



# LIFE BEGINS

A Publication of the  
Washington State Bar Association  
Senior Lawyers Section

Volume 15 Winter 2012-2013 Number 1

Co-sponsored by the WSBA Senior Lawyers Section

## Snap! Crackle! What's Popping in the Legal Profession

Annual Senior Lawyers Conference

Friday, May 10, 2013 - Seattle Airport Marriott

7:30 am	<b>Check-in • Walk-in Registration • Coursebook Distribution • Coffee and Pastry Service</b>	12:15 pm	<b>Networking Lunch</b> (Included with Tuition)
8:25 am	<b>Welcome and Opening Remarks by Program Co-chairs</b> <i>John G. Bergmann – Principal, Helsell Fetterman LLP, Seattle</i> <i>Stephen E. De Forest – Principal, Riddell Williams PS, Seattle</i>	1:40 pm	<b>Senior Lawyers Section Annual Business Meeting</b>
8:30 am	<b>The Art of Communication in Criminal Defense</b> <i>John Henry Browne – Principal, Law Offices of John Henry Browne PS, Seattle</i>	1:45 pm	<b>Community Property – How Have the Issues Changed?</b> <i>Karen E. Boxx – Associate Professor of Law, University of Washington Law School; Keller Rohrbach LLP, Seattle</i>
9:15 am	<b>Monies in Elections: How Presidential Campaigns Still Raised and Spent a Billion in 2012</b> <i>David Domke - Professor and Acting Chair Department of Communications at the University of Washington, Seattle</i>	2:30 pm	<b>Recent Developments in Estate and Gift Taxes</b> <i>Tom Culbertson – Principal, Lukens and Annis, Spokane</i>
10:15 am	<b>Break</b>	3:30 pm	<b>Break</b>
10:30 am	<b>Selection of Justices, Separation of Powers, and Funding for Education Under the Washington State Constitution</b> <i>Hon. Steven C. Gonzalez – Justice, Washington State Supreme Court, Olympia</i>	3:30 pm	<b>Managing a Practice Into Your Senior Years – A Panel Discussion</b> <i>Pete Roberts – LOMAP Manager, Washington State Bar Association, Seattle</i> <i>Michael Badger – Associate Director, Lawyers Services, Washington State Bar Association, Seattle</i> <i>Jerome L. Jager – Chair Emeritus, Senior Lawyers Section, Seattle</i> <i>Philip H. DeTurk – Chair Emeritus, Senior Lawyers Section, Pinehurst NC</i>
11:15 am	<b>The Ethics of Using Social Media in the Practice of Law</b> <i>Jeanne Marie Clavere – Professional Responsibility Counsel, Washington State Bar Association, Seattle</i>	4:30 pm	<b>Complete Evaluation Forms • Adjourn Conference</b>
		4:35 pm	<b>No-host Reception</b>

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# Snap! Crackle! What's Popping in the Legal Profession

## Annual Senior Lawyers Conference

Co-sponsored by the WSBA Senior Lawyers Section

Friday, May 10, 2013 • Seattle Airport Marriott • Seattle, WA



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## IRAs, Trusts, and Beneficiary Designations: What Works and What Doesn't

by Judd R. Marten – LeSourd & Patten, P.S.

There are several client situations in which planning with the use of trusts is desired, and therefore, a trust may be named as the death beneficiary of an Individual Retirement Account (IRA).<sup>1</sup> This may include estate tax planning for married clients who wish to fund a bypass/exemption trust or who wish to protect a large IRA against immediate and total access by the surviving spouse (even considering the unique and favorable income tax advantages of rollover and creation of a new IRA by the surviving spouse). This may also include clients with children and/or grandchildren who wish to ensure that a large IRA account is maintained, used, and distributed in the same way as other assets in trust for children and/or grandchildren rather than giving heirs the choice to cash out the IRA. In spite of accelerated timing rules for IRA distributions to a trust, an IRA owner may still prefer to guard against remarriage, provide assurance that residuary beneficiaries will be protected or carry out the intended plan of the IRA owner by designating a trust as beneficiary of an IRA. In other words, clients may want a trust for those beneficiaries they do not trust.

How can this be done in a way that maximizes the tax-deferred aspects of an IRA?

### Trusts as Beneficiaries: What Is the Payout Period?

If a person (an "individual") is named as IRA beneficiary, distributions must start by Dec. 31 of the calendar year following the calendar year of the IRA owner's death, and be paid over the life expectancy of the individual (using the appropriate table). Even if the individual were to die before receiving all benefits, the later recipient(s) could remain on the same payment schedule.

What about IRA distributions to a trust? The Internal Revenue Code and the IRS say *only* an "individual" can be a "designated beneficiary" for purposes of determining an IRA owner's post-death "applicable distribution period."<sup>2</sup> If a Bypass or Marital Trust or Grandchild's Trust is named as beneficiary, the IRA benefits will be paid to the trust, but the benefits might be dramatically reduced by the trust's payment of income tax either over the (shorter) remaining life expectancy of the IRA owner (if over 70½ at date of death) or five (5) years (if under age 70½ at that time) compared to the life expectancy of an individual beneficiary.

In order to maximize the "applicable distribution period," we want to "see through" a trust so that an "individual"<sup>3</sup> (as required by the IRS) can be tagged as the measuring life for distributions to the trust. The sensible way to

do this would be to select the age of the oldest current trust beneficiary, which would remain the payout period from that point on even if an older or even charitable residuary or contingent beneficiary later took this beneficiary's place. After all, estate planners aren't intentionally trying to "lock in" a longer payout period for a younger trust beneficiary, hoping that the younger beneficiary will die before final distribution so that an older beneficiary can get the longer payout period. However, that is the stated concern of the IRS. How do we allay this concern and prepare the beneficiary designation form (the "outbound" document) and the trust instrument (the "inbound" document) in support of a selected "individual" trust beneficiary as being treated as the "designated beneficiary"?

### Trusts as Beneficiaries: See-Through Status

There are two (2) ways to draft a trust or sub-trust as IRA beneficiary which will permit a "see-through" process to identify the trust beneficiary who will be the "individual" with the "applicable distribution period": (1) a Conduit Trust,<sup>4</sup> and (2) other See-Through Trusts.

#### (1) Conduit Trust

This is a safe harbor. A conduit trust has to provide that *anything* received by the trust from the IRA (*not just* the minimum required distributions (MRDs), but even distributions received by mistake or in excess of the MRDs) is immediately paid to or applied for the benefit of the trust beneficiary whose life expectancy is being used. This needs to be done until the death of the single beneficiary in a single share trust or the deaths of everyone in the group of beneficiaries if there are multiple beneficiaries of the trust.

Accumulations in a conduit trust are not permitted and, therefore, typical trust provisions regarding a standard of care, or other discretionary guidelines, will not be available. A conduit trust is virtually the same as naming an individual as beneficiary from an MRD standpoint, *except that* the IRA owner knows that IRA benefits *in excess of* the MRDs can remain *in the IRA* (not the trust), whereas an individual beneficiary could take out all of the IRA assets at any time.<sup>5</sup>

Even if the trustee only takes "bare minimum" MRDs during the life of the trust beneficiary, there may be little or no benefits for remainder beneficiaries of the trust if the beneficiary lives to a normal life expectancy. For example,

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children of a former marriage run the risk of receiving nothing after the death of a surviving spouse in a family/bypass trust. Also, in the case of a QTIP trust, all IRA income and QTIP income needs to be distributed to the surviving spouse, leaving nothing for remaining beneficiaries. So conduit trusts do not work for clients who want to provide for the surviving spouse while preserving IRA assets for his/her residuary heirs after the surviving spouse's death. A discretionary, "accumulation" trust with income and/or principal distributions subject to a standard such as maintenance, education, health and support, will fail to qualify as a conduit trust.

### **(2) Other See-Through Trusts**

If discretionary distribution flexibility is desired, then a conduit trust may not be the optimal instrument. In that case, one might consider a family/bypass trust that qualifies as a see-through trust beneficiary of the IRA.

For purpose of illustration, let's assume this trust may provide income and/or principal distributions subject to a support standard for the surviving spouse. Then, upon the death of the surviving spouse, the trust continues for children pursuant to a similar support standard until distributions are made at ages 25, 30 and full distribution at age 35. If a child does not survive the final distribution period, assets will remain in trust pro rata for the benefit of grandchildren until age 21. Contingent heirs will be named in the event that there are no surviving members of the immediate family.

At the outset it is important to decide whether the limitations, requirements, and accounting for see-through status would be onerous enough that a separate trust or sub-trusts should be created within the family/bypass trust. If this is the case, separation of the family/bypass trust into separate trusts or sub-trusts for receipt of IRA benefits should be included as both an authorization and instruction in the document (for example, separate sub-trusts for each child, which would permit not only separate investment but separate applicable distribution periods if also stated in the beneficiary designation). This is the "incoming" document. The "outgoing" document should also identify and designate the appropriate, separate trust (or sub-trusts) as beneficiary.<sup>6</sup>

What does the incoming see-through trust(s) need to say?

### **Individual Beneficiary Already Attained Age for Final Distribution**

Our family/bypass trust may already be a see-through trust because at least one individual beneficiary is old enough to receive the trust immediately and outright, so long as this is the case at the time of the IRA owner's

death. In the example of a family/bypass trust above, we are not required to look past the group consisting of the surviving spouse and children if, at the time of the IRA owner's death, looking at the identities of children and grandchildren, at least one of these individuals would be entitled to immediate and outright distribution of the trust if everyone else were predeceased (for example, a child is age 35).<sup>7</sup> In this situation (assuming the spouse survives) the surviving spouse's life expectancy will govern the MRD distribution period.

This will often be the situation, but not always. There is no way to be sure that an individual beneficiary will be both alive and at the age for distribution at the date of the IRA owner's death. For example, assume an only child has predeceased the surviving spouse with a three-year old surviving child (grandchild), and the surviving spouse and the three-year old are, therefore, the individual trust beneficiaries at the death of the IRA owner. Assuming there is an age 21 outright distribution age in the trust for the grandchild, and life-time only benefits in trust for the surviving spouse, contingent beneficiaries (such as a charitable entity) would be "counted." In this instance where the contingent beneficiary is not an "individual" for purposes of determining the "applicable distribution period," the trust would be subject to either the remaining life expectancy of the IRA owner, or the five-year rule. How can a trust that would otherwise be subject to these shorter distribution periods be written to provide more assurance of the ability to use an individual's life expectancy?

### **Spouse and Issue Only Beneficiaries**

In a typical family/bypass trust, the client has dual goals: to "provide" for the surviving spouse, and to "protect" children and grandchildren (possibly from another marriage) to the extent not "needed" by the surviving spouse. The client could be asked, "If all of your children and grandchildren were deceased at the time of your spouse's death, do you have a strong concern about benefits going to your contingent heirs (siblings, charity, etc.), or would it be okay if distributions went to your spouse's heirs instead?" If the client is not concerned about favoring his/her selection of contingent heirs, the family/bypass trust could provide that if all of the IRA owner's issue were to predecease the surviving spouse, the trust will terminate and be distributed to the surviving spouse. The trust would essentially provide, by its terms, that no trust beneficiary other than the surviving spouse and issue would "count" in determining the "applicable distribution period."<sup>8</sup>

If the issue predeceased the surviving spouse, he/she would then take over as the designated beneficiary of the inherited IRA in place of the trust. The surviving spouse

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could name successor beneficiaries for any benefits that remain after his/her death. The surviving spouse would not be required to "cash out" the IRA; rather, the IRA would continue to be subject to the surviving spouse's life expectancy for MRD distributions during his/her lifetime and then following his/her death. As a practical matter, if all issue predecease the IRA owner (X), the inherited IRA would be changed from "X, deceased, for the benefit of Q trust" to "X, deceased, for the benefit of Y (surviving spouse)."

### **Younger Individuals Are the Only Possible Residuary Beneficiaries via Trust Provisions and/or Power of Appointment**

In the above situation, assume that your client said, "I really don't want these benefits to go to my spouse's heirs, even if all of my children and grandchildren were deceased. I would rather that the IRA benefits go to my nieces and nephews."

The trust could state that the residuary beneficiaries, in the event that the IRA owner's issue were not surviving, would be "equally to my surviving nieces and nephews, or if under age 21 at that time, to such individual's parent or legal guardian as custodian under the Washington Uniform Transfers to Minors Act. If none of my nieces or nephews is surviving, then equally to the contingent heirs named in Article \_\_\_, excluding any charity or entity that is not an individual and excluding each individual beneficiary born prior to \_\_\_\_\_."

Alternatively, the IRA owner could give someone a limited power of appointment among a class of individual beneficiaries, again excluding charities or entities or older individuals. In default of exercise, the above provision benefitting nieces and nephews would apply.<sup>9</sup>

Either way, the surviving spouse's life expectancy should apply to the family/bypass trust as beneficiary. The surviving spouse will be the oldest beneficiary among a group (looking within the "see-through trust") which contains only individuals who are by definition younger than the surviving spouse.

The above are not the only types of discretionary trusts which may qualify for see-through status (the conduit trust being the only assured format described in Treasury Regulations), but they provide the underpinnings of what the IRS is looking for in issuing favorable private letter rulings.<sup>10</sup>

### **General, Protective Trust Provisions**

Conduit and see-through discretionary trusts need to be individually drafted to suit particular client situations, and the "outgoing" (IRA) and "incoming" (trust) documents need to be coordinated with each other.

However, as a safeguard and supplement to individual drafting there are general limitations and prohibitions

which will provide support for see-through status, and these can be included in a general, protective manner in a Will or Revocable Trust. The goal is to limit permissible trust beneficiaries to individuals, and "wall off" an entity, estate, or older contingent beneficiary from consideration in determining the applicable distribution period.

For example:

- The goal is the use of an individual's life expectancy for the distribution period. Therefore, it is a good idea to state that "... if an IRA or retirement benefit is payable to any trust or sub-trust, it is my intent that the trust be considered a qualified trust or see-through trust under Reg. Section 1.401(a)(9) with an individual trust beneficiary whose life expectancy is or will be used to determine the timing and amount of post-death distributions, and any non-complying or omitted provision of such trust or sub-trust shall be deleted or added, as the case may be, under the Washington State Trust and Estate Dispute Resolution Act."<sup>11</sup>
- Similarly, the following language will assist in "walling off" potential non-individual trust beneficiaries: "... it is my intent that all IRA or retirement benefits held by or payable to any trust or sub-trust will be distributed to or held for individual beneficiaries within the meaning of the minimum distribution rules and accordingly the trustee of any such trust or sub-trust shall not distribute such IRA or retirement benefits to or for the benefit of any estate, charity, or other non-individual beneficiary... nor will any debts, taxes, expenses of administration or other claims against or relating to my estate be charged to any such trust or sub-trust on or after Sept. 30 of the year following the calendar year of my death (or earlier determination date under the minimum distribution rules)."<sup>12</sup>
- Terms such as "children" and "issue" can be a problem if they could be older (via adoption) than the intended individual beneficiary, so it could be stated that "... an individual's child or issue shall not include an individual who is older than the oldest individual who was a beneficiary of any such trust or sub-trust at the date of my death."
- There should be a "cut-off" for the youngest beneficiaries (often grandchildren) to avoid bringing in contingent heirs such as older beneficiaries or charities, and yet not force distributions to be made to minors, so the following language could be used: "... whether as an individual beneficiary or beneficiary of a trust or sub-trust, if an individual has not yet reached 21 years of age at the time he/she is to receive IRA or retirement benefits,

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such benefits shall be distributed to his/her parent or legal guardian as custodian under the Washington State Uniform Transfers to Minors Act.”

- “Procedural” instructions and even “warnings” could be included, such as noting that the personal representative or trustee should deliver a copy of the Will/Trust to any plan administrator or custodian of IRA or plan benefits no later than Oct. 31 of the calendar year following death,<sup>13</sup> or mentioning and authorizing a “non-spousal direct transfer” to an inherited IRA under IRC Section 402(c)(11) for the benefit of a named beneficiary or trust for a beneficiary. [This is especially useful for a qualified plan which permits only a lump-sum payment of death benefits!]
- At the termination of an estate or trust it might be thought, erroneously, that the remaining IRA benefits need to be distributed outright to the estate or trust beneficiary instead of continuing to be paid pursuant to the distribution period applicable to the estate or trust (if the beneficiary desires, the beneficiary could always decide to cash out the benefits). So it could be noted that “... upon the closing of the estate or termination of any trust or sub-trust to which IRA or retirement benefits are payable, the personal representative or trustee is authorized and directed to transfer the right to receive such benefits to the applicable heir or beneficiary, without requiring or causing benefits to be distributed to such heir or beneficiary.”
- The community property interest in an IRA (or other non-ERISA plan) of the non-owner, non-participant spouse should be an interest which is governed by the Will of the spouse if this spouse predeceases the IRA owner/participant.<sup>14</sup> In a typical situation, this can be addressed by stating that such interest will be given outright to the IRA owning spouse, possibly with the ability to disclaim to the estate of the non-owner for non-pro-rata selection of assets. However, if both spouses want to name a trust as beneficiary, such as the family/bypass trust, and the Will of the non-owner so states, distributions from the IRA of the surviving IRA owner which go to the family/bypass trust of the deceased spouse may nevertheless be taxable as income to the surviving IRA owner.<sup>15</sup> A provision requiring payment or reimbursement to the surviving owner/participant of income or other excise or penalty taxes, which are actually payable by the survivor, as a condition of a trust or sub-trust receiving distributions, could be included among the other general, protective provisions. The payment and reimbursement provision should apply only if the survivor is actually subject to such taxes.

### Conclusion

Many advisors believe that the MRD guidelines applicable to trusts are needlessly restrictive and complex. I agree. The sensible approach would seem to be that so long as a family/bypass trust does not have an unusually older age for final distribution to residuary beneficiaries (and most family trusts provide for final distribution at age 35, perhaps age 40), then that should be good enough and potentially older uncles, aunts, charities, etc., as contingent, “wipe-out” beneficiaries could be ignored. Estate planners are not naming children as residuary beneficiaries with the hope that the surviving spouse’s age (or oldest child’s age if the spouse is deceased) will be “used” by the older uncle, aunt, or charity (certainly) as a way to artificially extend the tax-deferred IRA payout otherwise applicable to that individual or entity. Nevertheless, these guidelines have been spelled out and they should be complied with.

In the real world, one should be able to name a trust with some assurance that it will qualify as a see-through trust if: (1) a conduit trust can be used because protection of the remainder for residuary beneficiaries is not a priority and discretionary trust status is not required (as it would be for a special needs beneficiary for example), or (2) the residuary beneficiaries in a discretionary trust are both alive and old enough to receive outright distributions at the death of the IRA owner, or (3) another see-through drafting design is utilized, and (4) in all cases general, protective and administrative guidance is provided to the personal representative and trustee.

1 This discussion is limited to IRA accounts rather than including qualified plans. The minimum required distribution rules of IRC Section 401(a)(9) are equally applicable to IRAs and plans, but as a practical matter it is preferable and more common to be working with a large IRA account after rollover from a plan (for example, community property laws will apply to the IRA, protecting the non-participant spouse’s interests and permitting non-pro-rata selection of assets), or if death occurs before the IRA rollover by the living plan participant there could be a direct transfer to an inherited IRA account under IRC Section 402(c)(11).

2 IRC Section 401(a)(9)(E); Reg. Section 1.401(a)(9)-4, A-1.

3 Reg. Section 1.401(a)(9)-4, A-5(a) states that if the trust is valid under state law, irrevocable, the beneficiaries of the trust are identifiable, and documentation is provided to the plan administrator, the beneficiaries of the trust as *individuals* instead of the trust itself will be treated as being the designated beneficiaries. The trust beneficiaries *themselves* must also be individuals – after “looking through” the trust.

4 Reg. Section 1.401(a)(9)-5, A-7(c)(3).

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- 5 A conduit trust can create problems for an IRA owner who dies before age 70½ having named a conduit trust for the benefit of the surviving spouse. Under a special rule for surviving spouses generally, and as beneficiaries of conduit trusts, the MRD commencement date is deferred until the date the IRA owner would have attained age 70½. In PLR 2006-44022 this was the case, and the surviving spouse also died before the IRA owner would have attained age 70½, and the *five-year payout period* then applied to the IRA because the surviving spouse was treated as if the spouse were the IRA owner who died before age 70½ who had “not named a beneficiary” of the IRA prior to death – even though the conduit trust named residuary beneficiaries. IRC Section 401(a)(9)(B)(iv)(II) provides a similar rule for a spouse named as individual beneficiary who does not do a spousal rollover or treat the IRA as the IRA of the surviving spouse, and also does not name his or her own beneficiaries – in which case under many IRA accounts the remaining benefits would go to the spouse’s estate as default beneficiary and again the five-year rule would apply. *Note:* A Roth IRA naming a conduit trust for a surviving spouse would appear to have a *continuing* five-year problem on the death of the surviving spouse under the above PLR because there is no default rule other than the five-year rule (such as the remaining life expectancy of the Roth IRA owner or surviving spouse) if there is no “designated beneficiary” in view of the fact that a Roth IRA does not have an age 70½ lifetime required beginning date for the Roth IRA owner.
- 6 PLR 2005-37044 If there is an entity or older-than-desired trust beneficiary in the trust named as beneficiary, and it is not certain that both the trust and beneficiary designation clearly identify separate trust beneficiaries, the undesirable beneficiary could be removed via disclaimer (so long as done within the time-frame required for qualified disclaimer, PLR 2004-44033, PLR 2004-44034), or distribution of the benefits (PLR 2004-49041), or other assets (PLR 2006-20026, PLR 2006-20026), prior to Sept. 30 of the year following the calendar year of the IRA owner’s death. These steps, timely taken, will remove the undesirable beneficiary from the group of trust beneficiaries which would otherwise be considered regarding see-through status.
- 7 PLR 2004-38004, PLR 2006-10026; Reg. Section 1.401(a)(9)-5, A-7(c)(3), Example 1.
- 8 See footnote 5.
- 9 PLR 2002-35038.
- 10 A non-grantor beneficiary of a trust can be treated as the grantor of the trust for income tax purposes if the beneficiary has the sole, unrestricted right to withdraw assets from the trust. IRC Sections 678(a)(1), 672(f); Reg. 1.671-3 A grantor trust should qualify as a see-through trust with the grantor’s life expectancy being the applicable distribution period, although this is not entirely certain. See PLR 2006-20025, PLR 2008-26008, PLR 2000-23030 The ability of the beneficiary/grantor to withdraw assets from the trust, including MRDs, would make this an unfavorable format for a trust having retention of assets for residuary beneficiaries as an important goal, because the trust would be depleted if the beneficiary/grantor lived to normal life expectancy.
- 11 In earlier rulings the IRS permitted reformation (PLRs 2006-16-39, 40) when the defect was due to transfer between custodians and “new” forms were defective, and/or disclaimer or other actions were taken soon after death (PLR 2006-16-041). More recently, and in cases of reformation which dealt with the original IRA and/or individuals were being “added rather than removed” (which is counter to Reg. 1.401(a)(9)-4, Q & A 4 requiring that a DB be named at the date of death) the IRS has not permitted reformation as a way of correcting a non-DB designation or default designation. PLR 2007-42-026, PLR 2010-21-038.
- 12 See PLR 9809059 for the debts, expenses and taxes issue, and PLR 2002-35038, PLR 2004-10019, PLR 2004-53023 regarding “walling off” such items and non-individual beneficiaries.
- 13 This is the fourth requirement for a qualifying trust under Treasury Regulations, cited above in footnote 3.
- 14 RCW 6.15.020 *In re Estate of MacDonald*, 51 Cal. 3d 262, 794 P.2d 911 (1990).
- 15 IRC Section 408(g) provides that all of IRC Section 408 will be applied “without regard to any community property laws.” This provision of the Code was interpreted in *Bunney v. Commissioner*, 114 T.C. No 17 (2000) to cause income taxation to the IRA owning husband on IRA distributions, but contrary authority was also cited. IRC Section 408(d)(1) provides that IRA distributions are to be “included in gross income by the payee or distributee” but these terms have been interpreted to mean either the participant or beneficiary who *under the plan* (IRA) is “entitled to receive the distribution,” potentially leaving out someone who is not in this category but nevertheless actually receives a distribution.

## Three Seattle Lawyers Who Haven't Gone Far

by Hugh McGough



The 1940 U.S. census was published on April 2, 2012, after the 72-year wait required by statute. I used these census returns to take a virtual stroll on the Internet through my old neighborhood on the north slope of Queen Anne Hill in Seattle. There I was reminded that I was one of three young lawyers-to-be who grew up together during World War II next to anti-aircraft guns installed in nearby Mt. Pleasant Cemetery, search-lights in local parks, and barrage balloons tethered around Seattle to protect Boeing's production of B-17 Flying Fortresses from low-flying enemy aircraft.

American-born citizens with any trace of Japanese ancestry were evacuated from the West Coast, beginning with 225 residents of Bainbridge Island who were escorted onto trains by U. S. Army troops on March 30, 1942, and transported to internment camps in California and Idaho. Air-raid sirens went off in Seattle every Wednesday at noon. Volunteer air-raid wardens with gas masks enforced black-outs. Ration books were essential. After a Sunday family dinner in the early 1940s, my mother announced that the roast she had served was from the Montana Horse Meat Market in the Pike Place Public Market. Horse meat required no ration stamps. One of my jobs was to mix yellow coloring with unappetizing white globs of tasteless oleomargarine. Oleo cost half of the ration points of butter, which after 1941 was seldom available and always expensive.

### Three Adjacent Streets

In 1940, Ray Siderius, Walt Hageman, and I lived on three adjacent streets that ran east and west. Proceeding downhill from south to north, they were Raye Street, Newell Street, and Armour Street. Ray and I lived a short block east, and Walt a half a block west, of Queen Anne Avenue North, which ran north and south.

We three neighbor boys graduated from the University of Washington Law School in 1953 and 1954, and we have raised our families on or near Queen Anne Hill. Each of us has now practiced law for 57 years or more, not far from the neighborhood in which we grew up.

I found myself listed in the 1940 census return at 18 Newell Street as Hugh R. McGough, age 8, son and first of four children of Richard T. and Dorothy McGough, born in Washington, who was attending school (St. Anne Grade School) and had completed the second grade. My father's name was Thomas Richard McGough, although he usually used the name Richard. Most censuses and directories list

him as T. Richard McGough. Ancestry.com's index of the 1940 census inexplicably lists *McGough* as *McGovan*.

A block south and uphill from our house, at 21 Raye Street, lived Raymond H. Siderius Jr., age 11, son and middle child of Raymond H. and Catherine Siderius, born in Washington, who was attending school (also St. Anne) and had completed the sixth grade.

A block north and downhill from our house, and west across Queen Anne Avenue North, at 17 West Armour Street, lived Walter H. Hageman Jr., age 8, son of Walter H. and Gertrude Hageman. Born in Washington, Walt was attending school (at North Queen Anne Grade School) and had completed the second grade.

### Autos for Under \$700

All three houses are in good condition today and are in what continues to be a nice middle class neighborhood. Ray's house was valued at \$4,000. His father's occupation is listed as an engineer with the telephone company (Pacific Telephone & Telegraph Co.) with a 1939 annual income of \$3,100. Walt's house was valued at \$2,700. His father's occupation is listed as a cashier in the securities business (Grande and Co.) with a 1939 annual income of \$2,900. The McGough house was valued at \$5,000. My father's occupation is listed as a lawyer. No income is stated.

Average annual wages in 1940 were \$1,725 – down from \$1,970 in 1930. First-class postage stamps were three cents – and remained at that price until 1958. Life magazine was 10 cents; gasoline was 11 cents a gallon; the Seattle Times was five cents, 10 cents on Sunday. A new Chevrolet business coupe was advertised in the Seattle Times in April 1940 for \$659. New Hudsons and Studebakers were also advertised at below \$700. Pot roast was 16 cents a pound.

I attended kindergarten at North Queen Anne Grade School with Walt. While I was at St. Anne Grade School on the top of Queen Anne Hill about a mile south of our house, I often hitched a ride to school with Ray, his older sister Mercedes, and younger brother Bob, in their family Chrysler. Ray and I both graduated from O'Dea High School, Ray in 1945, and I in 1949. We both took our pre-law at Seattle University. Ray completed a hitch in the Army before law school, and entered law school in 1950. I entered law school in 1951 and, shortly after my graduation in 1954, was drafted into the Army as a private.

### One Marriage Each

Walt graduated from Queen Anne High School in 1949 (where he was a star tennis player), took his pre-law at the University of Washington (where he played varsity tennis), and entered law school in 1951. Ray and I served together

*continued on next page*

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### *Three Seattle Lawyers Who Haven't Gone Far* from previous page

as members of the editorial board of the *Washington Law Review*.

Each of the three of us has been married but once. Ray married Rosemary Barrett on Aug. 5, 1950, just before he began law school. Walt married Winifred (Winnie) Slater on June 13, 1953, while he was a law student. I married Matilda (Teel) Whelton on Oct. 6, 1956, in Galveston, Texas, while I was on active duty as a first lieutenant in the Judge Advocate General Corps of the U. S. Army.

Walt made a bit of legal history when he was sworn in to the Washington State Bar in July of 1955 by the commanding general of Nellis Air Force Base in Nevada while on active duty as a second lieutenant in the U. S. Air Force. Walt was assistant judge advocate and claims officer of the base. Upon completing his tour of duty, Walt returned to Seattle in 1956 and joined the downtown Seattle law firm of Skeel McKelvy – along with Mike Mines, another classmate of ours. In 1959, he moved his practice to the Ballard district of Seattle – about two miles north of where he grew up on Queen Anne Hill. He has maintained an office in Ballard since then. He and Winnie raised their three daughters in a home in the Blue Ridge area, about three miles north of his office. Winnie died in Seattle at the age of 77 on Oct. 9, 2009.

Ray served as an Assistant City Attorney of Seattle, from 1955 to 1959, when he joined two classmates from Seattle U. and the U.W. law school, Pat Corbett and Charlie Lonergan, in the downtown Seattle law firm of Corbett, Siderius and Lonergan, where he is now “of counsel” – but often in the office. His office has always been within three miles south of where he grew up on Queen Anne. Ray and Rosemary raised seven children on Queen Anne Hill. Two of their sons, Frank and Mike, are lawyers in Ray’s firm.

#### **When Radio was King**

After I was released from active duty with the U. S. Army in May of 1958, I became a Deputy Prosecuting Attorney for King County. I left there in Sept. 1960, to join George T. Nickell, a valued mentor and one of my favorite lawyers, in the small general practice firm of Nickell and McGough. In December 1962, to get some civil-trial experience, I joined what was then Northwestern Mutual Insurance Company (later Unigard) as an in-house trial lawyer. Later, I became general counsel of Unigard. My three-year commitment became a 32 year stay. In 1994, I moved to PEMCO Mutual Insurance Company as general counsel, a position from which I retired on June 30, 2012 – at the age of 81. My office at PEMCO was in the South Lake Union area of Seattle, less than three miles from where I grew up on Queen Anne Hill. Teel and I have raised our three children in the Magnolia district of Seattle, immediately west of Queen Anne, and also less than three miles from where I grew up.

During the 1940s, Mr. District Attorney was a 30-minute radio program that was broadcast on the NBC Blue Network, KOMO radio in Seattle.

The show challenged Jack Benny and Bob Hope for top ratings. These memorable lines opened each broadcast: “Mr. District Attorney. Champion of the people! Defender of the truth! Guardian of our fundamental rights to life, liberty and the pursuit of happiness!” We grew up with those lines echoing in our ears. The evil can be wrought by a government that flouts these values was taught to us by Nazi Germany. The satisfaction that Ray, Walt, and I have gained through our years of practicing law comes from achieving, in at least a small way, our childhood ambitions to become defenders of truth and guardians of the rights of our fellow citizens to life, liberty, and the pursuit of happiness.

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## Seven Questions Whether You're Retiring or Not Sure

by Phil DeTurk

At some point we practicing attorneys retire or we go to the Grand Courtroom in the Sky. It's our choice.

This article is for colleagues who at least want to consider retirement rather than stay with the practice of law until other events overtake them.

How would you answer these seven questions?

1. How much do you love the law, i.e., the practice of law?
2. Will you have enough money to support your present lifestyle? If not, can you supplement whatever funds will be available to you?
3. Have you decided what you will do with your time when you no longer have to spend somewhere around 50 hours a week involved in aspects of the law, including commuting back and forth?
4. Do you plan to live in your present home? If not, where will you go to retire?
5. Are you going to be a full-time retiree or just give lip service to retirement?
6. If travel is in your plans, will you soon become bored from such activities?
7. Do you want to maintain your bar membership, or make a complete break?

### Love, Liberty, and Court Rules

I will now consider each of the above questions from my viewpoint: a 50-year practitioner who has been away from the law for over five years.

1. I truly loved the law. What finally caused me to leave my practice? The overwhelming court rules topped my list. Other factors included the security requirements, the nitpicking by some judges, and my severe hearing loss.

It may well be that you don't want to give up the "power" of being an attorney, as there are numerous perquisites to being in the profession. I won't go into them as they would vary depending on the type of practice you have. However, you should certainly consider how important the law may be to you before you cast it aside just as you might a former client who keeps beseeching you for free services.

2. Once again, this is a personal thing. Some retirees can exist on social security and other tidbits. Most will need a strong resource, whether it's a retirement program, a working spouse, or independent wealth. I only suggest that you do a preliminary budget to determine how much you will need. Then you can determine if the wherewithal is there.

### Time on My Hands

Another important aspect to consider is how your expenses can be lowered. We had an early 'in joke' among our fledgling group around 1998 concerning the second motor vehicle. The consensus was that you should not expect your spouse to be your chauffeur. Keep that second automobile but review how you can reduce your expenses in such areas as club dues, new clothes, expensive meals out, mortgage payments, etc.

3. When you are out of the profession, you'll have a lot of time available for your use.

Eliminating travel to and from the office could result in the accumulation of 8-10 hours week. What do you do with it? Your present day hobby could take some of the time. Reading, which perhaps you were never able to squeeze in during the active practice, will be worthwhile.

I would suggest that just like the budget review mentioned in my response to question #2, you should program how you will allocate those hours which are no longer needed for the law. Once you determine how they will be used, you are on your way out the door. After all, duplicate bridge planning alone can use 15 hours a week.

4. Is it important whether you plan to stay in your present home? Yes, if you really want to get away from what you have been doing for many years. Your house is probably too big anyway, and it is in the same neighborhood in which you have lived as an attorney. So moving to another state where the weather is better might be important. You can always maintain a smaller residence in Washington, one which you will use when the Mariners are playing, or the weather is nicer, or it is not too hot in the eastern part of the state.

5. A simple yes or no to this. If you still plan to go to the office, talk to clients, do *pro bono* work, etc., you will not be fully retired. That alone should take care of the aforementioned budgetary problems. Yet it means that you will still be doing all of that getting-to-the-office routine and will not really be "retired."

### Keeping Things Fresh

6. Arnold Robbins spoke at an early CLE program put on by our Senior Lawyers Section well over a decade ago. He had recently retired and stated that once you have traveled you may not want to continue to do so. I took Arnie's words under advisement. Since pulling the plug from a permanent office over 10 years ago (I retained my status as an attorney by finishing several ongoing cases until 2006, which was my 50th year of practice), I have traveled extensively.

*continued on next page*

## Seven Questions Whether You're Retiring or Not Sure *from previous page*

In 2009 I took a trip around the world on an HAL cruise ship. I went westward and the stock market went down, down, down. Fortunately, we both recovered, me after 114 days at sea, and most of my investments over the next few years. That was to be the mother of all trips. I would take no more.

That turned out not to be true. I continued to do state-wide Road Scholar<sup>1</sup> programs to such places as Mobile, Ala; Altoona, Pa; and baseball spring training in Arizona and Florida (in different years).

This year, for the first time, Mr. Robbins' prognostication seemed to come true. I went to Italy for two weeks visiting Rome again, Florence, and Venice, for the third time. While I wasn't bored, I didn't feel the same zest as in my first visit to those great cities.

If there is a moral here, it is that there is a lot of the world to see but if you repeat the same ventures, you may not enjoy them as much. Thus, do something different for those trips. Visit the train museum in Altoona and enjoy the Bellingrath Gardens near Mobile Bay in Alabama.

7. There are several options regarding what to do with your bar membership. If you intend some sort of local legal work, you would be wise if not mandated to retain it. You can go inactive<sup>2</sup>, or you can obtain emeritus status and do *pro bono* work<sup>3</sup>. Or you can resign your membership, giving it all up with the possibility that should necessity demand, you can reinstate it after passing the bar examination again.<sup>4,5</sup>

When the occasional client does track me down, I have found it simpler to say that I am no longer a member of the Bar than to get involved in rehashing the client's former problem or tackling a new one.

*Phil DeTurk maintains honorary status in WSBA. He was originally admitted in 1956. When he is not on road trips or seeing the world, he resides in North Carolina.*

1 Contact Road Scholar (formerly Elderhostel, Inc.) at [www.roadscholar.org](http://www.roadscholar.org) or (877) 426-8056, for a free membership and information about thousands of worthwhile journeys throughout the world.

2 <http://www.wsba.org/Licensing-and-Lawyer-Conduct/Licensing/Membership-Changes/Inactive>.

3 <http://www.wsba.org/Legal-Community/Volunteer-Opportunities/Public-Service-Opportunities/Emeritus-Volunteers>

4 Editor's note: Starting July 2013, the Uniform Bar Exam is required to become a WSBA member.

5 If it is less than four years since resignation, 45 CLE credits and a readmission course are required instead of the bar exam.



Manage your membership anytime, anywhere at [www.mywsba.org](http://www.mywsba.org)! Using mywsba, you can:

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- Make a contribution to the Washington State Bar Foundation or to the LAW Fund as part of your annual licensing using American Express, MasterCard, or Visa.
- Join a WSBA section.
- Register for a CLE seminar.
- Shop at the WSBA store (order CLE recorded seminars, deskbooks, etc.).
- Access Casemaker free legal research.
- Sign up to volunteer for the Home Foreclosure Legal Assistance Project.
- Sign up for the Moderate Means Program.

*Editor's note: This article, a reprint from the Section's summer 2010 newsletter, was originally submitted to the Senior Lawyers Section for Life Begins, and with the permission of the author, it was forwarded to the Bar News for a wider readership. It appeared in the Bar News in March 2010. Being the 15th anniversary of the founding of our Section, we are once again reprinting it in Life Begins, its original intended home, for Section members who may have missed it in the Bar News or who just would like to read it again.*

## **Life Begins for Washington Lawyers Who Are "55 and Counting": A Brief History of the Senior Lawyers Section**

*by Philip H. De Turk*

It was 1995 and I was attending an ABA meeting in some city that hosted those events – Orlando, Florida, I recall. I belonged to the ABA Senior Lawyers Section. One of the meetings involved reports of the statewide organizations that existed. During the presentation, solicitation was made for more to be started.

The gist of the program was that each of us should sally forth into our own domain creating Senior Lawyer conclaves. I was skeptical. What would be the advantage of such a program? I did not respond, did nothing to foster the movement at that time.

Probably it was a meeting in another city in 1997 that finally caused me to believe there would be value in a Washington Senior Lawyers Section. I agreed to do my best for my mentors in the ABA to foster such a movement. I could say that the rest was history, but that is what this is about: the history of our section, now in its 13th year.

The first item that had to be completed back in 1997 was getting the WSBA to accept another section. To do that, a petition had to be prepared setting forth the purpose of the proposed group. It had to have 20 endorsers. Our section began with three general principles: We would have annual CLE meetings with subjects of interest to members of the Bar who were at least 55 years of age; there would be social events in various cities in Washington for our members; and we would issue a quarterly publication with articles by and for our members.

Jumping ahead, we have greatly succeeded with numbers one and three. Only two has been lacking, although we did put together a program in Spokane at the final state bar convention.

### **Fooling Around Yields a Motif**

Getting the 20 signatures was a difficult task. However, it need not have been. I learned later that the WSBA would have assisted in this effort. But I did it my way, going to the San Francisco ABA convention, where I corralled people I knew, seeking their John Hancock after explaining what I was trying to accomplish.

We were accepted in late 1997. Now all that had to be done was to get some members. An organizational meeting took place at the WSBA headquarters in downtown Seattle.

Exactly two people besides me attended. One was Howard Breskin, a longtime lawyer in Seattle. I was terribly dejected, but Howard urged me on, saying we should proceed as if we would have hundreds attending the first CLE meeting.

So we set it for August 1998 at the Sea-Tac Hyatt. Mr. Breskin helped me arrange an agenda and get the speakers. The WSBA advised they would give us seed money with which to front the first news publication, as well as some other mailings. These would be sent to lawyers who were admitted in 1958 and before, since the Bar keeps members' ages confidential.

I was in my office fooling around with the first quarterly newsletter. Suddenly it came to me: "Life Begins When You Retire," or perhaps "When You Retire, Life Begins." This was to be our motif: CLE subjects that would assist an attorney seeking retirement. The first issue advised all recipients of the forthcoming program. It was mailed around the spring of 1998.

### **Speakers at the First CLE**

Our first meeting's speakers were an eclectic group. We had Arnie Robbins telling about the travel he had done since retiring. Barrie Althoff talked about files and what the retiree should do with them. He also appeared again with Paula Ledbetter, my office manager, to discuss what can happen if a lawyer does not prepare for sudden death, insofar as his clients and caseload are concerned.

Stan Wagner chaired a two-hour session where laptop equipment for use in the office was reviewed. Then video aids for future trial use were demonstrated. Steve Jobes and Terry Tainter were speakers. The latest in the appellate field of decisions was presented, as well as the importance of various forms of insurance and trusts for the retiree.

Richard Gemson told us why we should have malpractice insurance, not only while still practicing, but for at least three years following termination of our legal efforts. Until the Statute of Limitations takes effect, lawyers are subject to suits by disgruntled clients.

Howard Breskin stepped to the fore with a humorous outline of what the retiree must anticipate: loss of office space and a secretary; loss of face; loss of income. Wow.

*continued on next page*

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## *A Brief History of the Senior Lawyers Section* from previous page

His talk probably did not inspire too many of our early members to unhitch from the practice.

We also had our first business meeting. During the weeks prior to the important CLE event, which had more than 100 attendees, individuals had sent in their \$20 to join the section. We were an active Section with more members than many of the others.

### **Around the State**

At that 1998 meeting, I was officially elected the next chair, or first chair, or following chair after organization had been completed. Fredrick Frederickson volunteered to be the second chair, beginning in August of 1999.

"Life Begins" was published every quarter. It was usually eight pages with some local topics as well as legal ones taken from other state publications (with the permission of the section involved).

Our next CLE annual meeting was also in August. A number of helpers materialized to arrange the program. These included Kenneth Selander, who became the third chair, and the always ready-to-serve Robert Berst, our fourth.

Somewhere along the line, the annual CLE event was shifted to early spring. It was also moved to the Sea-Tac Marriott. Monthly meetings of the officers began to take place, usually at the Broadmoor. Herbert Freise was a member of that Seattle golf club and arranged for our group of eight to 12 to gather there for discussion of CLE speakers and other events.

Bob Berst and I put together a program for Spokane to be held during the last WSBA convention. Sparsely attended, with some speakers withdrawing at the last minute, it was a marginal success. A program of ethics received some controversial input. The annual CLE was presented in Tacoma at the Fircrest Golf Course. Attendance was substantially lower than at the Marriott proceedings. The consensus has been that Sea-Tac is the best place for all future activities.

Following Berst, Pete Francis stepped forth to chair the organization. Our annual meetings never had fewer than 150 members attending at the cost of \$100. This fee included a lunch and cocktail party following the speakers. Jim McClendon's Pacific Financial Group sponsored these soirées, where no one ever took advantage of the drinks on the house.

### **13 Years and Counting!**

After Francis did a two-year stint as chair, Dudley Panchot headed the section for a period of time. His successor was Jerome Jager. It was during the latter's regime in September 2006 that we did a three-hour program prior to the honoring of the lawyers who had been WSBA members for 50 years. The number of attendees was adequate, but the effort was a money loser, due to the high expense of the meeting room.

Our current chair is Steve DeForest. Joanne Primavera ably served as secretary over the years. John Bergmann now serves in that capacity. The aforementioned Friese was active on the executive committee, as have been Gene Annis, Weston Foss, Thomas Wampold, and Roderick Dimoff.

Truly, without the efforts of these individuals, there would not be a section ready to celebrate its thirteenth year. Also, praise must be offered for the continuation of "Life Begins." After I moved to North Carolina in 2003 and could no longer do the job, Bob Berst took over. When he needed a sabbatical, the job was handed to Carole Grayson, although before assuming her duties, she confessed that, at a few months shy of "55 and counting," she was underage!

Then, too, our presence as a viable force among WSBA sections would not have lasted without the outstanding speakers we have had over the years — people who volunteered their time to do papers for use in the program booklets given to each member attending the function, and speaking for anywhere up to an hour. There have been well over 100 such people, so to name them at this time is not feasible. Suffice to say, we applaud each and every one of them.

As I conclude this third rewrite of the history, sitting in my den in Pinehurst, North Carolina, on Sept. 12, 2009, where it is 85 degrees outside, I realize that my final effort for the WSBA has come to pass. Henceforward, truly life begins here in the South.

*Philip H. De Turk attended George Washington University on a basketball scholarship and received a J.D. from GWU Law School. He was admitted to the WSBA in 1956. He has worked for small firms, as a solo practitioner, and at government positions. His career involved trial work including criminal, personal injury, real estate, and probate. He is now retired after 50 years of practice and lives in North Carolina to enjoy a life of golf and travel. He can be reached at hlipkruted@aol.com.*

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## Looking for a Pro Bono Opportunity?

The *www.ProBonoWa.org* is a tool for volunteers to locate and connect with pro bono opportunities around the state. This site provides clear and easy access listing of organizations, details about their service opportunities and resources that are available to support your service. Check out the pro bono directory to find an opportunity near you!

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*MCLE Regulation 103(f)* of the Washington State Board of Continuing Legal Education allows WSBA members to earn up to six (6) hours of credit annually for providing pro bono direct representation under the auspices of a *qualified legal service provider*.

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For further information contact Ana Selvidge, WSBA public service program manager, at 206-733-5905 or [anas@wsba.org](mailto:anas@wsba.org).

## Information for Your Clients

Did you know that easy-to-understand pamphlets on a wide variety of legal topics are available from the WSBA? For a very low cost, you can provide your clients with helpful information. Pamphlets cover a wide range of topics:

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## Article Ideas? Your Input Is Needed!

*Life Begins*, the Senior Lawyers Section newsletter which you are reading at this very moment, works best when Section members actively participate. We welcome your articles and suggestions regarding *your lives in or out of the law*.

Please contact Carole Grayson, editor, to submit an article, or if you'd like to write an article, or if you have ideas for article topics. Here's how to reach her: phone (206) 543-6486, email [cag8@uw.edu](mailto:cag8@uw.edu), fax (206) 543-3808, or mail at UW Student Legal Services, Box 352236, Seattle, WA 98195.

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Dudley B. Panchot <a href="mailto:anne1700@gmail.com">anne1700@gmail.com</a>
Thomas S. Wampold <a href="mailto:TSWampold@aol.com">TSWampold@aol.com</a>

### Emeritus

Philip H. DeTurk  
[hlipkruted@aol.com](mailto:hlipkruted@aol.com)

### BOG Liaison

Bill Viall  
[wviall@wkg.com](mailto:wviall@wkg.com)

### WSBA Support

Paris Eriksen  
[parise@wsba.org](mailto:parise@wsba.org)

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