

Diversity News

A Newsletter of the Washington State Bar Association



The Washington State Bar Association's Commitment to Diversity: "To advance and promote diversity, equality, and cultural understanding throughout the legal community . . ."

August 2011

Here's what's happening in the world of diversity (from the WSBA perspective). If you have any questions, please feel free to email me at chachdw@wsba.org.

New Stuff

Congratulations to our new members of the Board of Governors! At the June BOG Meeting in Kennewick, the Board elected Seattle attorney **Michele Radosevich** as the 2011–2012 president-elect. Kent attorney **James Armstrong** was elected at-large governor.

For more information on the Board meeting, please see the *News Flash*. Produced after each meeting of the Board of Governors, *News Flash* offers a quick overview of the work of the Board of Governors and a listing of upcoming events of interest. A few highlights:

- Kennewick attorney **Bronson Brown** received the Local Hero Award.
- The Board voted to recommend adoption by the Supreme Court of Standards for Indigent Defense Services, and new Performance Guidelines for Criminal Defense Representation.
- The Board meeting was followed on Saturday by the annual Access to Justice/Bar Leaders Conference.

See the current and past issues of *News Flash* at <http://bit.ly/jgK0ny>.

Congratulations also to Judge Patrick Oishi, recently appointed to the King County Superior Court! For more, see <http://napost.com/patrick-oishi-tapped-for-superior-court-judge-position-p1615-1.htm>.

Civil Rights Law Section Newsletter

The WSBA Civil Rights Law Section is pleased to announce the latest issue of our e-newsletter – the spring/summer 2011 edition! Now available online at <http://bit.ly/mNdAVs>.

Washington State Minority and Justice Commission Releases Judicial Officer Guidebook

The Washington State Minority and Justice Commission has released a new guidebook that demystifies the process of becoming a judge in hopes of attracting applicants and candidates from a wide range of backgrounds to the bench. "**Diversifying the Bench Guidebook: How to Become a Judicial Officer**" was developed by the Commission's Workforce Diversity Committee, co-chaired by King County Superior Court Judge Deborah Fleck and Department of Social and Health Services Special Assistant to the Secretary Bonnie Glenn. "Diversifying the Bench" is a practical guidebook which explains jurisdiction, judicial eligibility, terms of office, salaries, campaigning and selection processes (for mid-term replacements) for each court level in Washington, as well as evaluations of judicial applicants by the Governor's office (also for mid-term judicial replacements), evaluations of judicial candidates by state and local bar associations, and more. In addition, the guidebook includes a "Judges' Insight" section which gathers experiences and lessons-learned by many Washington judges on their way to the bench. The Guidebook can be found online at www.courts.wa.gov by clicking on "Resources, Publications and Reports," then on "Minority and Justice Commission Publications," or directly at www.courts.wa.gov/committee/pdf/Diversifying%20the%20Bench%20Guidebook.pdf.

New York State Passes Marriage Equality Act

On June 24, 2011, New York became the sixth state in the United States to allow same-sex marriage. Same-sex couples are now able to marry in New York; the new law went into effect on July 24. The New York State Bar Association's policymaking body voted to endorse state recognition of same-sex marriage in 2009. The bar worked to re-frame the same-sex marriage debate by demonstrating that the issue was legal: that state statutes denied same-sex couples in New Yorkers equal rights. By creating a well-received memorandum for the governor, which showed that the law could strike a balance between guaranteeing the rights of same-sex couples and protecting the rights of all New Yorkers to religious freedom, the bar helped to persuade Republicans to back the bill.

The new law provides same-sex couples state-sanctioned benefits and protections in a wide range of areas, such as health care, property ownership, taxation, testimonial privileges, child custody, and tort rights. Despite the passage of Marriage Equality Act in New York, the federal government and other states will not recognize same-sex couples as spouses, due to the federal Defense of Marriage Act. Currently, only New York, Massachusetts, Connecticut, Iowa, Vermont, New Hampshire, and the District of Columbia issue marriage licenses to same-sex couples. With the exceptions of New Mexico, New Jersey, Rhode Island, and all the states allowing same-sex marriage, all U.S. states define marriage as between one man and one woman. Thus, the privileges granted by the Marriage Equality Act will not be recognized at the federal level, nor will the privileges be recognized in many states.

Civil unions, which provide state-level spousal rights to same-sex couples, are allowed in four U.S. states: Delaware, Hawaii, Illinois, and New Jersey. Domestic partnerships, which grant some state-level spousal rights to unmarried couples, are provided in California, Oregon, Nevada, Washington, Hawaii, Maine, Wisconsin, and the District of Columbia.

Information gathered from National Conference of State Legislatures website at www.ncsl.org/IssuesResearch/HumanServices/SameSexMarriage/tabid/16430/Default.aspx.

Seattle University School of Law's Dean Mark Niles is proud to announce the 25th anniversary of Seattle University School of Law's Academic Resource Center and the ways it is changing the face of the legal profession! The anniversary celebration recognizes the law school's uninterrupted commitment to access.

Friday, September 9, 2011

CLE on Access and Diversity in the Legal Profession — 3:30 – 5:30 p.m.

Reception with remarks from prominent members of the Bar — 5:30 – 7:00 p.m. Open to the public and the legal community.

Saturday, September 10, 2011

Reunion dinner for ARC alumni — 6:00 – 9:00 p.m.

Details will be included in a forthcoming formal invitation. For more information, contact Leann Wagele of the Dean's Office.

“The Business Case for Diversity 2011: Reality or Wishful Thinking?” seeks to answer two questions: Is the oft-discussed business case for diversity truly creating a more diverse and inclusive legal profession? And if not, how can the business case be more effective? To view the full report, please go to www.TheILLP.com and click on the report title on the top navigation bar.

Recent Court Decisions of Interest

Wal-Mart Stores Inc. v. Dukes

www.scotusblog.com/case-files/cases/wal-mart-v-dukes/

In *Wal-Mart Stores Inc. v. Dukes*, the U.S. Supreme Court raised the bar for plaintiffs in meeting the “commonality” requirement for class certification. On June 20, 2011, the Court held the certification of the nationwide class of female employees was not consistent with Federal Rule of Civil Procedure 23(a). Justice Scalia said the plaintiffs failed to provide proof a common company-wide policy of discrimination, which is necessary to certify a class under Federal Rule of Civil Procedure 23(a) (2). “To sue about literally millions of employment decisions at once, [plaintiffs] need some glue holding the alleged reasons for all those decisions

together,” said Scalia. Wal-Mart is the nation’s largest employer and *Wal-Mart Stores Inc. v. Dukes* was the largest discrimination class action in history, filed on behalf of more than one million current and former female employees. The suit was rejected in a 5-4 decision. The *Wal-Mart Stores Inc. v. Dukes* ruling split along ideological and gender lines. All three women on the court, Justices Ruth Bader Ginsburg, Sonia Sotomayor, and Elena Kagan, dissented, joined by Justice Stephen Breyer. The ruling’s effect is likely to restrict other large employment class actions.

State v. Monday

www.courts.wa.gov/opinions/?fa=opinions.disp&filename=827362MAJ

On June 9, 2011, the Supreme Court of the State of Washington reversed Kevin L. Monday Jr.’s first-degree murder conviction and remanded for a new trial because prosecutorial misconduct deprived the defendant of a fair trial. Prosecutorial misconduct is grounds for reversal if the prosecuting attorney’s conduct was both improper and prejudicial, determined by examining the conduct in the full trial context. The Court held that when a prosecutor flagrantly or apparently intentionally appeals to racial bias in a way that undermines the defendant’s credibility or the presumption of innocence, it will vacate the conviction, unless it appears beyond a reasonable doubt that the misconduct did not affect the jury’s verdict. In *Monday*, the Court found the prosecutor’s conduct, making blatant and inappropriate appeal to racial prejudice and undermining the credibility of African-American witnesses based on their race by repeatedly invoking an alleged African-American anti-snitch code, had a substantial likelihood of affecting the jury’s verdict.

Legal Info of Interest

“ABA Panel Considering Boosting Job Protections for Nontraditional Faculty,” by Karen Sloan. An ABA committee is leaning toward extending job protections for law school clinicians, writing instructors, and other nontraditional faculty in a way that would stop short of traditional tenure. <http://bit.ly/qWutyg>

“Discrimination Claims of Former DLA Secretary Against Firm Mostly Survive Dismissal Motion,” by Sheri Qualters. The discrimination and retaliation claims of a former DLA Piper secretary against the firm have survived a dismissal motion, but a Boston federal judge tossed a few of her claims against individual DLA employees. <http://bit.ly/o1GKgo>

“DOJ Urges Judge to Reject Honors Program Hiring Suit,” by Mike Scarcella. The Justice Department is urging a federal judge in Washington to reject a suit that alleges department officials in 2006 used job candidates’ political and ideological affiliation to decide whether to grant interviews to applicants. <http://bit.ly/mzOMz>

“High Court Practitioners: Increasingly Diverse,” by Tony Mauro. Women and minorities are making it to the upper echelons of Supreme Court practice. <http://bit.ly/mhkwi4>

“Human Rights Lawyer Fights Prohibitions Over Use of WikiLeaks Documents,” by Mike Scarcella. A lawyer representing a Guantanamo Bay detainee is challenging government prohibitions that restrict access and use of WikiLeaks documents in pending litigation in Washington federal district court. <http://bit.ly/ncwhBn>

“In Miranda Calculus, Age Should Be a Factor, Court Says,” by Marcia Coyle. Stressing that children are not “miniature adults,” a divided U.S. Supreme Court on Thursday held that the police must consider a juvenile suspect’s age in deciding whether the child is in custody and must be given Miranda warnings. <http://bit.ly/lwuext>

“Professor Hopes Bar Passage Data Will Produce ‘Crisper Debate’ over Affirmative Action,” by Karen Sloan. Richard Sander, a professor at the University of California at Los Angeles School of Law, since 2006 has been pushing the State Bar of California to release detailed data on the academic records, bar exam results and ethnicities of candidates for admission to practice. <http://bit.ly/o2uFUy>

“Settlement Reached in Bias Claim Against Duquesne School of Law,” by Karen Sloan. Duquesne University has settled two of the three discrimination suits brought in 2010 by members of its School of Law faculty, and the third case appears poised to be dismissed by a federal judge. <http://bit.ly/nAzHzq>

“Settlement Reached in Demand for Information About Death at Guantanamo Bay,” posted by Matthew Huisman. The Department of Defense has settled a complaint filed by Dickstein Shapiro involving the release of information related to the death of a Guantanamo Bay, Cuba, detainee under the Freedom of Information Act. <http://bit.ly/pEKP5z>

“Social Security’s Disability Judges Come Under Scrutiny,” posted by David Ingram. Two congressional committees took aim today at the Social Security Administration for how its administrative law judges decide disability claims, following reports that a handful of judges fall well outside the norm. <http://bit.ly/mQaTVa>
“The Dissent that Changed America,” by Leon Friedman and Richard Mark Gergel. On June 23, 1951, a little more than 60 years ago, a three-judge federal court panel sitting in Charleston, S.C., issued a majority opinion, upholding the state’s rigidly maintained practice of segregating school children on the basis of race. <http://bit.ly/nPOBXi>

Opportunities

King County Dependency CASA Program Needs Volunteers

The Dependency CASA (Court Appointed Special Advocates) Program of King County Superior Court needs community volunteers to investigate and advocate on behalf of youth who have been abused and/or neglected. Many of these children have been removed from their parents’ care and are living with relatives or in foster care. The CASA Program needs both lay volunteers and pro bono attorneys to advocate for dependent youth. For more information, visit <http://1.usa.gov/9CNDMJ>.

VABAW CLE Stipend and Membership Waiver Available

The Vietnamese Bar Association of Washington understands CLE attendance may require out-of-pocket expenses and has budgeted a limited amount of money to assist members. We also understand that membership costs may require an out-of-pocket expense and we have budgeted a limited amount of money to assist with membership costs. Please visit www.vabaw.org for additional information and application instructions.

Upcoming Events

August 10: Seattle University School of Law Critical Race Summer Film Series

The Critical Race Summer Film Series aims to inspire reflections and discussions on the intersectionalities of race, gender, nationality, class, sexuality, and the law. These screenings are open to Seattle University School of Law students, alumni, staff, and faculty, as well as to members of the equal justice community. The screening is scheduled for Wednesday, August 10, from 3:00–4:30 p.m. at the Seattle University School of Law School Annex, Room 143. Facilitated discussions will follow the screening. Driving and parking directions will be provided to all participants. See <http://bit.ly/diRfP1> for more information.

August 28: MBA Annual Summer Picnic, 11:00 a.m. to 2:00 p.m. at Seward Park.

September 22–23: BOG Meeting, Seattle. www.wsba.org/About-WSBA/Governance/Board-of-Governors

September 22: WSBA Annual Awards Dinner. www.wsba.org/News-and-Events/Awards

September 23–24: Race and Criminal Justice in the West. Gonzaga University School of Law. www.law.gonzaga.edu/News-and-Events/task_force_on_race.asp