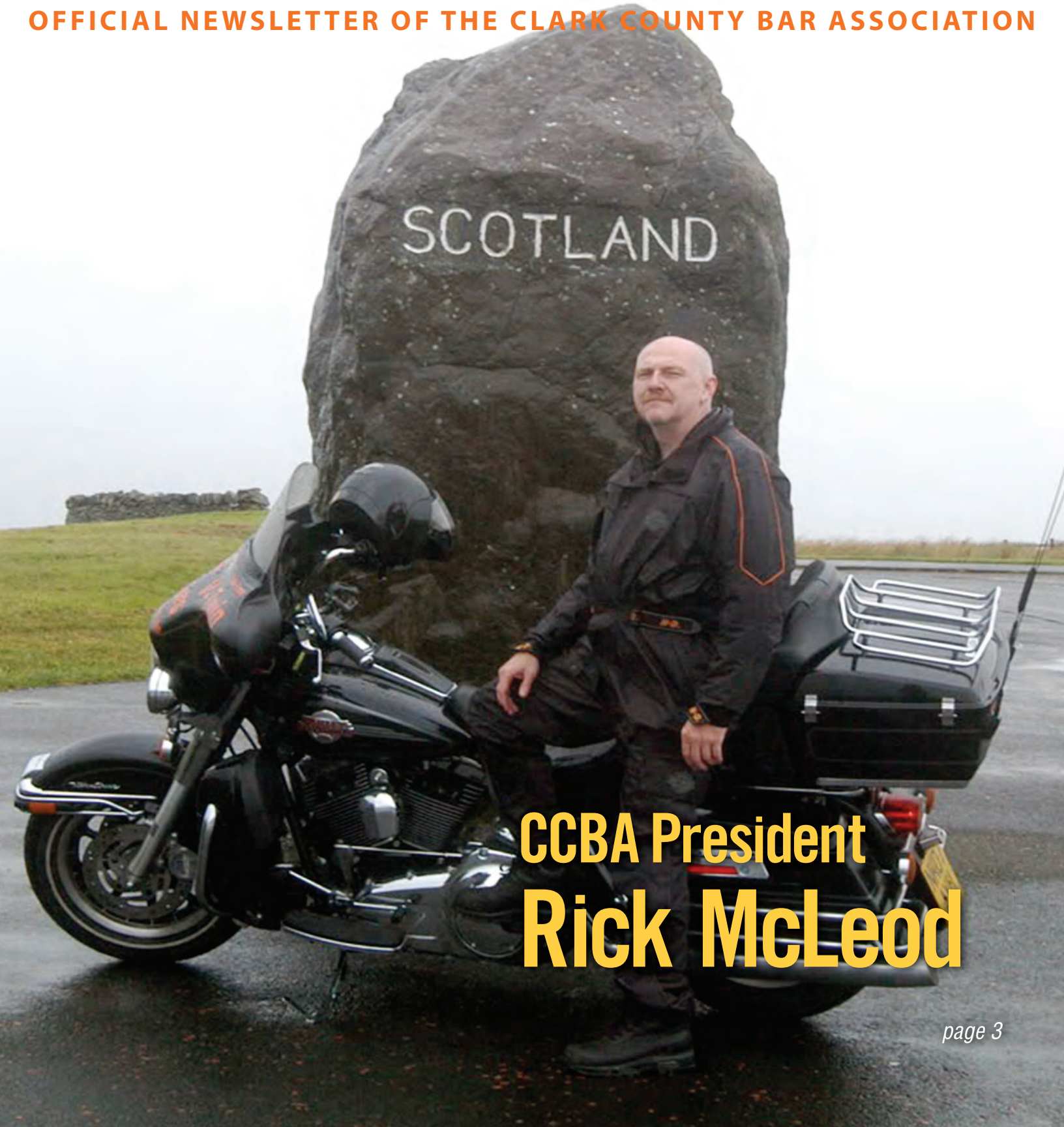


# HEARSAY



ccbawashington.org  
NOVEMBER 2015

OFFICIAL NEWSLETTER OF THE CLARK COUNTY BAR ASSOCIATION



CCBA President  
**Rick McLeod**

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**JEFF GOUGH, Creative Director • 360-818-4GCG • director@goughcreative.com**

An annual "green" subscription is included with annual membership dues. Members may purchase a hardcopy subscription for \$48.00. Letters, news items, upcoming events and announcements are welcome. Articles by members are accepted. Submissions should be presented in Microsoft Word and may be edited for length, clarity and style. Submissions by members are published at the editor's discretion and space available. Views expressed in articles represent the authors' opinions, not necessarily the CCBA's. The publication does not purport to offer legal advice.

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

## HENDERSON LAW FIRM, PLLC



Jordan Taylor, Paul Henderson and Connie Henderson

### *Medical Malpractice and Personal Injury Attorneys*

*"A plaintiff cannot get justice in Clark County, Washington!"*

We hear this a lot. That has not been our experience.

#### REPRESENTATIVE VERDICTS AND SETTLEMENTS:

Failure to diagnose brain cancer .....	\$4.5 million
Failure to treat infection.....	\$4.0 million
Failure to diagnose breast cancer.....	\$1.0 million
Rear end MVC - soft tissue .....	\$350,000
Trampoline accident .....	\$1.0 million
Partial blindness in one eye .....	\$850,000
Failure to diagnose GCA .....	\$1.75 million
Auto/pedestrian collision .....	\$1.6 million
Obstetrics malpractice .....	\$3.5 million

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## MEDICAL MALPRACTICE WRONGFUL DEATH PERSONAL INJURY



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Vancouver, WA 98660

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Portland 503.974.4161

Email [Jane@janeclarklegal.com](mailto:Jane@janeclarklegal.com)



# PRESIDENT'S MESSAGE

## Survey Says...



**RICK McLEOD**  
CCBA President

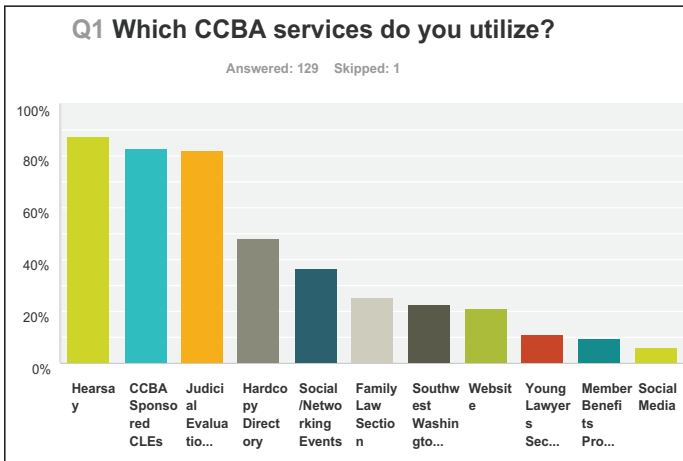
**“There are lies, damned lies, and statistics.”**

*– Origin uncertain, but popularized by Samuel Clemens<sup>[1]</sup>*

Engineers live by the numbers, and occasionally die by them. Numbers are immutable, as are most equations, at least above quantum scales. “Poll numbers” have a subtle difference, because the input data is dependent on potentially imperfect communication. Thus, while the numbers may be “hard,” what they mean may not be. And so, we have the potential “polling error.”

During October, we sent out an electronic survey to our membership. One hundred thirty responses came back – a huge return percentage, thanks – and, we will put your feedback to good use. It is a pretty safe bet that the poll was not perfect. Perhaps there would be some differences if we had used ratings from 1-10 or 1-100. Nevertheless, we’ve reviewed the data, and we think it was quite successful.

We learned that judicial candidate polls and local (live) CLEs are highly valued by our members. We also learned that Instagram is used by only a very few of you. Of course, there is a lot more data than that. Only 20% or so mentioned using the CCBA website, but that might get a boost as we expect to post the poll results there. I certainly hope so, as information on the website should be the most current.



We also learned that large majority of respondents favor having an evaluation poll for sitting judges. So, I expect to put some effort behind making that a reality. At least one person suggested that there used to be such a process. It’s not clear to me whether that was done by the CCBA or the Columbian, but if you have some ideas about the factors that we should be trying to measure (or not), feel free to provide your input. We may very well end up having a poll about the poll.

Certainly, do not expect this to be our last poll. We will not be inundating you with surveys, but there are some other areas on which we would like (that is, “need”) your input.

In other news, we bid farewell to the Red Lion. No more bar meetings or CLEs on the waterfront for a while. Naturally, this creates a bit more budget pressure for us, but we think that we will be able to weather the change. In time, the planned waterfront development should provide us with new alternatives. Until then, look for us to be somewhat mobile as we look for the best deals to carry out our mission.

Finally, if you did not go to the Battle of the Bands, then you really missed out. There was a huge crowd, which means that they should probably try this again in a larger venue.

[1] [https://en.wikipedia.org/wiki/Lies,\\_damned\\_lies,\\_and\\_statistics](https://en.wikipedia.org/wiki/Lies,_damned_lies,_and_statistics)

## Representing Injured Workers on Their Washington Claims

Busick Hamrick Palmer, PLLC





The Clark County Bar Association Presents a Nuts & Bolts CLE

December 9, 2015

**Deposition Techniques:  
Taking Depositions Part II and  
Defending your witness during deposition**

*Presented by:*

*David Markowitz, Markowitz Herbold PC and  
Lawson Fite, American Forest Resource Council*

**December 9, 2015 - 3:00 pm to 5:00pm at the Vancouver Hilton**

2 General CLE Credits

CCBA members: \$50.00    Non-members: \$70.00    Non-attorneys: \$25.00

• **Refreshments and Refined Company** •

---

**Deposition Techniques:**

**Taking Depositions Part II and Defending Your Witness during Deposition**

**Taking Depositions Part II:**

- Dealing with the problem witness
- When to stop asking questions
- Deposition thoroughness
- Style and demeanor

**Defending Your Witness:**

- Goals for defending your witness
- Preparing your witness to be deposed
- Protecting your client during deposition including proper objections

Name: \_\_\_\_\_ Bar Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Mail registration with payment to:**

CCBA

500 W. 8th Street, Suite 65 | Vancouver, WA 98660

**Credit card payment can be made at:**

Phone: 360.695.5975

**Pre-payment is preferred.**

# Richard D. “Rick” McLeod

## New Clark County Bar President

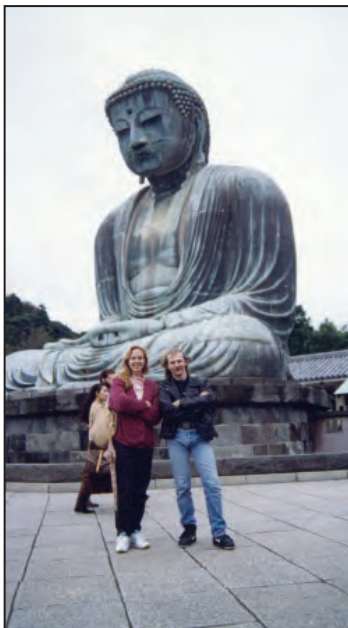
**ALFRED “ART” BENNETT**

*Hearsay Special Correspondent*



Rick McLeod has been described by his colleagues as a man of mystery, a man with wanderlust, and a Renaissance man. After interviewing Rick, it's easy to understand these descriptions. He probably has the most varied and diverse background of any member of the Clark County Bar Association.

Born and raised in Miami, he graduated from the University of Houston with a degree in Engineering. He then went to work in Silicon Valley while attending Stanford. Following a short stint in the Air Force, he worked at Cape Kennedy, Florida, on NASA projects supporting the Space Shuttle. Then, he had numerous engineering positions across the country and globe. He has lived and worked in Austin, Texas; Palo Alto, California; Houston, Texas; Beaumont, Texas; Melbourne, Florida; Tampa, Florida; Sydney, Australia (1992-1995, 1999-2000); Adelaide, Australia; Sterling, Virginia; and now, Clark County, Washington. Upon reflection, he said he was probably too mobile to have a family.



Being intellectually curious about the law, he attended and graduated from the University of Texas School of Law. He is currently a member of the Texas, Oregon and Washington Bar associations.



His specialties at his Portland law office have been intellectual property, primarily involving patent and copyright. He is now moving his office to Woodland, Washington, and adding elder law to his specialties. With an aging population, he feels there is an increasing need for legal help for the aged. He recently presented to the Clark County Bar a CLE titled “Elder Abuse Reporting Requirements for Oregon” on November 13, 2015.

As might be expected, Rick's hobbies are quite diverse: he is an expert skydiver, has a pilot's license, is a motorcycle enthusiast, and loves to regulate chumps in Gears of War. He occasionally does long-distance road trips on his cycle. He grows blueberries on his Woodland “farm.” He says he loves the Northwest and has finally put down roots here.

Rick's hopes and aspirations for the Clark County Bar presidency are to apply his engineering experience and analytical talents to continue the high professionalism of the Clark County Bar and to address that most difficult of all tasks: funding. He has already distributed a 13-page survey to bar members to get their opinion on various bar activities.

With his talents and experience, he should be able to meet those goals.

Good luck, Rick!



# CCBA CLE Calendar

*Register now for any of our upcoming CLEs*

**N&B – Deposition Techniques:  
Taking Depositions Part II and  
Defending your witness during deposition**

David Markowitz & Lawson Fite

December 9, 2015

3:00pm – 5:00pm

Vancouver Hilton

**\$50.00 for Members**

**\$70.00 for Non-Members**

**\$25.00 for Non-Attorneys**

**CLE –Ethics: The Good, The Bad  
and The In-Between**

Hon. John Nichols (Ret),

Paul Henderson & Connie Henderson

December 14, 2015

8:45am – Noon

Vancouver Hilton

**\$105.00 for Members**

**\$135.00 for Non-Members**

**\$52.50 for Non-Attorneys**

**N&B – Multnomah County Practice for the Clark  
County Attorney**

Honorable Nan G. Waller

Presiding Judge

Multnomah County Circuit Court

January 13, 2016

3:00pm – 5:00pm

Heathen Brewing Feral Public House

**\$50.00 for Members**

**\$70.00 for Non-Members**

**\$25.00 for Non-Attorneys**

**N&B – FMLA, WFLA, WFCA, WMFLA,  
PDL, OFLA, OMFLA, OCVL, OVCCLA,  
ADA, ADA AAA and More!**

**The Alphabet Soup of Employee Leave Laws  
for Washington and Oregon Employers**

Dan Grinfas and Matt Scherer

February 10, 2016

3:00pm – 5:00pm

Heathen Brewing Feral Public House

**\$50.00 for Members**

**\$70.00 for Non-Members**

**\$25.00 for Non-Attorneys**

**N&B – Bankruptcy 101**

Russell Garrett

March 9, 2016

3:00pm – 5:00pm

Heathen Brewing Feral Public House

**\$50.00 for Members**

**\$70.00 for Non-Members**

**\$25.00 for Non-Attorneys**

*Save the Date!*

**2016 CCBA Barristers Ball**

**February 27th, 2016 • at The Heathman Lodge**

# FAMILY LAW SECTION



**STEFANIE ELLIS**  
*Family Law Section President*

The Clark County Bar lost a great man this year. Dean Langsdorf's gregarious personality and kind spirit will be remembered by us all. The Family Law Section has created an award in his honor to be presented at the upcoming Barrister's Ball. We are currently seeking nominations for the award at this time. Please email Stefanie Ellis at [stefanie@greenandritchie.com](mailto:stefanie@greenandritchie.com) with your nomination and the reasons you believe that your nominee is qualified for the award. All nominations need to be received no later than December 10th.

### *The criteria for the award is as follows:*

- An attorney with integrity who is courteous and professional to his/her colleagues, court staff, judicial officers and litigants.

- An attorney committed to equal justice and dedicated to representing low income and disadvantaged clients.
- An attorney who is generous with advice and a willingness to mentor new/younger attorneys.
- An ability to see and encourage the talents of others.

Please note that the Board welcomes nominations from attorneys, staff members, judicial officers, judicial assistants and court staff. The names of those nominating individuals for this award will be kept confidential and discussed only amongst the Board members. !

**Are you interested in a hearing officer training?**

**Attend Vancouver Public Schools' training seminar**

**When**  
February 24, 2016  
2-4 p.m.

**Cost**  
\$35 (payable at the door)

**Credit**  
2 CLE Credits (pending)

**Vancouver School District, BATES Center**  
2921 Falk Rd., Vancouver WA  
To register please email [jen.anderson@vansd.org](mailto:jen.anderson@vansd.org)


**What does a hearing officer do?**

The discipline hearing process provides an opportunity for students and their parents to mitigate alleged serious misconduct. The hearing officer makes the ultimate decision whether to uphold the administrator's recommended sanction and issues a written order. An opportunity to expand your practice skills in the administrative/school law arena!

Hearing officers are assigned as needed.

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**VPS**

**LAW OFFICE of JOSHUA POPS**



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- Medicaid planning and applications
- Wills, Estate Planning, Probate, and Trust Administration
- Guardianships
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# YOUNG LAWYER SECTION



**JAMES LUTES**

*Family Law Section Secretary*

October's Young Lawyers Section Happy Hour was held at the recently opened Frontier Public House. Formerly where the Hideaway Tavern was housed, Frontier Public House touts itself as Vancouver's First Gastro Pub and was a great location for this happy hour. Not only was the food well priced (two dollars off every menu item during happy hour!) but it was also delicious. The Smoked Salmon BLT and wedge salad seemed to be most popular among the group.

The YLS board members met (and started drinking beer) early to do a much needed overhaul of the bylaws. Changes were made and voted on without a hitch, just in time for the contentious Seahawks-49ers Thursday Night Football game. Fortunately—and not surprisingly—the Seahawks won, so most attendees left the event happy. The consensus was that Frontier

Public House was a great place for YLS events and will be put on the rotating list of YLS happy hour locations.

The next YLS event will be a CLE led by Steve Thayer on Professionalism for Young Lawyers. It is scheduled for Thursday, November 19, at 5:00pm at The Grant House. Contact Nick Alexander at [nick@greenenpllc.com](mailto:nick@greenenpllc.com) to RSVP. Cost is \$15 for YLS Members, \$25 for non-YLS CCBA members and \$35 for non-CCBA members.

If you are interested in becoming a member of the Young Lawyers Section or in being added to the email list to receive updates on events and happy hours contact Christina Phelan at [christina@phelanlawoffice.com](mailto:christina@phelanlawoffice.com).

## WANTED!!!

The Hearsay is in search of new and exciting material and new and exciting contributors! Please join us on the third Tuesday of every month at noon at the CCBA office!

If you have a great idea to share please don't hesitate to contact us.

**Call Lisa in the CCBA office at 695-5975**

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**The Clark County Bar Association Presents a CLE**  
**December 14, 2015**

**Ethics—The Good, The Bad and The In-Between**

***Presented by:***

***Hon. John Nichols (Ret.), Connie Henderson & Paul Henderson***

**December 14, 2015 - 8:45 am to Noon at the Vancouver Hilton**

3 Ethics CLE Credits

CCBA members: \$105.00    Non-members: \$135.00    Non-attorneys: \$52.50

• **Breakfast service begins at 8:30am** •

---

**Ethics—The Good, The Bad and The In-Between**

Judge John Nichols (Ret.), Connie Henderson, and Paul Henderson will be presenting on the ethics of candor in the legal profession. Judge Nichols will address how professionalism is grounded in the fundamentals of the Rules of Professional Conduct and how those rules are often pushed if not broken in the courtroom. Connie and Paul, two seasoned Clark County litigators, will provide a review of current ethics cases and opinions on professionalism and candor and experiences that they have personally dealt with in their years of practice. Participants will be given an opportunity to ask candid questions of the three presenters regarding the impacts of how we treat each other in- and outside the courtroom. Come join the (lively) discussion!

Name: \_\_\_\_\_ Bar Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

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Phone: 360.695.5975

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# SUPERIOR COURT BENCH/BAR COMMITTEE MEETING MINUTES

November 10, 2015



**KAREN CAMPBELL**  
*Bench Bar Committee Chair*

The meeting began shortly after noon. Persons present were Judge Derek Vanderwood, Ann Christian, Karen Campbell, Jolene Sell, Scott Jackson, Taylor Hallvik, Jane Vetto, Jeff Sowder, and Heather Beasley.

## **OLD BUSINESS:**

1. Local Competency Evaluations: Ann updated the Committee about the status of hiring two FTE Western State Hospital (WSH) psychologists, dedicated to Clark County in-custody competency evaluations. One person has been hired and is scheduled to begin shortly after January 1, 2016. There is no definite date for when the second person will be hired. WSH is still in the hiring process. The psychologists will be housed in the DSHS offices located at NE 136th Ave in Vancouver.

2. Driver's Re-licensing Program: Karen provided an update on the Northwest Justice Project's work on the implementation of a statewide driver's license reinstatement program. Karen reported that a stakeholders' group met a second time on October 30, 2015. The group will meet again on December 10, 2015, to review and discuss proposed legislation. NJP's presentation to the Washington Supreme Court went well. There was a robust discussion between the eight Justices who attended and court personnel from the Spokane, Oregon, City of Tukwila, Clark, Cowlitz, and King County relicensing programs. Karen will give a presentation about NJPs driver's relicensing work and the collection of legal financial obligations in general at the National Consumer Law Center's annual conference in San Antonio.

3. Guardianship/Probate Bar: Nothing new to report.

4. PA's Policy re: Drug Court for Those Who Fail Diversion: Nothing new to report.

5. Mock Trial: Nothing new to report.

6. New Local Rules: Jane Vetto stated that it might be difficult for Clark County to adopt a system like that used in King County because King County has several judges dedicated to hear civil cases. Jane was concerned that the lack of dedicated Judges might increase the chances a civil case would be bumped in favor of a criminal case. This would be extremely costly and burdensome especially if experts were scheduled to testify. Jane encouraged the Judges to review the manual she obtained from the King County website discussing the procedures for handling scheduling conflicts. Jane also pointed out that King County has instructional forms that could be a resource for those looking at this issue in Clark County.

Judge Vanderwood indicated that although he has not been directly involved in the process, he didn't think adopting the same formula as King County was the intent of the Judges looking at this issue. Judge Vanderwood stated that the emphasis was focused on setting a trial date and scheduling other hearings based on that date. Judge Vanderwood told the Committee that the Clark County bench has been working hard on transferring cases when there is a conflict between civil and criminal cases. Judge Vanderwood said he would bring the King County materials to the attention of Judges Gregerson and Veljacic. Heather stated that civil cases can linger for a long period of time in Clark County and is in favor of some kind of date. Attorneys are encouraged to contact Judge Gregerson at the following email address to comment: [David.Gregerson@clark.wa.gov](mailto:David.Gregerson@clark.wa.gov).

## **NEW BUSINESS:**

7. Shackling Defendants: Scott Jackson requested this topic to be placed on the agenda. Jane Vetto, legal representative for the Clark County Jail (Clark County Prosecuting Attorney's office), stated that Commanders Rick Bishop and Mike Anderson met with the Judges regarding the economic impact of shackling defendants. Depending on the defendant's classification, the

Jail might need to send more Deputies to the courtroom if the defendant is not shackled. There was further discussion concerning this issue which arises mostly in cases with lengthy pre-trial hearings such as suppression motions. Defendants are not shackled during jury trials. Jeff discussed the case law addressing shackling and the briefs he has filed opposing the practice. Jeff stated that he has not raised the issue at arraignment or change of plea hearings. He has litigated the issue at suppression motions where his client needed to be able to write in order to communicate effectively with him. Clark County Judges have issued varying rulings, on a case by case basis, ordering that defendants could have one or both hands unshackled during the hearings.

Jane reported that she has a different interpretation of the case law than the position articulated by Jeff. Ann pointed out that there is a juvenile court rule addressing the issue, JuCR Rule 1.6. There is no similar rule that applies in adult court. Everyone agreed that the issue needs to be decided on a case by case basis.

8. The next Bench/Bar meeting will be held on December 8, 2015 at 12:00 p.m. in the Department 8 jury deliberation room.

Respectfully submitted,  
Karen Campbell

## THE CITY OF WASHOUGAL IS SEEKING PROPOSALS FOR ITS PRIMARY PUBLIC DEFENSE CONTRACT

Proposals are being sought for a two year contract to represent all of Washougal's misdemeanor indigent defendants. The deadline for receipt of proposals is December 18, 2015. The anticipated start date for the Public Defense Contract is February 1, 2016.

A formal Request for Proposals with directions on how to prepare and submit a proposal can be found on the City of Washougal's website at: <http://www.cityofwashougal.us/rfps>. A copy of the Request for Proposals may also be obtained by contacting:

**Scott E. Russon**  
Washougal Assistant City Attorney  
12204 S.E. Mill Plain Blvd., Suite 200  
Vancouver, WA 98684  
Phone: (360) 449-6100  
Fax: (360) 449-6111  
E-mail: [russon@elmbsv.com](mailto:russon@elmbsv.com)

Jim Holland (formerly of Perkins Coie and the King County Prosecuting Attorney's Office) and Jim Holland, Sr. continue a 100-year tradition of serving Washingtonians. The attorneys at Holland Law Group are committed to bringing truth and accountability to the injured, victims of negligence, and those seeking solutions to complex legal disputes. We welcome and appreciate every referral, and enjoy associating as co-counsel on civil cases nearing trial.

### RECENT RESULTS

- \$10,000,000 wrongful death of a child
- \$2,400,000 verdict in partnership dispute
- \$2,000,000 school district sports injury settlement
- \$1,300,000 over-service of alcohol settlement
- \$1,000,000 professional negligence settlement
- \$500,000 verdict for injury causing neck surgery
- \$480,000 verdict for injury causing neck surgery

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# Court Rules at Your Fingertips

**BRIAN MACKENZIE**  
*Hearsay Special Correspondent*

One of the constant realities of practicing law is the need for legal research. We lawyers know the basics of our practice areas, but there is always that one client that comes in the door with a problem that is new to our experience and makes us scratch our heads. It used to be that we had to rely on West Revised Code of Washington Annotated and other publications to research statutes and case law but that has changed dramatically in recent years. Now the RCWs are all online (and up to date), the Court Rules are found on the Washington Court website, and we have access to Casemaker to research case law as part of our WSBA membership. But ease of use is still an issue. I have found that, as a lawyer on the go who practices in a small firm, the Court Rules are often not easy to read on my iPhone or iPad. I just accepted it as a reality of life and waited for Washington to catch up with the world we live in. However, local attorney Angus Lee decided to do something about it and recently added to his website a section devoted to the Court Rules, all optimized to be read on mobile devices (<http://angusleelaw.com/court-rules>). I had the opportunity to sit down with Angus in September to discuss his project and his motivation behind it.



Angus opened his criminal defense firm in June of this year after moving back to Vancouver from Moses Lake where he worked as an elected Prosecutor. From the beginning he wanted to focus on mobility in his practice. He had seen how utilizing technology had helped the Prosecutor's office when they were able to cut costs significantly by using the RCWs online rather than in printed form.

He maintains a traditional brick and mortar office in Hazel Dell, but with the aid of technology is able to work on and access his files anywhere. But something was missing. He found that as he started taking on cases that it was difficult to research or access Court Rules quickly or effectively. So, he started creating his own court rule digital library. Having designed the majority of his business website himself, it was a simple process to start adding the rules as a page on the site. He chose

a more modern font that can handle high resolution screens and mobile devices. Recognizing that if he found mobile access useful other lawyers might feel the same way, he sent a message to the Solo and Small Practice listserv announcing the new feature of his site. So far the reaction has been positive. Many attorneys have been requesting the Court Rules they most often use be added to the library. Angus has obliged, adding the rules to his site early in the morning before his wife and kids wake up. He also recently found out the Solo and Small Practice section of the WSBA is going to be adding a link to his site on their home page. It looks like the Court Rules section of his website has the potential to become a great resource to attorneys across the state.

It was great to meet with Angus and talk about how law practice is changing with technology and some of the changes that we expect to see in the future. Whether we are correct in our expectations remains to be seen, but one thing is for sure and that is technology is making work easier while bringing unexpected challenges to the practice of law. It is an exciting time for all of us.



**Advertise in the 2016 CCBA Directory**  
*For rates and space availability, Call Lisa @ 360.695.5975*

# A Golden Rule Dissolution

**BRANDON CAMPBELL**

*Hearsay Special Correspondent*

In the legal dissolution of a relationship it is possible to follow the golden rule to, “do unto others as you would have them do unto you?” The Collaborative process of divorce (that is collaborative with a big “C”) is designed to allow for just such a reality. Collaboration may not be a term many affiliate with the process of dissolving a marriage. Obviously, a primary component of many “divorces” has been a marked lack of collaboration by the couple involved. The Collaborative method seeks to embrace this fact, and is structured to overcome these patent obstacles.

Two Rivers Institute for Dispute Resolution recently conducted a two-day Basic Interdisciplinary Collaborative Practice training. Two Rivers is a non-profit organization co-founded in April 2015 by collaborative lawyer and mediator, Nancy Retsinas, behavioral health specialist Kathleen Zumpano, MA, LMFT, and certified divorce financial specialist Donna Smalldon, MBA, CDFA. The Two Rivers training team of Retsinas, Zumpano, and Smalldon conducted the training on September 21 - 22, 2015, at the Historic Red Cross building located here in Vancouver on Officer’s Row. Local Clark County and Oregon family law practitioners attended this training event. Also attending were subject matter experts in the fields of finance and behavioral health. The combination of diverse professionals engaged in this training, offered a dynamic learning environment to attendees.



The Collaborative process of divorce was first conceptualized nearly 25 years ago by an attorney named Stu Webb, who still practices in Minnesota. Mr. Webb, a long time practitioner in the area of family law, simply decided he would no longer litigate family law cases. Mr. Webb based his decision on a determination



that he was doing more harm than good to his clients and himself, in litigating dissolutions through the traditional adversarial court process. Mr. Webb sent an invitation to family law attorneys he respected in his community, inviting them to take a leap of faith with him. Stu told these attorneys he would focus his practice solely on out-of-court settlement of family law matters. So much so in fact, that he would enter agreements with clients expressly mandating his withdrawal if either side sought court ordered intervention in a case he was working on.



A Collaborative dissolution is only appropriate in a circumstance where both parties can be brought to the table as willing participants, focused on resolving conflict via out-of-court processes. Cases involving a history of abuse, lop-sided power imbalances, and significant distrust may not be appropriate for the Collaborative process. The backbone of this method is the decision by two people seeking a dissolution of their marriage to work in good faith towards out-of-court settlement. The Collaborative process necessitates the hiring of collaboratively trained counsel for both spouses. The parties involved in such a dissolution sign a contract called a participation agreement, to set the framework upon which the Collaborative model can take shape.

Mr. Webb and the forerunners of the Collaborative practice developed a process defined by carefully crafted structure, based on good faith disclosure and a holistic approach to alternative dispute resolution. In a Collaborative participation agreement the parties pledge: to work in good faith; voluntarily disclose all information and documentation relevant to the dissolution; and to focus on out-of-court settlement and the attainment of high-end goals as opposed to proffering law-centric adversarial

positions. Buttressing these unique aspects of the Collaborative process is a limitation on the scope of representation by the attorneys involved. A Collaborative attorney always limits the scope of their representation expressly requiring their withdrawal if contested court proceedings are initiated by either party involved in the Collaborative process. Last year, the Washington legislature officially sanctioned this form of practice by enactment of the Uniform Collaborative Law Act, which can be found at RCW 777 et. seq.

The Collaborative method focuses on client-driven, interest-based, negotiations. Many clients desire to address particular concerns related to their dissolution which simply cannot be addressed in court. The family law practitioner using a traditional court-based model is tasked with triaging their client's most pressing needs, in the brief time allotted before heavily docketed Commissioners and Judges. The client's "needs" in this litigated process are largely defined by their attorney's assessment of the legal tools actually available to address their client's concerns. Often, there are no legal remedies for addressing many of the actual worries a client may have during a dissolution. Clients engaged in the Collaborative process are afforded an outlet for reconciling disputes and conflicts that they may not be able to have addressed by litigating their dissolution. By giving light to these considerations and adhering to an interest-based approach to problem solving, the parties are more amicably able to resolve differences and reach out-of-court divorce settlements.

It is said that mediation of disputes allows parties to air their differences more effectively than the court process may be able to. Many believe that alternative dispute resolution methods allow for more buy-in by the parties involved, to resolutions in which they were intimately involved. In court, there are generally winners and losers, or no winners at all. The Collaborative process allows room for clients to integrally help shape their own post-dissolution futures.

Throughout the Collaborative process the parties are called upon to come together to make decisions through frank face-to-face negotiations, each with their collaborative attorneys by their side. One such decision the parties are asked to make is agreeing as to what resources are appropriate to help the parties make these significant life decisions. Some of the common specialists tapped in this process include: collaborative coach, neutral child specialist; or a neutral financial specialist.

A client's particular circumstances dictate the makeup of the Professional Collaborative team. Many dissolutions are fraught with emotion and conflict. In these instances a coach, who has a behavioral health background, may be asked to assist the clients in coming to the table. The coach may be a neutral, designed to facilitate communication between the couple. It may otherwise be appropriate for the parties to utilize individual coaches, to help each individual spouse regulate the emotional terrain of the process. A neutral child specialist can help clients develop post-divorce co-parenting relationships and give life to structured parenting plans that meet their family's specific needs and concerns. A neutral financial specialist can be tapped to help empower the clients to

make informed decisions about their financial futures by providing structure and information, enabling them to make sound financial decisions for themselves and their family.

As in all aspects of the Collaborative process these team members are chosen by mutual agreement of the parties. Similar to the exclusion provision for the lawyers involved, these professionals generally will not move forward with the parties after their dissolution is finalized. The neutrals are there to help the parties through the process, and their neutrality dictates they generally not work with either party post-dissolution on an individual basis. At times, and upon mutual agreement of all parties, behavioral health specialists may assist the parties after the collaborative process has concluded.

If you would like to speak to a Collaborative practitioner about how this process works, or if you have burning questions about the practical application of this method, you may contact Nancy Retsinas at (360) 816-2246. Additionally, Two Rivers Institute will host a meet-and-greet social at Cellar 55 Tasting Room November 16, 2015, from 4:00 p.m. to 7 p.m, and will conduct another two-day Basic Interdisciplinary Collaborative Practice training on February 1-2, 2016. CLE credits are available for the training.

Those interested in learning more about the process of dissolving a marriage via the Collaborative method may visit <http://tworiversinstitute.org/> for a look at local resources. Other available resources for inquiring on this subject are available at the International Academy of Collaborative Professionals website [www.collaborativepractice.com](http://www.collaborativepractice.com).

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# UP IN SMOKE:

## Marijuana retail lotteries and restrictions on marijuana license transfers



**ELI MARCHBANKS**  
*Hearsay Special Correspondent*

Earlier this year the legislature instructed the Washington State Liquor Cannabis Board (WSLCB) to update the regulations on cannabis production, processing, and sale. A couple of weeks ago the last of those updates were released, revealing a new landscape for those hoping to get into the cannabis industry. While there were several changes or additions to the regulations, this article focusses on two major ones: (1) the new tiered structure for obtaining a cannabis retailer's license, and (2) the new regime governing license acquisitions and transfers.

### RETAIL TIER SCHEME

The window to apply for a marijuana retailer license (not for production or processing) opened on October 12. In the past retail license applicants have been chosen based on a lottery system. However, the new regulations employ a tiered priority system for accepting applications.

**First Priority** - Applicants who applied for a retail license prior to July 1, 2014, operated or were employed by a collective garden before January 1, 2013, have maintained a state business license and municipal business license, and have a history of paying all applicable state taxes and fees receive first priority.

**Second Priority** - Applicants who operated or were employed by a collective garden before January 1, 2013, have maintained a state business license and municipal business license, and have a history of paying all applicable state taxes and fees have second priority.

**Third Priority** - All other applicants who meet the other license requirements.

This tiered priority system is quite a break from the lottery system that preceded it. Washington may be mimicking Colorado's regulatory regime, which allowed those operating in the medical marijuana world to obtain recreational sale licenses before other applicants jumping in from other industries. While

this system may deter applicants who do not fit into the first or second priority boxes, such potential applicants should not be immediately put off. It is unclear just how many people fit into those first two boxes. It is a very specific breed of applicant that could earn the coveted status of first or second priority. Those who are strong candidates may still have a solid chance even if they are third in priority.

### LICENSE TRANSFERS

The three-tiered priority system described above was hot news in the canna-law circles. The legal blogosphere exploded with the news. However, I have not seen one commentator discuss the restructuring of how licenses may change hands. To my practice this is the much more relevant change.

For months, common wisdom in the canna-law community was that a license could not be transferred from one business entity to another because the license could not be separated from the business to which it was issued. The accepted practice for a license to change hands was for the business entity that had acquired the license to change hands. Depending on the Washington State Liquor Cannabis Board (WSLCB) investigator, you might be able to get away with a transfer from one entity to another pre-issuance, but definitely not post-issuance. However, the WSLCB appears to have made an about-face in policy. My firm's experience as-of-late has been a complete break from this structure.

In recent months the WSLCB has started telling our clients they may not transfer a license application from one business entity to another pre-issuance. Instead, they may only transfer the license to another business entity once it has been issued. In dealing with the WSLCB our office has been told that the unofficial reason is the WSLCB is tired of applications spending several months (or years) going through the application process. One reason they credit for this is the inability to transfer a license to another entity once it has been issued. Accordingly,



some WSLCB investigators are no longer allowing a pre-issuance transfer to another business entity at all.

The WSLCB is referring to this post-issuance transfer as the “assumption process.” While the WSLCB has not been exceedingly clear about this process, it appears that it is authorized by recent changes to WAC 314-55-135. A new version of that provision went into effect on June 20, 2015. The previous version had been effective since November 21, 2013. The old version of the provision read in its entirety:

“**WAC 314-55-135 Discontinue marijuana sales.** You must notify the board’s enforcement and education division in writing if you plan to stop doing business for more than thirty days, or if you plan to permanently discontinue marijuana sales.”

The new version of the provision has multiple subsections, with one referring to “Assumptions.” It states:

“**Assumptions: Assumption of license and purchases by licensee of certain marijuana inventory and stock.** In the case of a sale of business with a licensee, after obtaining the approval of the board and under the supervision of a representative of the board, the licensee may sell the entire inventory at a negotiated fair market price. Sales below cost are prohibited.”

This is vague language to say the least. Arguably the definition of “business” could refer to a business entity or it could be used in the more amorphous sense of “customer goodwill” and “means of production.” Practically, the WSLCB seems to be adopting the latter definition and is beginning to allow the “assumption” of a marijuana license by a separate business entity than it was originally issued to. What is clear is that the purchaser of a marijuana license still has to be approved by the WSLCB and the transfer must be supervised by the WSLCB. This is good news for those who want to get into the marijuana industry, missed the license application window, and have the money . . .

unless down the road the Washington Supreme Court interprets WAC 314-55-135 more conservatively than the WSLCB, that is.

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## HEARSAY PROFILE

# Rubbing Elbows: A Trip to Paul's with Ben Melnick



**COLIN McHUGH**  
*Hearsay Special Correspondent*

When I was asked to do a profile on an attorney in Clark County for this month's Hearsay, I chose Ben Melnick. Well, I will be honest . . . no one asked me to do this, I volunteered. But it was for obvious reasons, I like Ben and I like Paul's.

A few weeks ago, I ran into Ben Melnick at a Young Lawyers Section event. I mentioned to him that I, along with a few other young lawyers, were frequent patrons at Clark County's greatest establishment: Paul's Elbow Room. It is not far from my house, and for reasons which I will discuss later, it is the perfect place for an attorney in this area to grab a drink.

When I informed Ben of my infatuation with Paul's he was devastated. "How come you never call me? I've never been to Paul's!" He had a great point. I needed to get Ben to Paul's, but it wasn't going to be easy.

Ben and I met about four years ago. After finishing my first year of law school at the New England School of Law in Boston, I transferred to Gonzaga Law, and started studying there as a 2L. Although he probably does not remember, we were in the same ethics class, with Kim Pearson, our professor (in this class, we discussed the famous Jespersen case from this area, although some of you may recall as the "Happy Face Killer case").

I do not remember the specifics of how Ben and I actually met, but both of us remember a specific time in cold and snowy Spokane. I had just hopped behind the wheel of my grandfather's old, tan, 1986 Ford Bronco, and was leaving the law school parking lot, when out of nowhere, Ben popped out in front of me, with a large grin on his face, and a right hand giving a very accentuated "thumbs up" sign to me. From then on Ben and I always greet each other that way.

Now that Ben and I are both attorneys in this area, for the last year, we have continued to be friends. As a Vancouver

native, Ben has been extremely gracious to a Seattlite like me, helping me understand the lay of the land in this area and especially in this legal community. Needless to say, I



felt bad that I had not invited Ben along to hang out at my favorite dive bar, with all of our mutual friends.

From then on, I made every effort to contact Ben to "COME TO PAUL'S!" But this was not easy. Ben, for several weeks, had been preparing to run in the Portland Marathon, and as he put it, was "on the wagon." A week or two after the marathon we, along with Bjorn Hess and Jesse Jacobs, continued to schedule and reschedule a time to sit down and have, what Bjorn Hess calls, a "CLE" among several lawyers.

Finally, we were able to coordinate a time to get together at Paul's on a Wednesday night at around 7 p.m.--prime Paul's time. When you first arrive at Paul's and enter through the main front door, you are immediately at a crossroads; you either take a left to the diner or take a right to the "Elbow Room." I have never taken a left, but I hear that Paul's has great breakfast (a recent yelp review currently reads, "the food here makes me freak out dawg!", followed by two dozen rows of exclamation points). Once you take a right and enter the Elbow Room, you are immediately greeted with the strong odor of natural gas. Do not be alarmed! It smells like that every time, and I have never witnessed the place explode.

Upon entrance into the bar area, you will notice that the Elbow Room probably has not changed its décor since around the time that Bob Yosef started practicing law. As it was only a few days after Halloween, the fake spider webs and jack-o-lanterns hung from the outdated wood trim (I would also recommend that you do not apply the 5-second rule to the floors at Paul's). Waiting for me, cozied up in a booth, were Bjorn and Ben, and a couple of stiffly poured drinks. Jen, the bartender, who is as sweet as can be, and who arguably has the heaviest hands in Clark County, greeted me, and told me that she would bring me the "usual"--a glass of water and a shot of Irish whiskey--which I never particularly asked for, but I am sure was orchestrated beforehand.

Paul's was recently famous. A scene from the 2014 Reese Witherspoon movie *Wild* was filmed in the diner. According to Jen, Witherspoon never left her trailer until it was time to film and then promptly left after the scene was over. If you ask Jen about Witherspoon or *Wild*, she probably will not talk about it with you.

With drinks in hand, we began to interrogate/interview Ben. Melnick, as he put it, "keeps a beard in the winter" that is well-trimmed and Clark-County-bench approved. With cheap lager in his hand and a twinkle in his eye, I could tell very quickly, that Ben enjoys a challenge. With question after question, he answered every time with two answers: the quick, witty and sarcastic answer, and the thoughtful, serious, and real answer, one of the reasons why I like him.

As most litigators I know, Ben likes competition too. Since he was very young, Ben has been an avid soccer player and fan. When asked how he had gotten into long distance running, he replied, "It was an easy transition, one of them is long distance running on the same field with a ball, the other is just long distance running. Plus, I couldn't find a soccer team."

Melnick attended Wazzu for undergrad, and as previously stated, graduated from Gonzaga University School of Law. Melnick, like many other young attorneys in town, came out of law school and into the practice during a bleak time for lawyers, with few job prospects, high student loan interest rates, and not a ton of experience. Even as the son of a longtime Clark County prosecutor, Superior Court judge, and now Division II Court of Appeals judge, Ben simply stated, "this is where the work is," and looked to Clark County as a place to start his legal career.

Ben now works for an old friend and colleague of his father's, Beau Harlan. He is enjoying his transition into personal injury, but especially takes pride in his criminal law work. When asked why he did not want to be a prosecutor and instead became a criminal defense attorney Melnick passionately replied, "the defendant gets hammered on all sides! I like being able to protect them from being exposed."

Although Melnick does not know whether he will always stay in Clark County, or whether he will follow in his father's footsteps towards the bench, it seems that Ben wishes to explore more of the world. "Who knows? But I do have a sense of adventure. We'll see." When asked if he would try other types of law, "I'd probably take a swing at something."

After several gripping stories, and many off the record conversations, Ben had to take off, as it was a Wednesday night after all. But I promised him I would keep him in the loop in the near future for more "CLE" nights like this.

In closing, I recommend two pieces of advice to the Clark County Bar: 1) If you think you are too good for Paul's Elbow Room, you are probably right, but you should at least go there once and check it out--it is a great place to experience at least once--and 2) If you have not gotten a chance to get to know Ben Melnick, do it. He is a great guy with a side-splitting sense of humor, and a wittiness that is hard to match.

Finally, thank you Ben for getting out of the way of my Ford Bronco, and for helping me feel at home in Clark County, the way I feel at home at Paul's. THUMBS UP!

# Clark County VOLUNTEER Lawyers Program

Two things happened this month: Battle of the Lawyer Bands and our Campaign for Equal Justice Telethon.

Battle of the Lawyer Bands was a big success. The Brickhouse was packed, the music was loud and the tacos were great. If you missed it, watch for it next year.

Many thanks to those of you who answered your phone and made a donation during our telethon. If you did not get a chance to donate, please consider a donation. Log on to [www.C4EJ.org](http://www.C4EJ.org) and support your Clark County Volunteer Lawyers Program. Remember, for every dollar you donate we get about \$1.50 back in our annual grant.

Thanks, Susan

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

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**Statistics for September:**

<b>Cases Place for Representation</b>	<b>3</b>	<b>Volunteer Attorney Hours</b>	<b>61.50</b>
Clinic	# of Appts.	Clinic	# of Appts.
Family Law Advice Clinic	29	Spanish Family Law Clinic	4
Bankruptcy Clinic	0	General Law Clinic	4
Homeless Shelter Clinic	5	Homeless Court Referrals	5
Housing Justice Project Clinic	5	Housing Justice Project Courthouse	5
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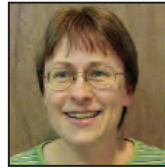


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**MARIA SOSNOWSKI**  
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# UPCOMING EVENTS

MEETING

**December 2, 2015**  
 CCBA Board Meeting  
 CCBA Office Noon - 1:00pm

MEETING

**December 7, 2015**  
 CLE Committee Meeting  
 CCBA Office Noon - 1:00pm

MEETING

**December 8, 2015**  
 Superior Court Bench/Bar Meeting  
 Clark County Courthouse - Noon

CLE

**December 9, 2015**  
 Nuts & Bolts CLE - Taking Depositions:  
 Strategies, Tactics & Techniques  
 Presented by: David Markowitz &  
 Lawson Fite  
 Vancouver Hilton 3:00pm - 5:00pm

SOCIAL

**December 10, 2015**  
 Family Law Section Holiday Party  
 Red Cross Building Noon - 1:00pm

CLE

**December 14, 2015**  
 CLE - Ethics: The Good, The Bad and  
 The In-Between  
 Vancouver Hilton 8:45am - Noon

MEETING

**December 15, 2015**  
 Hearsay Committee Meeting  
 CCBA office - Noon

SOCIAL

**December 17, 2015**  
 YLS Holiday Party  
 Shanahan's - 5:00pm

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Criminal .....	25
Debtor/Creditor .....	12
Family Law .....	41
General Litigation .....	54
Labor & Employment .....	16
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