

The WRIT

December 2011, Vol. 33, No. 11

OFFICIAL PUBLICATION OF THE WASHOE COUNTY BAR ASSOCIATION

WCBA Honors 40+ Members

Wednesday, December 14, 12 noon • Harrah's

Each December, WCBA honors our members who have been licensed in Nevada for 40 years. They “graduate” to honorary status, having earned our recognition and dues-free status.

Margo Piscevich, who gained honorary status in 2010, will be our emcee for the event this year. We invite you to come to

the December 14 luncheon at Harrah's to congratulate our honorees and perhaps share a story a two—we will have microphones at the ready!

2012 Honorees

Tom Belaustegui
Byron Bilyeu
Don Clasen
Ross de Lipkau
Gordon DePaoli (past president)
John Echeverria
David Hamilton
A.J. “Bud” Hicks
Jim Kosinski
Bob Lyle
Marvin Murphy
Fred Oats
John Ohlson
Steve Peek
Kent Robison
Ted Schroeder

RSVP by Monday, December 10. \$25 per person, \$200 for table of 8 with sign. Register and pay online at wcbar.org or call 786-4494.



Test your identification skills and match the names to the photos! Think 1972.



Our 2012 Santa Fe Dinner Host Monique Laxalt invites you to join colleagues and friends at the Santa Fe Hotel on Thursday, January 19, 2012. The 2012 dinner will honor Bruce Laxalt, Monique's brother and our longtime member and friend.

Drinks start at 5:30, dinner at 6:30. As always, no speeches! Seating is limited to first 200 RSVPs. \$40 per person—\$320 for signed table for 8.

Registration at wcbar.org.

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Clay Brust, President



I tried to quit the profession in my fourth year. Overwhelming student loans and a lack of marketable skills kept me practicing.

The problem was stress. I didn't know the law's reputation for stress before I decided to go to law school. I am a sheepherder/farmer by lineage. My genes are equipped to handle the stress of waking up from a nap on the side of the hill, counting the sheep, then going back to sleep. Maybe even scaring off a coyote or two. Forget about arguing nuances of the proper application of vague case law and statutes to uncertain facts against people who have loved hostile confrontation their whole lives – not to mention occasional unreasonable expectations of clients. I had no chance.

Stress is something you have to learn to live with as a lawyer. Beyond the

of my colleagues is part Greek, which he interprets as being a Spartan warrior, bred for battle. He now walks around the office with a PICC line feeding antibiotics directly into his heart to treat an infection in his left forearm that was aggravated by the stress of competitive golf. Cal Dunlap claims he could dunk a basketball before he practiced law! Mercy.

About a day after I quit, I changed my mind and decided there must be a place in the profession for someone like me. While I've been looking for that, I've stumbled upon a couple aspects of the profession that help reduce stress. First, clients are fascinating. Anyone who needs to hire a lawyer is either involved in significant projects in the community, has befallen a tragedy, or has experienced something very unusual, often as a result of their own crazy judgment. Clients'

I've stumbled upon a couple aspects of the profession that help reduce stress. First, clients are fascinating.

anguish, it can also have physical effects, even on the strongest amongst us. One of my colleagues, who has multiple world champion triathlon titles, told me that the type of stress lawyers experience actually causes our bodies to react in a way that produces belly fat. Another

lives are more interesting than any book or movie. Hence the maxim: "A license to practice law is a ticket to the greatest show on Earth." Stay interested in your clients' stories. It keeps you involved in your work and makes it more fun.

Spending time with colleagues is another way to beat stress. At my office, we constantly joke with each other and occasionally take breaks to play a few hands of poker. Make a point to keep your office door open and visit the people down the hall. It's a great way to blow off steam.

Another stress reliever is participation in bar related activities. Attend WCBA and State Bar functions or volunteer for one of the many programs we sponsor. The social activities are always fun and humanizing. You'll see your adversaries in a different light and may even like them. Our volunteer opportunities provide opportunities to use your legal skills without any client/adversary/judge related stress. They provide an opportunity to work with other members of the WCBA collaboratively rather than as adversaries. You can also volunteer at a local school or youth organization. Recent events make clear the need for good people to help mentor and participate in the lives of our youth.

Finally, the ultimate stress reliever – vacation. The holidays are weeks away. Take them seriously this year. Forget about work long enough to discover a new perspective that makes practicing law more enjoyable. Then, tell me about it so I'll have material for my next article.

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CONVERSATIONS ON DISCOVERY

By Wesley M. Ayres, Discovery Commissioner

In 1994, the American Bar Association (“ABA”) issued a formal opinion addressing the obligations of a lawyer who is offered or provided, by a person not authorized to offer them, materials of an adverse party that the lawyer knows to be, or that on their face appear to be, subject to the attorney-client privilege of the adverse party or otherwise confidential. See ABA Comm. on Ethics & Prof’l Responsibility, Formal Op. 94-382 (1994). The ABA recognized that the Model Rules of Professional Conduct do not provide explicit guidance on the issue. Nevertheless, it opined that public policy considerations and case law support the position that an attorney who, without solicitation, receives materials which are obviously privileged or confidential has a professional obligation to notify the adverse party’s lawyer that the attorney possesses such materials, and either follow the instructions of the adversary’s lawyer with respect to the materials, or refrain from using the materials until a definitive resolution of the proper disposition of the materials is obtained from the court. In 2006, however, the ABA withdrew its earlier opinion, finding that the Model Rules do not address the situation, and that the moral and ethical considerations that may guide a lawyer’s conduct are not an appropriate basis for a formal opinion. See *id.* Formal Op. 06-440 (2006) [hereinafter *Formal Opinion 06-440*]. Recently, in *Merits Incentives, LLC v. District Court*, 127 Nev., Adv. Op. 63 (2011), the Nevada Supreme Court provided important clarification regarding counsel’s obligations when he or she is anonymously provided with confidential or privileged documents—

not an everyday occurrence, but one which raises important ethical concerns.

The *Merits Incentives* decision arose out of an action filed by the manufacturer of high-end salon products against certain distributors after it discovered that some of its products were being sold at unauthorized retailers. After commencing suit, plaintiff received an anonymous package from Lebanon containing a computer disk and a note stating that the package should be forwarded to plaintiff’s counsel in the Nevada action. The package apparently was sent by a former employee of defendants, against whom they previously obtained a permanent injunction precluding him from distributing certain confidential information (including trade secrets) to customers, manufacturers, suppliers, or business partners. After plaintiff’s counsel received the package, he served defendants with a supplemental NRCP 16.1 disclosure including a copy of the disk and a copy of the envelope it arrived in, stating that the disk came from an unidentified source. Shortly thereafter, plaintiff served defendants with a request for production listing over 500 documents contained on the disk, and asking for authentication and hard copies of some of the documents. In response, defendant provided only a general objection to the request. The supreme court later observed that “that type of objection is insufficient to assert a privilege.” See *Merits Incentives*, 127 Nev., Adv. Op. 63, at 5 n.2; see also *Nevada Power Co. v. Monsanto Co.*, 151 F.R.D. 118, 121 & n.5 (D. Nev. 1993) (requiring production of a sufficiently detailed privilege log when documents are withheld based upon a privilege). Thus, defendants had failed to properly

assert any valid objection in response to the supplemental NRCP 16.1 disclosures or the request for production. About two weeks after receiving defendants’ response, plaintiff deposed an employee of defendants and used some of the documents from the disk, again without objection.

Approximately eight months after plaintiff first disclosed its receipt of the disk, defendants filed a motion to dismiss plaintiff’s case or, alternatively, to prohibit plaintiff’s use of misappropriated confidential and privileged documents and for disqualification of plaintiff’s counsel. After a hearing, the district court denied the motion. It found that plaintiff had received the disk in an unsolicited package from an anonymous source; that its counsel disclosed plaintiff’s receipt of that disk; and that neither plaintiff nor counsel had actual knowledge of the injunction against defendants’ former employee. It also found that, with one exception, defendants failed to show that any of the documents on that disk were privileged. The district court concluded that plaintiff’s counsel acted reasonably and appropriately with respect to the documents and the disk. Defendants then filed a petition for extraordinary writ relief, in which they sought only an order directing the district court to disqualify plaintiff’s counsel. See *Merits Incentives*, 127 Nev., Adv. Op. 63, at 5-6.

Defendants argued that plaintiff’s counsel violated his ethical duties because, once he realized the privileged nature of one or more documents on the disk, he should have ceased reviewing the disk, notified petitioners, and returned the disk. Significantly, the supreme court found that certain rules from the

Nevada Rules of Professional Conduct were inapplicable. Rule 4.4(b) requires counsel to notify the sender when counsel receives a document that he or she knows or reasonably should know was inadvertently sent. Of course, the disk at issue was not inadvertently sent by defendants (or anyone else). Rule 4.4(a) precludes counsel from using methods of obtaining evidence that violate the legal rights of a third person, but plaintiffs counsel did not seek to obtain the disk. Even the broader Rule 8.4(d)—which does not allow an attorney to “[e]ngage in conduct that is prejudicial to the administration of justice”—requires “some type of affirmative action.” See *id.* at 11. Plaintiffs counsel took no action prohibited by these rules, and had no knowledge of the injunction against defendant’s former employee. See *id.* at 7-11 & nn.3-6.

The court recognized that some jurisdictions have adopted a “cease, notify and return” rule under similar circumstances. See *id.* at 9. That rule provides that once counsel realizes the privileged nature of the documents anonymously provided, he or she must cease reviewing the documents, notify opposing counsel, and return the documents. But Nevada has no such rule, see *id.* at 9 n.4, and that approach is not required under Rule 4.4(b), see Model Rules of Prof’l Conduct R. 4.4 cmt. 2 (2007) (“this Rule does not address the legal duties of a lawyer who receives a document that the lawyer knows or reasonably should know may have been wrongfully obtained by the sending person”); *Formal Op. 06-440* (“if the providing of the materials is not the result of the sender’s inadvertence, Rule 4.4(b) does not apply to the factual situation”). Further, the court declined to adopt that rule under these circumstances. See *Merits Incentives*, 127 Nev., Adv. Op. 63, at 12 n.7.

Notwithstanding the lack of any explicit rule applicable to this situation, the district court had apparently applied Rule 4.4(b) by analogy. The supreme court approved that approach:

[W]e now adopt a notification requirement to apply in situations where an attorney receives documents anonymously or from a third party unrelated to the litigation. Thus,

an attorney who receives documents regarding a case from an anonymous source must promptly notify opposing counsel, or risk being in violation of his or her ethical duties and/or being disqualified as counsel. Notification must adequately put opposing counsel on notice that the documents were not received in the normal course of discovery and describe, with particularity, the facts and circumstances that explain how the documents or evidence came into counsel’s or his or her client’s possession. . . .

Id. at 11-12 (footnote omitted). The court also found that plaintiffs counsel complied with this obligation through his supplemental NRCP 16.1 disclosure. See *id.* at 12.

As noted above, the district court found that one document on the disk was privileged—a draft affidavit—and it precluded plaintiff from using that document. In their petition for extraordinary relief, defendants argued that the district court was required to disqualify plaintiffs counsel irrespective of whether counsel was involved in obtaining that document. Our high court observed that it had not previously addressed the circumstances under which disqualification might be required in these kinds of situations. After considering *In re Meador*, 968 S.W.2d 346 (Tex. 1998), a decision in which the Texas Supreme Court articulated various relevant factors to be considered in resolving this issue in a given case, the Nevada Supreme Court adopted the *Meador* factors:

- 1) [W]hether the attorney knew or should have known that the material was privileged;
- 2) the promptness with which the attorney notifies the opposing side that he or she has received its privileged information;
- 3) the extent to which the attorney reviews and digests the privileged information;
- 4) the significance of the privileged information; i.e., the extent to which its disclosure may prejudice the movant’s claim or defense, and the extent to which return of the documents will mitigate that prejudice;
- 5) the extent to which movant may be at fault for the unauthorized

disclosure; [and] 6) the extent to which the nonmovant will suffer prejudice from the disqualification of his or her attorney.

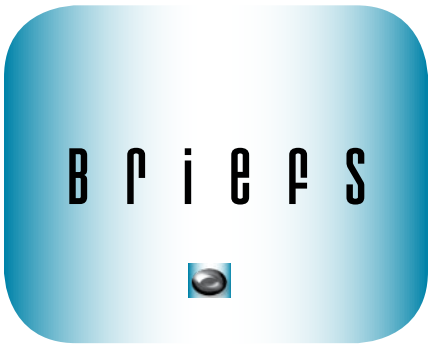
Merits Incentives, 127 Nev. Adv. Op. 63, at 14 (footnote omitted) (quoting *Meador*, 968 S.W.2d at 351-52). Practitioners should note that this list is not exclusive; courts must consider all facts and circumstances to determine whether the interests of justice require disqualification. See *id.* at 14 & n.8.

The supreme court found that application of these factors did not require the disqualification of plaintiffs counsel. Most of the documents on the disk were not privileged, and no evidence refuted counsel’s affidavit stating that he did not review the privileged document. Counsel sent defendants’ counsel a supplemental NRCP 16.1 disclosure one month after plaintiff received the disk, a second supplemental disclosure of the disk followed four days later, and his request for production individually identified 503 of the documents contained on that disk. Even assuming that the draft affidavit had some significance, the district court prohibited its use, and petitioners failed to show any prejudice resulting from the affidavit’s disclosure. Further, given the complexity of the case, plaintiff would suffer prejudice if it had to retain new counsel. See *id.* at 15-16. For all of these reasons, defendants’ petition for extraordinary writ relief was denied.

Wes Ayres is Discovery Commissioner for the Second Judicial District Court. His columns are online and searchable at wbar.org.



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Attorneys Allison and Urga Honored for Professionalism

Attorneys George Allison and William Urga recently received the Howard D. McKibben Model of Professionalism Award and the Lloyd D. George Professionalism Award, respectively. Both awards are given by the state bar in conjunction with the Professionalism Summit Committee and associated county bars, i.e., Clark County Bar Association or Washoe County Bar Association.

The Howard D. McKibben award goes to a member of the Nevada bar who has demonstrated the highest standards of professionalism during his or her legal career. Recipients must be committed to the Rule of Law and embody the principles of respect, courtesy and civility. George Allison, this year's winner of the award, became a licensed Nevada attorney

in 1963 and is the co-founder of Allison MacKenzie (originally Laxalt, Berry and Allison). He lives in Carson City.

William Urga, this year's Lloyd D. George Professionalism Award winner, is a shareholder at the firm of Jolley, Urga, Wirth Woodbury and Standish, and a Clark County resident. Winners of this award must possess a civility that fosters ideals, courtesy, dignity and balanced judgment in promoting the efficient resolution of disputes.

LEGAL SURVIVOR COURSE

NALS of Nevada will be holding its annual Legal Survivor Course on Friday, April 13, 2012, at The Tamarack Junction in Reno. The program will include five speakers and offer a total of seven hours of CLE credit. More details will be available soon. For more information, contact Sharon Coates at scoates@dlpfd.com.



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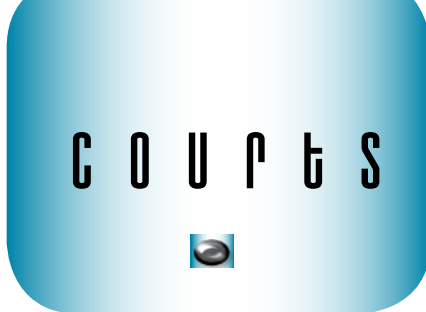
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Judicial Election Filing Deadline January 3-13, 2012

There are several judicial seats on the ballot for 2012, from Nevada Supreme Court to local city and justice courts. There is a new seat in Reno Justice Court and several seats are on the ballot. NRS 293.177 and 293.193.

Information is available on the Nevada Secretary of State's website, county and city websites.

<http://nvsos.gov/>

<http://www.co.washoe.nv.us/voters>

Commission on Judicial Selection Names Finalists in Fourth Judicial District

Nevada Supreme Court Chief Justice Nancy Saitta announced that the Nevada Commission on Judicial Selection today named three finalists for each of the two vacant seats at the District Court in Elko.

The seats became vacant because of the death of District Judge Andrew Puccinelli and the retirement of District Judge Michael Memeo.

The nominees were selected following interviews by the Nevada Commission on Judicial Selection on November 18 in the Elko County Commission Chambers. The names of the finalists have been sent to Governor Brian Sandoval, who will appoint the new judges from the lists.

The Commission's three nominees for Judge Memeo's Department 1 seat, in alphabetical order, are:

David D. Loreman, 52, Spring Creek, attorney in private practice

Nancy Lynn Porter, 50, Elko, attorney in private practice

William E. Schaeffer, 56, Battle Mountain, attorney in private practice

The Commission's three nominees for Judge Puccinelli's Department 2 seat, in alphabetical order, are:

Judge Alvin R. Kacin, III, 43, Elko, Elko Justice and Municipal Court

Kristin A. McQueary, 47, Elko, Elko

County District Attorney's Office
Nancy Lynn Porter, 50, Elko, attorney in private practice

Judicial Selection Commission rules allow an applicant to be selected for more

cont. next page

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JUDICIAL SELECTION CONT.

than one vacancy. In this situation, having one name appear on both lists ensures the governor has three names from which to choose for each department.

Four attorneys applied for the Department 2 vacancy. The same four plus an additional attorney applied for the Department 1 vacancy. Applicants had to be Nevada attorneys with 10 years of legal experience, two of those in Nevada.

Judge Memeo resigned effective November 1, 2011. He has served nearly 15 years since being elected in 1996 as one of two judges on the District Court bench in Elko County.

Judge Puccinelli, 58, died on August 8, 2011 as he battled cancer. He had served on the bench since being appointed in 2002.

Because the Fourth Judicial District Court has just two judges, senior judges and visiting judges have been assigned by the Administrative Office of the Courts to sit in the Elko courts and ensure that cases are heard in a timely fashion. Temporary judges will continue to sit until the new appointees are named and take the bench.

The November 18 interview and selection process by the nine-member Commission once again was open to the public, as it has been since 2007.

In selecting the finalists, the Commission considered the applicants' interviews along with information in comprehensive applications about education, law practice, business involvement, community involvement, and professional and personal conduct. The Commission also considered letters of reference and public statements during the interview process.

Applications of the attorneys were posted on the Supreme Court website, www.nevadajudiciary.us. The applications of the finalists will remain on the webpage of the Commission on Judicial Selection until the Governor makes his appointments (although some personal information and letters of comment will remain confidential).

No time limit exists for the Governor to make a judicial appointment. However, if an appointment is not made within 30 days following submission of names by the Commission, the Governor may make no other appointments to public office.

Whoever the Governor selects must run and win in the 2012 election to retain the seat.

The Commission is composed of seven permanent members – the Supreme Court Chief Justice, three non-attorneys appointed by the Governor and three

attorneys appointed by the State Bar of Nevada. Neither the Governor nor the Bar may appoint more than two permanent members from the same political party, and cannot appoint two members from the same county.

For District Court vacancies, two temporary members are appointed from the judicial district where a vacancy occurs – a non-attorney by the Governor and an attorney by the State Bar – bringing the Commission membership to nine. The temporary members serve only until the nominations for the vacancy are transmitted to the Governor.

The regular commission members are:

Chief Justice Nancy Saitta, Chair

Ann Bersi, Ph.D., former deputy district attorney in the Civil Division of the Clark County District Attorney's Office (State Bar appointee)

G. Fred Boyd, small business consultant in Reno (Governor appointee)

Scott Freeman, Reno attorney (State Bar appointee)

Jeffrey Gilbert, Las Vegas, veteran gaming executive (Governor appointee)

Thomas L. Stockard, Fallon, Churchill County Deputy District Attorney (State Bar appointee)

Leslie M. Williams of Schurz in Mineral County, Economic Development Coordinator for the Walker River Paiute Tribe (Governor appointee)

The temporary commission members were:

Former Elko Assemblyman John Carpenter (Governor appointee). He served in the Legislature from 1987 until leaving office in 2010. He is a rancher, real estate broker and Elko businessman.

Deputy Elko County Public Defender Andrew M. Mierins (State Bar appointee).

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J U D I C I A L E T H I C S

Hon. David Hardy, Second Judicial District Court, Department 15

“Each of us is two selves . . . the great burden in life is to always try to keep that higher self in command.”¹

Judicial discipline complainants often conflate judicial misconduct with legal error. For this reason a majority of discipline complaints are dismissed without investigation. In this essay I examine when judicial discipline may be an appropriate response to a judge’s erroneous application of the law.²

The Nevada Commission on Judicial Discipline has enumerated powers set forth in NRS Chapter 1. Generally, the Commission does not have authority to consider complaints about legal errors or discretionary decisions “unless supported by evidence of abuse of authority, a disregard for fundamental rights, an intentional disregard of the law, [or] a pattern of legal error or an action taken for a purpose other than the faithful discharge of judicial duty.”³

Rule 2.2 of the Code of Judicial Conduct provides a judge “shall uphold and apply the law, and shall perform all duties of judicial office fairly and impartially.” Good faith errors of fact or law do not violate the rule.⁴ The inverse must therefore be true: a judge is susceptible to discipline when the error of fact or law is not made in good faith. A few examples are instructive.

Decisions made in bad faith. A Mississippi judge was upset over a lack of funding for a court bailiff. He publicly stated he would “teach the county a lesson or would make the county pay.” He then suspended fines in 17 cases.⁵ Another example of bad-faith error comes from Texas. A small altercation between college fraternities resulted in the loss of a student’s Texas A&M class ring. A young man was charged with theft for throwing

the “Aggie” ring into the grass. (The defendant denied his involvement and the charge was dismissed when another student confessed to the ring toss.)

At his arraignment the judge asked the defendant where he attended school. When the defendant responded that he

This same judge imposed an equally curious sentence in another case. There, the defendant was convicted of dumping chromium from his metal-plating business. The judge ordered the defendant to drink a “toxic sludge cocktail” containing the pollutants dumped by the defendant.

attended a college near Texas A&M, the judge said: “You might want to think about going somewhere else considering the nature of your criminal activity.” The judge then asked the defendant if he knew what an Aggie ring was, to which the defendant answered he did not. The judge held up his own hand, revealing an Aggie ring, and asked, “See this on my hand?” Although the bail schedule was only \$5,000, the judge imposed bail of \$50,000.

During his disciplinary proceeding, the judge explained that an Aggie ring “is a manifestation of one of the highest traditions in the community . . . [It] is an outward, visible symbol of the wearer’s commitment to the school.” The State Commission on Judicial Conduct was not impressed. It concluded the judge was impatient, undignified, and discourteous, and he “abandoned his role as a neutral, detached, and impartial magistrate.”⁶

Abuse of authority. Bond/bail and summary contempt decisions create an ethical minefield for judges. Earlier this year a New Mexico judge avoided discipline by tendering his resignation.

The resignation was predicated upon the judge’s response when he observed a brief courtroom disturbance. He “intentionally and without any justification in law or fact” convicted and jailed 32 courtroom spectators. By intentionally jailing innocent spectators he “abused his judicial powers and committed serious willful misconduct in office.”⁷

Disregarding fundamental rights. A Texas judge presided over a criminal matter in which a defendant was convicted of severely neglecting two horses. Horses must be important in Texas because the judge sentenced the defendant to 30 days in jail with a diet restriction of only bread and water for the first three days. This same judge imposed an equally curious sentence in another case. There, the defendant was convicted of dumping chromium from his metal-plating business. The judge ordered the defendant to drink a “toxic sludge cocktail” containing the pollutants dumped by the defendant. Both sentences were covered by the local media. The judge was disciplined because he failed to comply with the law when he imposed sentences that were unenforceable and in violation of the defendants’ fundamental rights.⁸

Intentionally disregarding the law. A Louisiana judge ignored statutory law and local rules when he expunged felony arrest and conviction records without a hearing. The Louisiana Supreme Court noted its “great care” in the matter because “subjecting a judge to discipline because of an erroneous legal ruling has the potential to trammel the exercise of judicial discretion and stifle the independence of the judiciary.”⁹ Nonetheless, it concluded the legal error rose to judicial misconduct

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Judicial Ethics cont.

because the controlling law was “clear and unambiguous.” The judge “showed a disregard for the established procedural rules by which his decisions should have been made. Such an attitude cannot prevail, as ‘our judicial system operates on ‘rules of law’ of which judges and lawyers must abide.”

Pattern of legal error. A New York judge was removed from office for failing to advise defendants at arraignment of their right to appointed counsel, setting excessive bail amounts for defendants charged with petty crimes or violations, and jailing defendants in lieu of bail for offenses that rarely resulted in jail sentences upon conviction. The Commission noted the errors were not isolated instances but established a “pattern . . . so extraordinary that we must characterize it as abusive and coercive in the extreme.”¹⁰

Action taken for a purpose other than the faithful discharge of judicial duty. A Louisiana judge issued an arrest warrant for the crimes of DWI, contributing to the delinquency of a juvenile, disturbing the peace, and extortion. The person arrested was the judge’s neighbor and the probable cause for the arrest was neighborhood disharmony grounded in unrestrained dogs and teenagers riding motorcycles at excessive speeds. Another neighbor who was aligned with the judge was the complaining witness. The judge was disciplined for violating several ethical rules when making his judicial decision.¹¹

Failing to exercise discretion. An Indiana judge routinely assessed higher fees when traffic-infraction litigants chose trial over a guilty plea. He told one defendant who expressed some uncertainty about her plea that “I’m a great listener but sometimes I’m very expensive,” implying he would assess a higher fee if she made him sit through trial. The judge also failed to consider the specific circumstances of each defendant, such as driving records, when he imposed sentences. In so doing, he failed to exercise his discretion and made his own sentencing participation superfluous.¹²

These decisions illustrate that judges are not immune from scrutiny merely because their errors are made in the

performance of their official duties. On an unrelated topic, my review of Senator Raggio’s biography last month led to several questions about the books currently on my nightstand. I do not intend to continue this theme in future essays. Nonetheless, I recently finished three books that may provide an enjoyable diversion during the holidays.

The first book, *Still Alice*, examines the diagnosis and devastation of early onset Alzheimer’s Disease. The science of Alzheimer’s is presented with a deft human touch. The story begins with the fictional protagonist (a 50-year old Harvard professor of psychology) noticing subtle memory deficits. She fights the disease valiantly but ultimately surrenders to its inevitable grasp. Through the development of her disease she changes her life landscape from the professional to the personal. The journey becomes serene and the final destination is peaceful. I was mesmerized by the cruelty of Alzheimer’s yet I finished the book with a renewed resolve to improve my life and relationships.

The second book is *Nemesis*, by prolific American novelist Philip Roth. *Nemesis* was recently named a finalist for the Wellcome Trust Book Prize, which is awarded annually to books presenting medicine through literature. *Nemesis* is set in the Jewish neighborhood of Newark during the polio epidemic of 1944. The 23-year-old protagonist Bucky Cantor carries the burdens of an atypical childhood and the guilt of being excluded from military service. He is conflicted about his faith but heroic in his service as director of the local parks and recreation summer league. He anguishes over the losses of those within his charge. He confronts his own exposure to the disease. And he succumbs to the false responsibility he imposes upon himself. The typical Greek tragedy construct works, for as Cantor languishes in later life he re-connects with a man who contracted polio on the playground under Cantor’s supervision. Unlike Cantor, this man conquered the misfortunes of his youth and realized a fulfilling life. I was ennobled by Cantor’s suffering. Like *Still Alice*, *Nemesis* inspired me to be larger than the daily activities I pursue.

The book I finished over the Veteran’s Day weekend examined the parallel lives

of Martin Luther King and James Earl Ray during the early months of 1968. The juxtaposition is masterful: King delivering his final sermon to the striking sanitation workers, spiritually charged but revealing thanatopsis, whereas Ray is the loner animated by racism and hatred. King is ever selfless while Ray embodies the selfish, debased among us. *Hellbound On His Trail* then focuses on the pursuit and capture of Ray in the several months following the King assassination. In homage to judicial ethics, I suggest that King’s words apply to all who work within the judiciary: “Each of us is two selves . . . The great burden of life is to always try to keep that higher self in command.” Justice would be well served if judges followed King’s timeless advice.

NOTES

¹ Dr. Martin Luther King, Jr., quoted in Hampton Sides, *Hellbound On His Trail: The Electrifying Account of the Largest Manhunt In American History* 67 (2011).

² This essay is based upon Cynthia Gray’s presentation *The Line Between Legal Error and Judicial Misconduct*, which was presented at the 22nd National College on Judicial Conduct and Ethics, sponsored by the American Judicature Society.

³ State of Nevada Commission on Judicial Discipline, Purpose of the Commission, <http://judicial.state.nv.us/purposenjdc3new.htm> (last visited November 14, 2011); NRS 1.4653.

⁴ Comment 3 to Rule 2.2 of the NCJC.

⁵ *Miss. Comm’n on Judicial Performance v. Sheffield*, 883 So.2d 546 (Miss. 2004).

⁶ *In re Honorable George Henry Boyett*, CJC No. 11-0047-JP, Public Reprimand and Order of Additional Education (Texas State Commission on Judicial Conduct July 11, 2011).

⁷ *In the Matter of Sam B. Sanchez*, No.32,557, Inquiry Concerning a Judge Nos. 2009-124/2010-009/2010-019/ 2010-064 (N.M. May 17, 2011).

⁸ *In re Honorable Michael Peters*, Public Admonition (Texas State Commission on Judicial Conduct May 4, 2006).

⁹ *In re Judge Charles Elloie*, 921 So.2d 822, 899 (La. 2006).

¹⁰ *In re Bauer*, 818 N.E.2d 1113, 1117 (N.Y. 2004).

¹¹ *In re Justice of the Peace Myrty Alfonso*, 957 So.2d 121 (La. 2007).

¹² *In re Young*, 943 N.E.2d 1276 (Ind. 2011).

This is number 50 in a series of essays on judicial ethics authored by Judge David Hardy, Second Judicial District Court, Dept. 15.



P R O B O N O C O R P O R E

Renee Kelly, Nevada Legal Services

A very special thank you to all of the Washoe County Bar members who gave their time and support which allowed us to conduct our public legal aid events during National Pro Bono Week

LAW FAIR AT MEADOWOOD MALL (10/22/11)

Sarah Carrasco, Roger Harada, Greg Jensen, Brett Kandt, Celeste Luce, Mark Mausert, Ryan McElhinney, Ernie Neilson, Pat Phair, Marta Presti, Muriel Skelly, Rod Sumpter, Keith Tierney, Brenoch Wirthlin, and Anna Zarndt

WILLS FOR VETERANS (10/24/11)

Cindy Armentrout, Linda Bowman, Tom Collins, Roger Doyle, Dick Edwards, Brian Gonsalves, Joe Gorman, Nicole Harvey, Michelle Kazmar, David O'Mara, Brian Pick, Jeremy Reichenberg, and McClure Wallace

ALL DAY SELF HELP CLINIC (10/26/11)

Roger Harada, Angela Lightner, Beth Luna and Heather Robertson

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Judge Connie Steinheimer

2011 Individual Honoree:
Jeremy Reichenberg, Esq.

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PEOPLE

In Memory

David J. Guinan, a longtime member of the Washoe County Bar and partner at Hoffman, Test, Guinan and Collier died in early November. Guinan was fourth generation Nevadan, alumnus of UNR and Hastings School of Law. He was active in local organizations and charities and was a past Grand Master of the Grand Lodge of the Free & Accepted Masons.



Guinan is survived by his wife Loretta, daughters Amy and Cheryl, son David and a granddaughter. Donations may be sent to RiteCare Clinics, Scottish Rite Foundation, Box 2068, Reno, NV 89504.

Please send news of awards, appointments, publications and elections to The Writ. E-mail chris@wcbar.org. Fax to 324-6116 or mail to P.O. Box 1548, Reno, NV 89505.

Holland & Hart Partner Jim Newman Elected to EDAWN Board of Trustees

Jim Newman, a partner at Holland & Hart, was elected to the Economic Development Authority of Western Nevada (EDAWN) Board of Trustees. Newman has significant experience advising individuals and companies on a wide variety of legal issues, and in many instances serves as outside general legal counsel for his clients.

Previously, Newman served as a liaison to EDAWN through his position as President of Western Industrial Nevada (WIN), an organization that provides networking and educational events in Northern Nevada. EDAWN is a private/public partnership committed to recruiting and expanding quality companies that have a positive economic impact on the quality of life in the Greater Reno-Tahoe region.

Larry Sage Honored for Military Service

Retired Sparks Municipal Judge Larry Sage was among those honored on November 5 by the Office of the Adjutant General. Sage is currently a senior legal consultant at Harbinger Technologies Group. He was inducted into the Hall of Fame due to his volunteer service as ombudsman and mediator for the Employer Support of the Guard and Reserve.

Since his retirement from the bench, Judge Sage has continued with his adjunct (volunteer) facilitation for the National Judicial College and pursued a Masters of Judicial Studies degree. He served as a civilian contractor in Afghanistan from 2007-2010. That job included being a Justice Advisor to the Afghan Attorney General, instructing Afghan prosecutors, CID offices and Primary Court judges. He then served as Senior Legal Advisor to the Afghan Minister of Defense and other government officials.

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The Law Library will be closed Monday December 26 for Christmas.

We would like to thank the following

attorneys who participated in Lawyer in the Library programs during the months of Sept. & Oct. Richard Cornell, Madelyn Shipman, Craig Etem, Eric Lerude, Patricia Phair, Donald Pope and Gary Pakele who volunteered for our Wednesday night program. We would also like to thank Shannon Parke, Steve Scheerer, Linda Daykin, Tamara Jankovic, Dixie Grossman, Alison Colvin, Graeme Reid, and Muriel Skelly for volunteering for our Tuesday night program, which is

reserved for family law matters.

Please call Nikki Britt at 328-3250 if you would like to volunteer for our weekly Lawyer in the Library programs.

See wcbar.org/events for details and registration

DECEMBER

6 Please join NNWLA for its annual Holiday Party on December 6 at 5:30 p.m. at Judge Cooke's house. All NNWLA members are welcome to attend! We will have appetizers and wine for everyone to enjoy. To RSVP or for more information, contact Kelly at kgunderson@gundersonlaw.com.

9 WCBA CLE, Negotiations with Cynthia Hoover and Mark Lenz, 6 hours CLE. Details and registration at wcbar.org/events.

14 WCBA luncheon honoring 40+ members. Harrah's Reno, 12 noon. \$25 per person. See page 1 for details. Register online at wcbar.org or call 786-4494.

15 The FJDBA will be holding our annual holiday party on Thursday, Dec. 15, 2011, starting at 5:30 p.m. The party will be held at the Governor's Mansion in Carson City. The party will be held in conjunction with Volunteer Attorneys for Rural Nevadans who will be celebrating their 15 th year anniversary.

JANUARY

16 WCBA CLE, Business Valuation Issues for Commercial & Family Law Litigation presented by Richard Teichner and Robert Cerceo. 9:00 a.m. to 12:15 p.m.. 3 cr. CLE. Register at wcbar.org or call 786-4494.

16 WCBA CLE, Business Valuation and Gift Planning presented by Scott Wait, CPA, Jason Morris and Timothy Riley. 1:30 - 4:45 pm, 3 cr. CLE. Register at wcbar.org or call 786-4494.

19 Annual dinner party at the Santa Fe Hotel. Our host for 2012 is Monique Laxalt and we honor our longtime member Bruce Laxalt. Watch for your invitation! \$40 per person. \$320 for table of 8 with sign. Limited to first 200 reservations. Drinks at 5:30, dinner 6:30. Register at wcbar.org.

FEBRUARY

24 High School Mock Trial Regional Competition. Please mark your calendar and volunteer as a scoring judge. Trials are at 8:30, 10:30 and 1:30 Friday and we promise they are entertaining—you will be impressed at the skill of the young participants. E-mail Gina@wcbar.org or call 786-4494 to volunteer.

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