfeiture would result. The Court held “that granting an equitable grace period is proper only when a lessee makes valuable improvements to property that would result in an inequitable forfeiture if the lessee is not given a grace period.” (p. 1)

Justice Madsen, in a concurring opinion, noted “the unique aspects of agricultural production in the context of equity and property. Specifically, beyond structural improvements, perennial crops can constitute valuable permanent improvements.” (Concurring p. 1)

Washington Consumer Protection Act

***Young v. Toyota Motor Sales, USA.*, Wash. slip op No. 97576-1, September 24, 2020**

Young purchased a Toyota truck which was incorrectly advertised and labeled as having an outside temperature gauge on the rearview mirror. After failing to reach an agreement over the missing display, Young brought a Consumer Protection Act (CPA) suit against Toyota. The trial court returned a defense verdict, and Young appealed. The Court of Appeals affirmed in a divided opin-

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ion with the majority holding “that to be unfair or deceptive for purposes of the CPA, a misstatement of fact must be material.” (p. 4) Young was granted review.

Affirming the lower courts in the result but clarifying the law the Supreme Court noted that to “prevail [on a Washington CPA claim], a private plaintiff must establish “(1) an unfair or deceptive act or practice, (2) occurring in trade or commerce, (3) affecting the public interest, (4) injury to a person’s business or property, and (5) causation.” (p. 5) The Court then held that “[t]o satisfy the first element of a CPA claim, a plaintiff need not show that they—or anyone—was in fact deceived. Instead, the plaintiff must establish that the unfair or deceptive act or practice had the capacity to deceive a substantial portion of the public. ... Nor is there a need to prove reliance to establish the first element. ... Similarly, materiality is not a necessary component of the first element.” (p. 6-7, internal quotes and citations omitted).

Sentencing

Personal Restraint Petition of: Ira Michael Cranshaw, Wash. slip op No. 97778-0, September 24, 2020

At trial, Ira Cranshaw was found guilty of multiple severe crimes against two victims (V-1 and V-2). Cranshaw appealed his convictions. The Court of Appeals upheld his convictions for crimes against V-1, but reversed his convictions against V-2 and remanded for a new trial. On remand, the trial court sentenced Cranshaw for crimes against V-1 and held a new trial for charges involving V-2. Cranshaw was again found guilty, and he was sentenced using offender scores that counted his convictions involving V-1. His sentence became final in September 2006. In May 2019, Cranshaw filed a personal restraint petition in the Court of Appeals regarding, in part the calculation of his offender scores. The Court of Appeals dismissed the petition, and Cranshaw then filed a motion for discretionary review, which the Washington Supreme Court granted.

The Court noted that these were unusual circumstances. However, the sentence imposed after Cranshaw’s retrial was invalid, and he was entitled to be resentenced using an “offender score calculation determined as if all of the serious violent offense convictions arising out of this single prosecution constituted multiple current serious violent felonies sentenced in a single proceeding.” (p. 3-4)



**WHATCOM COUNTY BAR ASSOCIATION
TREASURER'S REPORT - August 2020 (AMENDED)**

For period 8-1-2020 to 8-31-2020

Beginning of period cash balance (on 8/1/2020) **\$19,924.56**

Deposits/Credits:

Lunches		
Advertising revenue	410.00	
CLE Fees Received		
Membership dues received this period		
Copier Income		
Interest Income - Checking	0.17	
TOTAL DEPOSITS:		410.17

Checks/Expenses:

Accounting Fees	27.18	
Northwood Hall - Bar Lunch		
Honorarium, Plaques, Holiday Tip		
Courthouse Copier Rental	163.78	
Meals & Entertainment (Retirement Party)		
Post Office Box Rental (annual)		
Postage and Supplies		
Newsletter Stipend (Annual)		
Taxes and Licenses		
Bank Fees		
SUBTOTAL EXPENSES:		190.96

Donations:

- Law Advocates
- Law Library
- Teen Court
- High School Mock Trial Team

TOTAL DONATIONS: -

TOTAL EXPENDITURES **\$ 190.96**

END OF PERIOD BALANCE **\$20,143.77**

Petty Cash **100.75**

Operational Reserves Savings Account - including interest** **6,487.94**

\$ 26,732.46

WCBA MEMBERS

102

**WHATCOM COUNTY BAR ASSOCIATION
TREASURER'S REPORT - September 2020**

For period 9-1-2020 to 9-30-2020

Beginning of period cash balance (on 9/1/2020)		\$20,143.77
<u>Deposits/Credits:</u>		
Lunches		
Advertising revenue	435.00	
CLE Fees Received		
Membership dues received this period		
Copier Income		
Interest Income - Checking	0.17	
TOTAL DEPOSITS:		435.17
<u>Checks/Expenses:</u>		
Accounting Fees	27.18	
Northwood Hall - Bar Lunch		
Honorarium, Plaques, Holiday Tip		
Courthouse Copier Rental	163.78	
Meals & Entertainment (Retirement Party)		
Post Office Box Rental (annual)		
Postage and Supplies		
Newsletter Stipend (Annual)		
Taxes and Licenses		
Bank Fees		
SUBTOTAL EXPENSES:		190.96
<u>Donations:</u>		
Law Advocates		
Law Library		
Teen Court		
High School Mock Trial Team		
TOTAL DONATIONS:		-
TOTAL EXPENDITURES		\$ 190.96
<u>END OF PERIOD BALANCE</u>		<u>\$20,387.98</u>
 <u>Petty Cash</u>		 100.75
<u>Operational Reserves Savings Account - including interest**</u>		6,488.21
		<u>\$ 26,976.94</u>
 WCBA MEMBERS	 102	

FILED
COUNTY CLERK
2020 OCT 16 P 3:26

IN THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF WHATCOM

IN THE MATTER OF RESPONSE TO PUBLIC)	Admin File No.
HEALTH RISK DUE TO COVID-19 PUBLIC)	20-2-00001-37
HEALTH EMERGENCY)	FOURTEENTH
)	ADMINISTRATIVE
)	ORDER
)	October 16, 2020

The Court will resume hearing trials with twelve-person juries beginning November 16, 2020. Jury selection procedures will be conducted at a location outside the Whatcom County Courthouse.

The Court will issue a supplement to this Order which will contain more detailed information about the manner in which jury trials will be conducted in compliance with applicable restrictions related to the COVID19 pandemic.

DATED this 16th day of October 2020.

DEBORRA GARRETT, Presiding Judge

IN THE MUNICIPAL COURT OF THE CITY OF BELLINGHAM
WHATCOM COUNTY, WASHINGTON

IN THE MATTER OF,
STATEWIDE RESPONSE
BY STATE COURTS TO
THE COVID-19 PUBLIC
HEALTH EMERGENCY

TEMPORARY
ADMINISTRATIVE ORDER
No. 2020-07

The Court, being fully informed, hereby issues the following FINDINGS:

1. The Court hereby incorporates all findings in Bellingham Municipal Court Temporary Administrative Orders No. 2020-01, 2020-02, 2020-03, 2020-04, 2020-05, and 2020-06 (as amended).
2. The Court hereby incorporates all findings in Washington Supreme Court Order No. 25700-B-608, Second Administrative Order No. 20-2-00001-37, Second Revised and Extended Order Regarding Court Operations No. 25700-B-618, Third Revised and Extended Order Regarding Court Operations No. 25700-B-625, Order Re Modification of Jury Trial Proceedings No. 25700-B-631, and Fourth Revised and Extended Order Regarding Court Operations No. 25700-B-646.
3. The Court is attempting to facilitate jury trials at the earliest opportunity consistent with public health requirements during this pandemic. However, the Court has limited courtrooms, restrooms, elevators, and other physical spaces to meet social-distancing requirements, staff operating under difficult circumstances due to the pandemic, as well as constitutional mandates such as public access and the right to confront witnesses. The Court has increased the number of courtrooms in use for many calendars in order to promote social distancing and facilitate telephonic hearings, which require more time and personnel than live hearings. These changes require accommodations and have caused additional delays in holding jury trials, which would utilize the same courtrooms. To facilitate maximum flexibility to adapt to changing circumstances, specific jury trial procedures will be set forth in a separate document.
4. The Covid-19 virus continues to pose a clear and present danger to the safety of courthouse visitors and staff. As of October 15, 2020, the Washington Department of Health indicated that, in Whatcom County, there were 1,489 cases of Covid-19 and 49 related deaths, with a mortality rate of 3.3%, according to the Bellingham Herald. Health officials have mandated mask use, encouraged social distancing, and discouraged gatherings of large numbers of individuals, which is typical for calendar sessions in this Court.

5. The Court is committed to ensuring rights to public court proceedings while protecting the safety of all participants and the public. The Court has requested and received authorization for technology to broadcast live from the courtroom during jury trials, which will facilitate a public trial while protecting the public from infection. This technology is currently being tested. The Court is also working to develop procedures to ensure compliance with the applicable laws and Washington Supreme Court orders regarding court proceedings, particularly jury trials.
6. Due to the large and growing backlog, caused by the pandemic, of criminal cases that require jury trials, coupled with the need to comply with state health directives and orders from the Washington Supreme Court, restricted by limited facilities and available calendars, and the upcoming holidays (Veteran's Day, Thanksgiving, Christmas and New Year's), it is extremely difficult to set and hear multiple jury trials, particularly multi-day jury trials, without disrupting other scheduled calendars, during the next two months. The Court will attempt to hold such trials as technology and schedules allow, but it is not possible to accommodate the increased demand for jury trials without unavoidable delays.
7. The Court is making exceptions to comply with the Americans with Disabilities Act as needed, including permitting limited in-person hearings. The Court has heard cases in person to ensure due process for hearing-impaired defendants.
8. The public health emergency and local conditions constitutes unavoidable and unforeseen circumstances affecting the right to trial beyond the control of the Court and the parties, as set forth in CrRLJ 3.3(a)(8). The Court is attempting to facilitate jury trials at the earliest opportunity. However, due to the number of cases, procedural and health requirements, and limited facilities, further delays are unavoidable.
9. Written waivers of speedy trials have proven particularly difficult to obtain under current circumstances. The mail is less than fully reliable. Many defendants, including those who have yet to obtain counsel, lack reliable mailing addresses or lack internet access to the Court's website, and therefore cannot obtain the requisite form. Even after verbally indicating their desire to waive speedy trial in court, many fail to send in written waivers or send them to the wrong court. Finally, written documents transmitted by hand may increase the risk of infection.
10. Paragraph 23 of Supreme Court Order No. 25700-B-646 recommends courts follow the "most protective public health guidance" and authorizes courts to adopt measures that are "more restrictive" than that Order, including "extending as necessary the time frames in this Order." Given local conditions described above, such extensions are necessary and additional public health measures will remain in effect.

The Court, therefore, hereby issues the following emergency orders:

1. **INCORPORATION OF PRIOR ORDER.** All emergency orders set forth in Temporary Administrative Order 2020-04, 2020-05, and 2020-06 (as amended) remain in effect, subject only to the changes set forth below.
2. **THE BELLINGHAM MUNICIPAL COURT BUILDING** will remain **CLOSED TO THE PUBLIC** until such time as the Court determines it to be safe to reopen under Washington Department of Health guidelines. Day-to-day court hearings will continue telephonically and/or by video until further notice. However, the

Courthouse will temporarily open for scheduled jury or bench trials for criminal defendants, witnesses, attorneys, jurors, security officers, victims and court-appointed interpreters, and as otherwise directed by a judicial officer in extraordinary circumstances. The public may view court proceedings live online using the Court's website, and copies of electronic recordings remain available without cost. All persons entering the Bellingham Municipal Court Building shall comply with all applicable health and safety policies and all specific jury trial procedures set forth in a separate document forthcoming.

3. **TRIAL CALENDAR REOPENING AND EXCLUSION OF TIME FOR TRIAL.** Due to the above findings, and pursuant to CrRLJ 3.3(e)(8) and paragraph 23 of Supreme Court Order No. 25700-B-646, speedy trial time is excluded until December 15, 2020 in all criminal cases. After November 15, 2020, jury and bench trials may proceed as set unless the Court determines it is unsafe or unable to do so, or for such other reasons as provided by law.
4. **WAIVER OF SPEEDY TRIAL.** A defendant, or their attorney, may verbally waive the defendant's right to a speedy trial on the electronic record in lieu of the written waiver provided for by CrRLJ 3.3(c)(2)(i). The new commencement date shall be the date of the waiver unless stated otherwise on the record.
5. **SCOPE.** Areas and persons in entities located in the Bellingham Municipal Court Building but outside of the Court's physical space, such as Information Technology, the City Attorney's Office (Criminal Division), and public television, are beyond the scope of this Order.

DATED this 20 day of October, 2020.



DEBRA LEV, Presiding Judge



Ramblings of a Small Time Country Lawyer

~By Rajeev!

Whatcom County Bar Association

Subtitle: Love it!



I am nothing without the Whatcom County Bar Association. Or more aptly, I would not be where I am today without the Whatcom County Bar Association (WCBA). And my position in life now, both as a well rounded human being and as a legal professional, is light years from where I was when I showed up in Whatcom County penniless, holding a bar card in my hands. I graduated in 2007 at the bottom of the economic collapse, and when I showed up in October of 2008 it had been almost a year without a long term fulltime job in my hands, despite all kinds of law school era accolades that reflected well on paper.

Since then: the vast majority of my best legal and civic education has come to me through my fellow WCBA members; the vast majority of my best clients have come to me through my fellow WCBA members; the vast majority of my non-solo extracurricular adventures have been with my fellow WCBA members; I met my wife hanging out with WCBA members; and most of my learning about life has been side by side with my fellow WCBA members. It's made me who I am today, and I am really pleased with what WCBA has done for me.

That is one of the MANY reasons I am so excited that we are finally getting together again (**see Page 3**) as a community of legal professionals! I've been attending Skagit County Bar events over this last year (virtually) through my work with the WSBA, and I have really enjoyed their expressed affection and camaraderie, and I am enthused for us to get back together as well.

I encourage every new attorney I meet to get involved with WCBA- not just to get to the monthly meetings, but to write articles for this august Journal and to reach out to wiser attorneys and make connections. Unfortunately, this year has shredded our association due to Corona virus, and our new lawyers are not being fostered in the same collegial society I came up in.

We, as legal professionals, have the power collectively to shape and influence our world, the civility of it, and the quality of all of our lives- but only if we actually come together, know each other, and support each other by fostering dialogue and action. The WCBA is our best tool to do that, to improve our own lives, our profession, and our entire County.

So when you see the notice about our meeting, take the time to actually calendar... not just because of what the bar can do for you, because of what we can do together collectively!

I'll "see" you there!

Warmly, Rajeev!

**Genissa Richardson announces her new firm,
True North Legal Services, PLLC.**

Dear Colleagues,

I am pleased to announce that I opened a solo practice this July, focusing on Estate Planning and Probate. I was born and raised in Whatcom County and am proud to serve my community as a home-grown attorney. Referrals for Estate Planning and Probate appreciated.

Sincerely,

Genissa Sygitowicz Richardson



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Is pleased to announce that Stephen Jackson has joined the firm as an associate attorney.

Stephen comes to the firm with years of experience handling serious felonies at the Whatcom County Public Defenders Office, clerking in US District Court, and for the Federal Public Defenders Office in Nevada. Before his legal career, Stephen worked in journalism as a reporter during which time he won an Emmy for his work.

Jackson's practice includes defense of individuals accused of criminal conduct, appellate work, employment actions, wrongful discrimination, civil rights, and vacating criminal convictions.



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THE WHATCOM COUNTY BAR ASSOCIATION
NEWSLETTER

Happy New Year!
JANUARY 2006
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Please Recycle

LAW Advocates' Project SAFER suffers huge funding hit

Program for domestic violence victims may need new home

By Kirsten Barron
LAW Advocates Board Chair



There probably isn't a lawyer in Whatcom County who doesn't know about LAW Advocates' Project SAFER. One reason it is so well known is that it has been staffed by terrific lawyers, including Laurie Powers, Brian Valentine and Pam Englett. Another reason is the importance of the work. SAFER provides the most critical legal services to some of the county's most desperate folks, victims of domestic violence.

Project SAFER assigns lawyers to obtain emergency orders providing for the safety of domestic violence victims and their children, economic support and visitation. The goal is to get these orders in place immediately and deal with the urgent details so the private bar can then step in to finish the case.

The project has helped hundreds of victims of domestic violence and their families. A U.S. Department of Justice study conducted several years ago found that programs like SAFER are the *single most important factor in breaking the cycle of domestic violence*.

That's the good news. But what's with the bad news highlighted in this article's headline? Simply put, LAW Advocates has lost \$94,000 in federal funding — about 75 percent of the SAFER budget. I will not go into all of the funding details, which include the D.O. DSHS, CTED, OCLA, Law Fund, NW Justice, the Supreme Court, the Access to Justice Board, the WSBA and many others. (Although if anyone is interested, you won't be surprised to learn that I have a lot to say about the process. I mean A LOT!) The bottom line is the Project SAFER's federal funding was cut off as of October 2005, with almost no notice.

The Legal Foundation of Washington immediately provided us with enough funding to carry us through December, and it approved another grant that will get us through March of 2006. We have come up with a plan to run half-time program from April to June of 2006. After that there is no certainty about the program.

I STILL HAVEN'T FIGURED OUT how we are going to tell a woman whose hand has a knife to her throat in front of her children that she will have to wait for help. That may sound melodramatic, but it is the reality of these folks' lives. We want someone may die. Or a child may suffer, wounded that cannot be healed with stitches. Waiting — when we know how to prevent something — seems senseless. Because it is.

The LAW Advocates Board has been working through these issues for the last several months. We do not have a lot of confidence that we will be able to raise at least \$100,000 annually. Our fundraising of

(Continued on p. 9)

BAR LUNCH

 The WCBA lunch and meeting will be at noon Wednesday, 2006, at Northwood Hall. The monthly business meeting will begin promptly at 12:15 p.m. The guest speaker will be .

PAGE # THE WHATCOM COUNTY BAR ASSOCIATION NEWSLETTER JANUARY 2006

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