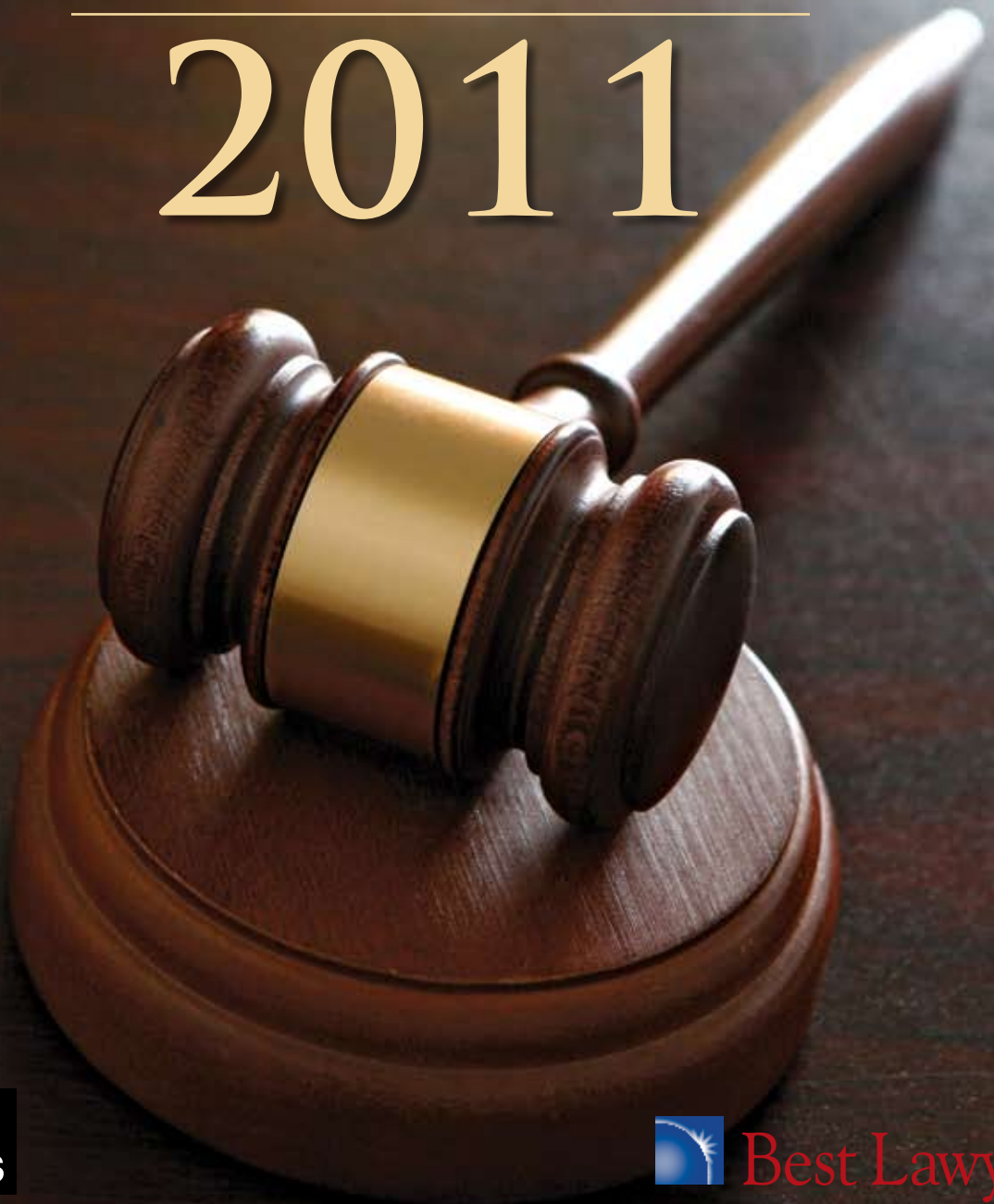


THE BEST LAWYERS IN WASHINGTON STATE

# BEST LAWYERS 2011

BEST LAWYERS | 2011



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# BEST LAWYERS 2011

AN UNCERTAIN ECONOMIC CLIMATE RAISES THE NEED FOR EFFECTIVE LEGAL COUNSEL.

BY GARY P. TOBER, LANE POWELL PC

**E**VERY YEAR brings opportunities and challenges, and 2011 is likely to be no exception. Competitive pressures, economic woes, high rates of unemployment, difficult to obtain financing and slow economic growth are among the challenges that businesses face. In addition, state and federal legislation could add to these business challenges with higher taxes, piles of administrative burdens, more rigorous enforcement and collection activities.

During 2011, obstacles are likely to arise in a number of areas. Obtaining sound legal advice would be beneficial in handling these obstructions and it could lead to a successful year.

Federal, state and local governments are short of revenue. While some government cutbacks have occurred, more are likely in view of the November elections. New and higher tax rates are generally viewed by those in government as the prescription.

Changes to the tax laws will be on the table during 2011. Various tax breaks may stay or lapse as the Bush-era income and estate tax cuts are scheduled to expire January 1. President Obama has proposed business tax breaks and a reform of United States tax rules applicable to international business and investment activities. Any reshuffling of the tax rules and rates will create uncertainty for businesses and require assessment of how tax situations should be handled.

The federal deficit has reached \$14.3 trillion and continues to grow. The present and future cost of financing this debt will adversely affect federal resources into the foreseeable future. Without raising taxes, there will be less funding for infrastructure projects, environmental improvements or support for education. The dampening effect on the American economy and its deficit will be a consideration for businesses.

We live in a global economy. Consumer products are as likely to come from

abroad as they are to have been made in the United States. For businesses, this means consideration of whether it makes sense to outsource production and to redefine the parameters of their business operations. Where is the market for a company's goods or services and how does the company most efficiently supply the market? Competitors for American consumers may be located in foreign jurisdictions. Wage and regulatory differentials between operating here or abroad may require a re-evaluation of basic business premises and necessitate the repositioning of assets.

In a global economy, businesses need to post people to other countries or employ foreign nationals. Such situations require the U.S. company to comply with immigration laws of different countries. Americans seeking employment or business opportunities outside of the United States must comply with foreign laws concerning employment, tax and immigration. Corporate actions, such as mergers and acquisitions, divisions of businesses and changing government policies, must also be addressed when pursuing foreign opportunities. Legal assistance on such matters can help avoid costly mistakes.

Disputes are the lifeblood of litigation. Litigation is the focus of many lawyers. However, litigation continues to be a costly process to resolve disputes. While the number of civil suits in the United States may actually be declining, the cost of bringing or defending a dispute to trial continues to rise. Alternative dispute resolutions (ADR) may be explored as a means of resolving legal disputes at reduced legal costs. However, while private, ADR can become a costly and involved process. Preventive action to minimize legal costs is always desirable.

Real estate continues to be a depressed area. Media sources report that there is an 8- to 9-year backlog of foreclosed homes held by banks. In addition, millions of homeowners are not current on

their home loans. Commercial real estate is also in a mire. Real estate prices are not likely to rebound until these distressed properties are worked through. For those with cash, the real estate market presents some interesting opportunities. For those who have leveraged their real estate, holding on to the property could be their primary endeavor during 2011.

The recently passed health care reform legislation will have a significant impact on many businesses and organizations. Decisions on employee health insurance benefit packages are likely to have financial implications. Businesses must begin to review options for health-care benefits, the costs and the impact on competitiveness. The November elections have set the stage for another political fight over health care. Whether Republicans will be successful in rolling back Obama's health care overhaul, or in starving elements of its funding, is uncertain. What is certain is that any proposal will add more complexity and cost to obtaining health care benefits. Keeping compliant will be easier with knowledgeable legal counsel.

Operating a business involves dealing with multiple challenges. Among those challenges are the laws and regulations in which the business operates. Legal aspects of business and investment must be considered to operate a business successfully. The advice and assistance of a lawyer can be invaluable.

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Though we consider each and every one of our attorneys to be among the "best lawyers," we proudly congratulate the nine Seed IP attorneys selected for inclusion in the 2011 edition of *The Best Lawyers in America*<sup>®</sup>.

# DON'T HIRE A LAWSUIT

WITH THE ECONOMY IMPROVING, MORE COMPANIES WILL BE HIRING NEW EMPLOYEES. USE GOOD HIRING PRACTICES TO AVOID FUTURE LAWSUITS.

BY DARREN A. FEIDER, WILLIAMS KASTNER

**I**N TODAY'S economic climate, businesses are confronted with an exceptionally large pool of talent for any available openings. Faced with so many applicants, it is even more critical to employ good hiring practices.

## JOB DESCRIPTION

Many employers do not have job descriptions for various positions because their preparation is time consuming and duties inevitably change or morph. However, it is important that clear expectations are established when the hiring takes place. At that point, you should keep the description sufficiently vague to add other duties when necessary.

A word of caution: the job description should reflect what the job actually requires. If the employee does not need a college degree or the ability to lift 100 pounds, the job description should not require such talents, and it will appear as if you are using subterfuge to screen out certain groups. If the job description calls for a specific ability and you hire someone who does not have that ability, the other applicants may assert discriminatory treatment.

## JOB APPLICATION

Employers should require all applicants to send not only a résumé, but also a proprietary employment application. This gives you more information about the applicant. Is the application completely filled out? Is it messy or disorganized? This information can be invaluable in making a good hiring decision. Also, look for any gaps in employment history. Has this person checked the prior crimes box, or "inadvertently" missed it? Third parties have been successful in suing employers for negligent hiring if the employer could have learned of the negative proclivities by following up on any gaps in the application form.

The purpose of the job application is to learn all that you can before you hire. The application should inquire into prior

experience and knowledge to perform the job. You should not ask about things that are not job related such as political affiliations, religion, age, or marital and family status.

Although the exact format of the job application is not significant, it should have an "at will" statement, which means that you are not promising employment for a specific term nor do you need "cause" to terminate the relationship. The "at will" statement should help prevent a breach of contract claim. The job application

**THE SINGLE BEST HIRING PRACTICE IS TO CONFIRM PRIOR EMPLOYMENT HISTORY AND CHECK REFERENCES. FORMER EMPLOYERS AND/OR SUPERVISORS ARE OFTEN A USEFUL SOURCE OF INFORMATION.**

should also contain a statement that the applicant agrees that the information provided is true and accurate, and that he or she can be terminated if it is false or omits details. Such a statement can be helpful should litigation come to pass with this employee. More important, such a statement encourages applicants to be honest and truthful from the onset of employment.

## PRIOR EMPLOYMENT HISTORY CHECKS AND RELEASES

The single best hiring practice is to confirm prior employment history and check references. Former employers and/or supervisors are often a useful source of information regarding the candidate.

To avoid the common problem of a for-

mer employer refusing to provide any information for fear of litigation, you should have the applicant sign a release in which he or she agrees not to sue the former employer for disclosing information. This document should be attached to the application though placed on a separate page. You should warn the applicant in writing that you intend to conduct a background check, that the applicant is authorizing such a check and that you may take adverse action based on your findings. Recently, several state and federal agencies have been challenging the use of credit and criminal history background checks as discriminatory for certain groups. Such checks raise interesting legal issues that require further discussion beyond the scope of this article.

## RESTRICTIVE AGREEMENTS

In certain industries or businesses, non-compete, non-solicitation or confidential agreements are standard, and contrary to urban legend, these agreements can be enforced if properly drafted and presented. Employers should ask the applicant if he or she is subject to any such agreement. You should not hire a "future lawsuit" or someone who may end up incurring attorney fees when that can be avoided. On the other hand, you may wish to protect your confidential, proprietary information or prevent an employee from soliciting your customers or competing with you for a certain period of time in a defined geographic area. The best time to obtain such an agreement is at the time of hire, when your leverage is at its best and employment can be consideration for the agreement.

## INTERVIEW PROCESS

Besides checking with prior employers and confirming educational or job training, the in-person interview remains the best way to ensure that you hire the best available candidate. Interviews should be conducted in person so that you can gauge the applicant's responses and your



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ability to interact with him or her. Best practices dictate that you should interview only qualified applicants. The sifting out process should be completed with (1) an accurate job description, (2) a completed application and (3) a prior employment history check.

The contents of the interview should be based on the necessary job duties, the application information and most important, what you think makes a good employee for the particular position. Find out if the applicant understands what the position requires and his or her ability to perform those duties. Many employers use an outline of standard questions to ensure that

the key issues are covered. To drill down further, some employ hypotheticals to gauge how an applicant would respond to particular job-related situations. It goes without saying, but you should avoid questions about age, race, citizenship, national origin, politics, religion, gender, family plans, disability, etc. Such questions are not job related and can expose you to a discrimination claim by those who are not hired. If you find that you are doing all of the talking or that the applicant only asks questions about vacation, benefits and pay scale as opposed to the questions about the organization, this person may not be the best fit for you.

## HIRING DECISION

You should hire the most qualified person for the position. You should follow your intuition or gut on the hiring decision. However, an accurate job description, completed application, employment history check and proper interview will make that hiring decision the best.

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# METHODOLOGY

This list is excerpted from the 2011 edition of The Best Lawyers in America, the preeminent referral guide to the legal profession in the United States. Published since 1983, Best Lawyers lists attorneys in 91 specialties, representing all 50 states, who have been chosen through an exhaustive survey in which thousands of the nation's top lawyers confidentially evaluate their professional peers. The 2011 edition of Best Lawyers is based on more than 2.8 million evaluations of lawyers by other lawyers.

The method used to compile Best Lawyers remains unchanged since the first edition was compiled more than 25 years ago. Lawyers are chosen for inclusion based solely on the vote of their peers. Listings cannot be bought, and no purchase is required to be included. In this regard, Best Lawyers remains the gold standard of reliability and integrity in lawyer ratings.

The nomination pool for the 2011 edition consisted of all lawyers whose names appeared in the previous edition of Best Lawyers, lawyers who were nominated since the previous survey, and new nominees solicited from listed attorneys. In general, lawyers were asked to vote only on nominees in their own specialty in their own jurisdiction. Lawyers in closely related specialties were asked to vote across specialties, as were lawyers in smaller jurisdictions. Where specialties are national or international in nature, lawyers were asked to vote nationally as well as locally. Voting lawyers were also given an opportunity to offer more detailed comments on nominees. Each year, half of the voting pool receives fax or e-mail ballots; the other half is polled by phone.

Voting lawyers were provided this general

guideline for determining if a nominee should be listed among "the best": "If you had a close friend or relative who needed a real estate lawyer (for example), and you could not handle the case yourself, to whom would you refer them?" All votes and comments were solicited with a guarantee of confidentiality – a critical factor in the viability and validity of Best Lawyers® surveys. To ensure the rigor of the selection process, lawyers were urged to use only their highest standards when voting, and to evaluate each nominee based only on his or her individual merits. The additional comments were used to make more accurate comparisons between voting patterns and weight votes accordingly. Best Lawyers uses various methodological tools to identify and correct for anomalies in both the nomination and voting process.

Ultimately, of course, a lawyer's inclusion is based on the subjective judgments of his or her fellow attorneys. While it is true that the lists may at times disproportionately reward visibility or popularity, the breadth of the survey, the candor of the respondents, and the sophistication of the polling methodology largely correct for any biases.

For all these reasons, Best Lawyers lists continue to represent the most reliable, accurate and useful guide to the best lawyers in the United States available anywhere.

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John Hempelmann is recognized as one of the premier land use, natural resources and real estate development attorneys in the state of Washington, and he has worked extensively to help form the legislation that governs Washington's land use law. John's many innovative projects include large, combined conservation and development transactions in Washington and Maine.

Don Marcy is a leader in land use and real estate development matters. He has guided many of the region's significant business park, retail, and mixed use projects through the development process to a successful conclusion. He is very active in NAIOP, the commercial real estate development association, and is currently Chairman of the Government Affairs Committee, Washington Chapter.

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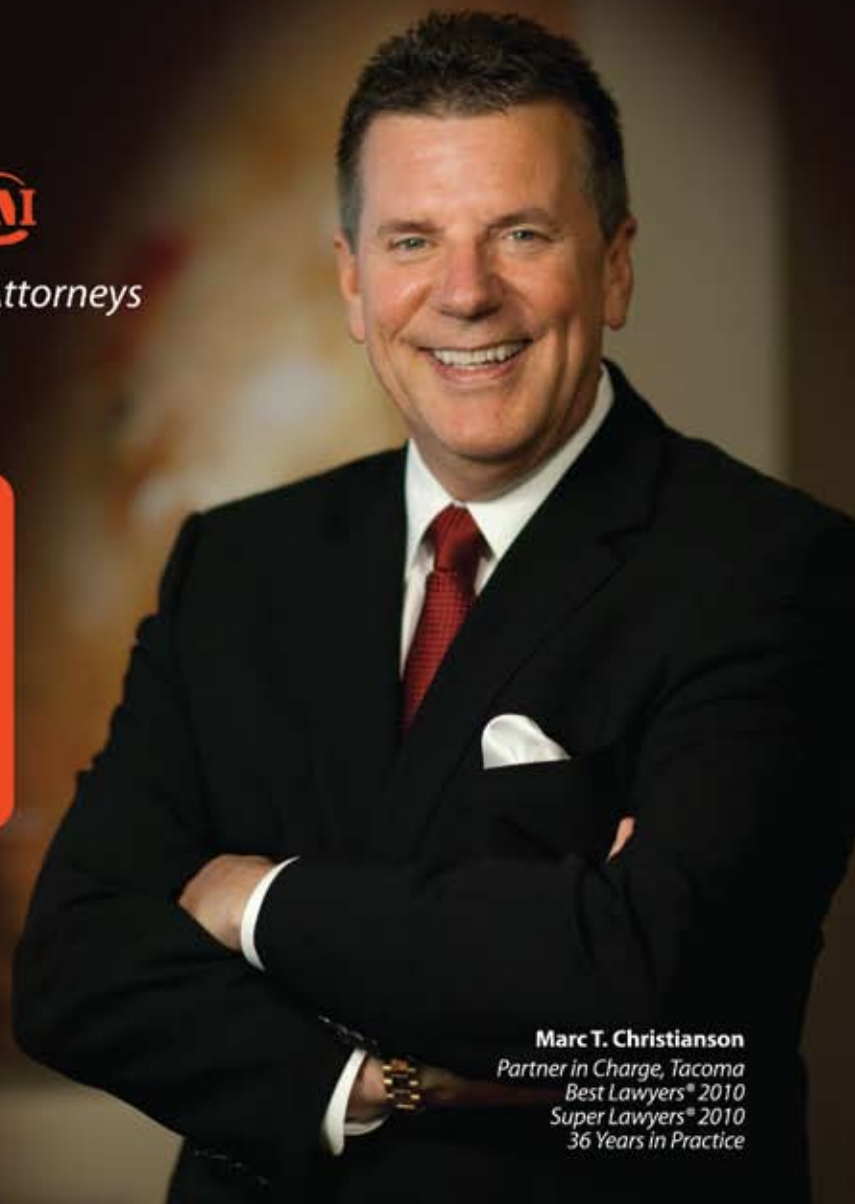
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CAMDEN M. HALL'S practice concentrates on:

- Complex family, property and parenting disputes
- Prenuptial and marriage agreements
- Business litigation
- Settlements
- Second opinions
- Special deposition counsel
- Alternative dispute resolution (as a mediator or arbitrator)
- Related appellate work in Washington State and federal courts

Family disputes generally involve significant parenting, financial and other issues. Cam is especially sensitive to the unique pressures on parties to such disputes and does not treat them as participants in just another lawsuit. The usual result is an amicable settlement. However, when necessary, his clients' rights are vigorously asserted at trial.

In addition to specializing in family and business issues, Cam has significant experience in appeals (as amicus curiae or counsel of record), class-actions, constitutional law litigation, municipal, alternative dispute resolution and international litigation (People's Republic of China).

Cam also serves as an arbitrator of other attorney and client fee disputes. He has been a Seattle Municipal Court Judge Pro-Tem and King County Superior Court Judge Pro-Tem. For many years he has been listed in *The Best Lawyers in America*, "Super Lawyers" and has an "AV" Martindale Hubble rating.



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