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# WASHINGTON STATE BAR NEWS

LANDLORD-TENANT: A NEW BILL OF RIGHTS

## Washington State Bar News

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### IN THE NEWS



### DEPARTMENTS

# Editor's Notes

Reasonable attorneys' fees may now be recovered by the prevailing party in damage suits for $1,000.00 or less. An amendment to RCW Chapter 4.84, which took effect on June 6, provides for allowance of such fees regardless of whether the action is commenced in Justice Court or Superior Court (ch. 84, L.1973).

Fees may be recovered only by the "prevailing party." To be regarded as a prevailing party, a plaintiff must serve a written offer to settle, and equal or better the offer at trial. A defendant is the prevailing party if the plaintiff recovers nothing, or no more than defendant's offer of settlement.

If both parties have made offers, but plaintiff recovers less than the amount he has demanded in settlement but more than that offered by the defendant, there is no "prevailing party." Plaintiff must recover *as much as or more* than he has demanded. (Sec. 2). Defendant is the prevailing party only if the plaintiff recovers *the same as or less* than defendant has offered.

Under the new statute, the offer of settlement must be "served on the adverse party in the manner prescribed by applicable court rules." (Sec. 4) The reference to an adverse *party* indicates the statute is intended to apply only to offers of settlement made after commencement of litigation, but the point is not altogether clear.

There is presently no court rule specifically dealing with offers of settlement by a plaintiff. CR and JCR 5 (b) prescribe the manner of serving similar documents, but deal only with documents subsequent to the original complaint.

CR and JCR 68 detail a method by which a *defendant* can make an offer of judgment, ten or five days before trial respectively, and impose costs subsequently incurred upon a plaintiff who fails to accept and who does not obtain a judgment more favorable than the offer. These rules specify that an offer can be continually improved up to the specified number of days before trial.

The new statute does not specifically authorize the court by rule to set a number of days before trial after which an offer will not be considered effective to actuate the statute. By the language of the statute, only the *manner of service* is to be determined by court rule.

Can a plaintiff drop his demand from $900 to $600 at the beginning or half-way through trial, and recover attorney's fees as part of his costs if he recovers judgment of $650? Conversely, if a defendant raises his offer from $400 to $700 during trial, and plaintiff recovers $650, is the defendant entitled to attorney's fees? A literal interpretation of the statute indicates that the court *shall* award *reasonable* attorney's fees in these situations.

What are *reasonable* attorney's fees? If the offer is reduced for the first time during trial, or shortly before, is the adverse party entitled to fees for time spent throughout the dispute, or only for efforts expended after the offer of settlement was first made? The statute gives no clue. Use of the term *"reasonable amount,"* however, seems to give the court discretion to consider factors beyond the time, skill and effort of the attorney in setting the fee.

What effect has an offer with a time limit? For example, shortly after commencing suit, plaintiff offers to settle for $700 if paid within 10 days. After the 10 days have expired, defendant offers to pay the $700. Plaintiff tells the defendant that he lost his chance to settle, and demands $750 plus $250 attorney's fees to settle. The case is tried, and plaintiff recovers a $750 judgment. Is plaintiff a "prevailing party"? Probably he is. Nothing in the statute requires a party to keep his offer open up to the time of trial.

The statute is limited to an *action for damages.* No suits solely for recovery of property and not all suits for recovery of money, therefore, are included.

The provision of the statute stating it shall apply regardless of whether the action is commenced in Justice Court or Superior Court may contain a trap. Article IV, Section 6, of the Washington State Constitution seems to state that the Superior Court has original jurisdiction only in cases in which the demand is in excess of jurisdiction granted to Justices of the Peace. The Superior Court could properly award attorney's fees, therefore, in suits for less than $1,000 arising out of false imprisonment, defamation, or the like, over which Justice Courts have no jurisdiction (RCW 3.66.030), but the Superior Court may well lack original jurisdiction in other actions for damages of less than $1,000.

The primary purpose of the statute is to make it economically feasible for an injured plaintiff to take his small damage suits to court. If attorneys become aware of and utilize the statute, the goal should be achieved.

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# The President's Corner

## More About Judicial Reform

In December of last year, with the 1973 legislature about to convene, the Bar News devoted considerable space to discussion of judicial reform. Judge Utter of our Supreme Court urged reform from the point of view of a judge subject to the economic and political pressures and vagaries of the popular election. Ken Billington, chairman of our highly regarded Citizens Committee on the Courts, keyed his article to citizen conviction that our judges and court system, though good, would, and should be, greatly improved and strengthened by wide ranging revision of the Judicial Article of our State Constitution. Other articles reported on a series of conferences on judicial reform throughout the state sponsored by the Citizens Committee and other organizations, and earlier action taken by the Board of Governors looking toward revision of the Judicial Article. The letters to the Editor included one from Milton C. Smith supporting such efforts and I, in the President's Corner, held forth on the same subject.

A great deal of further effort by representatives of the Bar Association and other groups has been expended since last December. Results to date are inconclusive but the Board of Governors remains hopeful that the legislature will take action on judicial reform in the September mini-session. Some of what has occurred in the intervening months is set forth in the following paragraphs.

The Board of Governors determined not to resubmit its own bill for judicial reform but instead to give wholehearted support to the legislation proposed by the Citizens Committee, which contained most, but not all, of the key changes sought by the Board of Governors. The Citizens Committee bill was supported by many lawyers and by many judges at all court levels. However, a number of lawyers and judges were unable to resist an inclination to challenge one or more of its provisions.

Perhaps the most hotly debated issues were those having to do with whether the present system of popular election of judges, with incumbents standing for re-election against all comers, should be supplanted by what is known as the "merit selection system" whereby, in the event of a judicial vacancy, the Governor would appoint from a small list supplied by a judicial nominating commission, and an incumbent would run, periodically, not against live opposition but simply upon his own record, the so-called "retention election."

Resistance to merit selection and the retention election was not limited to lawyers and judges; it was actively opposed, also, by representatives of labor. As a result, a compromise bill was filed (SJR 113) which, while it retains the concept of popular election, would permit change to some form of merit selection or other election procedure by a two-thirds vote of the legislature or by the initiative process. Under this bill, the election campaign pressure on judges would be lessened by extending the term of the Superior Court judge from four to six years and of the judges of both appellate courts from six to eight years. It retains the Citizens Committee concept of a strong, broadly based commission (with citizen, judge and lawyer representation) whose principal function would be in the area of judicial discipline and removal. Ultimate control of the administration of the courts would remain with the judiciary, as in the Citizens Committee bill (rather than with an independent commission), with the Chief Justice of the Supreme Court as administrator. The Chief Justice would be selected by his brethren. His authority would be strengthened (a) by a ten year term, (b) because he could succeed himself, and (c) by extending his tenure on the court by a minimum of two years following the expiration of his term as Chief Justice.

For the inspired, conscientious advocate of total judicial reform, the compromise bill may seem to fall short of perfection. The concessions which it reflects may, however, be just what is needed to obtain the enactment of meaningful legislation in the September mini-session. In any event, the compromise bill has the full support of the Board of Governors as representing several giant steps forward toward greatly needed improvement. Your help is earnestly sought. Word from you to the legislators from your district can make all of the difference.

What do you think of this?

# WASHINGTON'S RESIDENTIAL LANDLORD-TENANT ACT OF 1973

by: Don Clocksin

The Washington State Legislature has passed the "Residential Landlord-Tenant Act of 1973." Chapter 207, Laws of 1973 (43rd Leg., 1st Ex. Sess.). The act will go into effect on July 16, 1973, and is the first major alteration of state landlord-tenant laws since they were originally passed in 1891. This article will summarize the act's key provisions and compare them with the old law in Washington.

Many of the sections of the act merely codify in statutory form something similar to what case law now requires. Some alterations have been made during that process. In addition, a number of new concepts have been established.

### Landlord Duties

There are a limited variety of situations where present Washington case law imposes a duty on the landlord to repair, or at least disclose, defects. He must repair if there is an explicit covenant to repair — written or oral. E.g. *Pappas v. Zerwoodis*, 21 Wn.2d 725,153 P.2d 170 (1944), (written covenant to repair); *Mesher v. Osborne,* 75 Wash. 439, 134 Pac. 1092 (1913), (wrongful death liability for failure to disclose concealed defect); *Rossiter v. Moore*, 59 Wn. 2d 722, 370 P.2d 250 (1962). He is liable for failure to repair a hidden defect known to him and not to the tenant. *Flannery v. Nelson*, 59 Wn.2d 120, 366 P. 2d 129 (1961); *Thomas v. Housing Authority of Bremerton*, 71 Wn.2d 69, 426 P.2d 836 (1971). Local housing codes may impose obligations to repair and maintain the property. See e.g. City of Seattle Housing Code, Chapter 27, *et. seq.* Violation of a statute is actionable negligence, *White v. Peters*, 52 Wn.2d 824, 329 P.2d 471 (1958).

The obligations imposed by case law have their limitations. They are not usually imposed by implication; they often require only disclosure, not repair; they are intertwined with tort law and therefore difficult proof problems exist; and most importantly, those obligations or covenants remain independent of the covenant to pay rent. *Income Properties Investment Corp. v. Trefethen*, 155 Wash. 493, 284 Pac. 782 (1930). In addition, sources of case law are not generally available to the public, so common knowledge is often erroneous and confusing.

In the new statute the duties and remedies are codified and apply on a statewide basis. The act requires the landlord to keep the rented premises "fit for human habitation." (Sec. 6). In particular, he must substantially comply with all applicable governmental codes and regulations. If a "grandfather clause" in a local code exempts a dwelling, it is also exempted from this first requirement. If a conflict arises between the obligation to comply with a code and another obligation in the act, and the code imposes a *greater* burden, then the landlord's duty shall be to comply with the greater duty.

Section 6 goes on to require the landlord to maintain structural components in good repair. He or she must keep common areas clean and safe and provide a rodent and insect control program. He or she must maintain the dwelling in as good a condition as it should have been at the initiation of the tenancy, normal wear and tear excepted. There is an obligation to provide "reasonably adequate" locks and keys. In Seattle, as an example, this obligation will require compliance with a new provision in the Seattle Housing Code which requires deadbolts or deadlatches and requires that, in most circumstances, locks must be changed when a tenant moves out. (City of Seattle Housing Code 27.28.010)

The landlord must maintain electrical, plumbing, heating and other facilities and appliances in working order, keep the dwelling reasonably weathertight, provide garbage removal service in multiple unit buildings, and, except where the building is not already equipped, provide facilities which supply heat and hot and cold water.

Finally, the landlord — who is defined in Section 3 as the owner, lessor or any designated representatives of those persons — must tell the tenant who the "landlord" is and how to contact him. If no designation is made, then the person to whom rent payments are made shall be considered the representative "for purposes of service of notices and process."

The act has a unique time limit section which varies the amount of time in which the landlord must commence repairs by how serious the defect is. (Section 7.) The landlord's failure to repair then allows the tenant to utilize the remedies given him or her under the act. A defect which results in loss of water or heat or creates a hazard to life must be attended to by the landlord within 24 hours. Correction of a failure to provide hot water or electricity must be commenced within 48 hours after the landlord is notified. Repairs of less serious defects must be initiated within seven days. This includes items which need not be repaired in 24 or 48 hours but which will cost less than the lesser of $75 or one-half month's rent to repair. All other defects which violate the act must be dealt with by the landlord within 30 days of notice.

Additional duties of the landlord appear throughout the bill. Two days' advance notice is required for entry into the dwelling, except in emergencies. (Section 15.) The landlord may not use his common law right to attach personal property. (Section 23(4).) The landlord may never "lock-out" a tenant (Section 29(1) ) nor may he cause the termination of utility service, except to make repairs. (Section 30.) The penalty for this violation is actual damages plus up to $100 per day for each day the utilities are off.

The act (Section 23) forbids a waiver of any rights or remedies granted in the act, except that the parties can opt out of certain sections of the act if the conditions in section 36 are met. Section 23 also prohibits rental agreement clauses that: 1) authorize confession of judgment, 2) require the tenant to pay attorney's fees except as the act otherwise allows, 3) limit the liability of the landlord or indemnify him for that liability or for costs, or 4) commit the parties to a particular arbitrator before a dispute arises.

### Tenant Remedies

The essence of any bill reforming the landlord-tenant relationship is the remedies given to the tenant. A suit for damages or other traditional judicial relief is commonly not available to the low-income tenant. The cost often exceeds the recovery. The use of any legal "self-help" remedy (other than moving) has been effectively denied by statutes prohibiting most defenses from being raised in an unlawful detainer action. R.C.W. 59.12.030, .140; *Tuschoff v. Westover*, 65 Wn.2d 69, 395 P.2d 630 (1964).

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Mr. Clocksin has been active in welfare and landlord tenant reform, both through litigation and legislative action. He served as a registered lobbyist representing the Washington State Low-Income Housing Coalition during the last State Legislative session and was active in the drafting and passage of the Residential Landlord-Tenant Act of 1973.

The act codifies one common law remedy and creates other new ones. Case law sets out the principle that there is an implied covenant of quiet enjoyment of the rented premises. A branch of that covenant which forces the tenant to move results in constructive eviction. Constructive eviction releases the tenant from the obligation to pay rent and in addition, authorizes the recovery of damages. *Washington Chocolate Co. v. Kent*, 28 Wn.2d 448,183 P.2d 514 (1947). The act codifies that principle. (Section 9(1).) A time limit is imposed, during which the landlord is on notice that he must repair. If he doesn't, the tenant can give written notice and move. The notice need not be in advance. The importance of the remedy is that it is fast and the tenant can get his prepaid rent and deposit returned.

The second remedy given to the tenant for the landlord's failure to repair and maintain is commonly referred to as the "repair and deduct" remedy. (Section 10.) At common law, the tenant did not have a right to make repairs with rent money. *Philips v. Port Townsend Lodge F. & A.M.*, 8 Wash. 529, 36 Pac. 476 (1894). The act allows the tenant, upon notice to the landlord and a waiting period, to contract to have repairs done or to do them himself or herself. The cost of repairs can be deducted from the rent in an amount up to one month's rent in every twelve months for contracted repairs and up to the lesser of one-half month's rent or $75 each twelve months for repairs done by the tenant. The fact that less rent is paid than was agreed to between the parties will not be grounds for the landlord to prevail in an unlawful detainer action brought for non-payment of rent.

The third remedy (Sections 11-12) allows the tenant to go to a court or an arbitrator and obtain a declaration that the landlord's failure to repair, after notice, has resulted in a diminution in the value of the premises justifying a reduction in rent owed. The tribunal has the power to reduce the rent, award retroactive relief from the date the landlord was first notified of the defect, order the tenant to make repairs without the dollar limits contained in the preceding section, or terminate the tenancy. No remedy similar to this exists in the present state law, though an action to alter contract terms for fraud or deception may have been appropriate in certain situations. A case awaiting decision in the State Supreme Court seeks to establish a similar principle, based on a case-law warranty of habitability. *Foisy v. Wyman*, Supreme Court No. 42605.

### Retaliation

A new concept in the state law is the protection a tenant has from retaliation by the landlord. (Sections 24-25.) Protected tenant acts are complaints to code enforcement agencies and assertions of rights given under the act. The landlord may not evict a tenant, increase his or her rent, reduce services or increase obligations if he or she is retaliating against the tenant for those acts. If one of those reprisals occurs within 90 days of a protected act, there is a presumption that it is retaliatory. While the general rule remains that a landlord of private housing may evict or raise the rent without cause, this section provides an important exception. A landlord now may not evict or increase rent if the purpose is to punish a tenant for asserting his legal rights.

### Deposits

The Washington act finally gives some statutory attention to the problem of deposits. (Sections 26-28.) It requires that, at the initiation of the tenancy, the deposit be identified as to type (rent, damage, cleaning) and conditions for its return. That deposit must be placed in a trust account and the tenant must be told where his or her money is deposited. The deposit must be returned or a "full and specific statement" of the basis for retaining any part must be delivered to the tenant within 14 days of vacating. No deposit can be withheld for normal wear and tear. This could even, arguably, include a non-returnable cleaning deposit. (Section 26.) However, it does not seem consistent to allow non-returnable deposits but forbid their use for normal cleaning. The act does not put dollar limits on deposits that can be charged, but neither does it require a demand by the tenant in order to get his or her deposit back. The tenant's claim to the deposit is prior to that of any creditor of the landlord, even if such moneys are co-mingled.

### Arbitration

The Washington act is unique in establishing special arbitration procedures for use in resolving landlord-tenant disputes. (Sections 32-35.) The settlement procedure is to be administered pursuant to Washington's Arbitration Law, Chapter 7.04 RCW, except where the procedure in the new act is different. Arbitration is appropriate where the parties have agreed to submit a dispute

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# THE MULTISTATE BAR EXAM: A NEW APPROACH

**by Daniel C. Blom**

The recent introduction of the multistate bar examination signified the most conspicuous change of the century in this state's testing for the bar. But a good many other changes, most of them recent, have taken place in bar examination procedure since most members of the bar took the test. This article will discuss some of the changes, as well as the problems and background which led to them.

## Statute And Rules

Under the State Bar Act (Ch. 2.48 RCW), no person is permitted to practice as an attorney in the state unless he is a citizen of the United States, as well as a bona fide resident of the state, and has been admitted to practice law in the state (RCW 2.48.190). The Admission to Practice Rules of the Supreme Court (APR) of the State of Washington specify that every person desiring to be admitted to the bar of the State of Washington must pass a bar examination (Rule 1, APR). To take the examination as a general applicant, an individual must either be a graduate of an approved law school or a registered law clerk who has satisfactorily completed the course of study prescribed by the rules. There are special rules for the admission of attorney applicants (Rule 3, APR). The Admission to Practice Rules provide that the general applicants' examination shall be conducted by and under the direction of the Board of Governors, who shall, for the purpose of conducting the examination, appoint a committee of three or more members of the state bar, which shall be known as "the Committee of Law Examiners." The examination is to consist of such questions as the committee may select, on such subjects as may be listed by the committee and approved by the committee and approved by the Board of Governors. The state bar association certifies to the committee the names of those whose applications to take the examination have been approved by the Board of Governors, after investigation of eligibility as specified by the rules. The Committee of Law Examiners has charge of the conduct of the examination and is directed, as soon as practicable after the completion of the examination, to certify to the Board of Governors the grades of those who have taken the examination (Rule 4, APR). Time, frequency and location of the bar examination are designated by the Board of Governors (Rule 4, APR).

An applicant is permitted to take the examination three times as a matter of right. His right to take the examination after three failures is dependent upon special permission of the Board of Governors, based on a showing that it is reasonably likely that he will pass the next examination if permission is granted (Rule 4C, APR).

There is a special problem concerning nonresident general applicants who wish to take the bar examination and be admitted to practice. It is quite clear from Rule 2 that a general applicant need not be a resident in order to be permitted to take the bar examination. However, Rule 5B provides that no applicant shall be recommended to the Supreme Court for admission nor be permitted to take the oath of attorney unless he is then a resident and domiciled in the State of Washington.

If an applicant is not a resident of the State of Washington at the time of taking the examination, he is required to submit to the Board of Governors, as a prerequisite to the taking of the oath of attorney and being recommended for admission by the board, an affidavit that he is a resident of and domiciled in the State of Washington. Rule 5C provides that in all cases the oath of attorney must be taken within one year from the date of examination, except for good cause shown. It would, therefore, appear that a non-resident who took the bar examination would normally have to establish a bona fide residence and domicile in the State of Washington within a year after the date upon which the examination is taken, in order to be admitted to the bar.

**How The Bar Examination Works**

Each year, a committee of law examiners, composed of practitioners of the law, is appointed by the Board of Governors. There are currently forty members of the committee (a far cry from the six who constituted it 10 years ago), and they serve as a panel from which the examiners who will give each examination are selected by the chairman. On the present panel, the cities of Seattle, Spokane, Tacoma, Anacortes, Ellensburg, Sunnyside, Grand Coulee, Vancouver, Shelton, Puyallup, Everett, Olympia and Walla Walla are represented. More than 3/4 of the examiners are graduates of Washington law schools. The size of the panel, which contains more than three times the number of examiners currently employed in each examination, permits examiners to be excused periodically from preparing examinations. It also permits an apportionment between experienced examiners and newly appointed ones. The test covers certain basic fields which are approved by the Board of Governors. The last revision of these fields occurred in September of 1967, and the following subjects were approved: Contracts, Commercial Transactions, Property, Torts, Trial Practice, Criminal Law, Constitutional and Administrative Law, Wills, Trusts and Probate, Business Organizations, Family Law, Federal Individual Income Taxation, Labor Law and Legal Ethics. Questions may include issues involving community property, equity or conflict of laws. A committee on the subject matter of the bar examination, under the Chairmanship of Judge George Shields of Spokane, a former examiner, has been working for more than two years on the review of the subject matter and the improvement of the structure of the examination. Some of its recommendations already have been implemented, including a reduction in the number of questions and the making of the ethics question compulsory. Other recommendations are expected to be implemented in the February 1974 examination.

Prior to the state's participation in the multi-state objective examination, about which more will be said below, the bar examination consisted of three days of essay questions.

With the institution, in February 1973, of the multistate examination, which occupies one of the three days, the essay portion has been reduced to two days. The questions have been reduced in number to four per two-hour session, out of which the applicant answers three. Accordingly, the present format of the test comprises two days of essay questions, during which a total of twenty-four questions are given in a total of twelve hours. Out of these, the applicant must answer eighteen questions. He, thus, has an average of forty minutes per answer, and the questions can, as a result, be

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somewhat more complex, covering more issues per question than before.

Questions are assigned to the examiners who have been selected to serve on the panel several months in advance of the date of the examination. Since more than one question is given in certain of the basic fields, the fields are sub-divided, and different examiners are assigned different sub-areas of a basic field, to prevent duplication among the questions. Approximately two months before the examination date, the examiners are required to submit their questions and outlines covering legal issues, or proposed answers, to a screening committee, the members of which analyze the questions and answers, examine them for clarity of expression and adequacy and return them to the examiners for revision or correction, pursuant to the recommendations of the screening committee. The examiners then bring the revised questions to a meeting of the full panel of examiners, which goes over each question and subjects it to general discussion and criticism. Out of these sessions, further corrections and changes are made, after which the questions go to the printers. They are thereafter proofread carefully by both the bar association staff and the examiners. The bar examination is given at the Seattle Center, or some other suitable place, the fourth week in July and the fourth week in February. Examiners are assigned to preside at the examination. They are assisted by proctors, who are employed for the purpose, as well as the permanent staff of the state bar association, in the administration of the bar examination, which, to insure confidentiality and the meeting of security requirements, is quite complicated.

To the end that the bar examination shall be administered with complete impartiality and objectivity, each applicant, after his identity is checked, is issued a card which contains a number. He writes his name on that card and seals it in an envelope. This number is placed by the applicant on all his examination papers, and, thenceforth, his paper and his identity are represented by number only. The envelopes are then collected by the proctors. They are placed in a safe deposit box at a bank, and they are not opened until after the examinations are graded and the successful applicants are determined. The applicant is requested to keep his number to himself and to avoid displaying it to proctors, examiners or staff members. Every effort is made to maintain the anonymity of the applicant inviolate. For example, the place in which the applicant is to write his number on the test paper is such as to make it difficult or impossible for anyone else to see the number after it has been written in the pamphlet. With the bar examinations under constitutional challenge in actions pending in nine states, the examiners consider it vital not only to avoid any possibility of discrimination of any kind, but to do everything reasonably possible to allay any apprehension which may exist that discrimination might be practiced.

The multistate bar examination covers five basic fields, which a study established were tested in by all the states in the country. These fields are: Contracts, Torts, Real Property, Evidence and Criminal Law.

It will thus be seen that there is a duplication between the multistate examination and the essay examination. This was intentional. It was decided that all fields that were covered by the multistate examination should also be covered by the essay examination, so that the state would not relinquish its locally prepared tests in any of the fields covered by the multistate examination.

### History and Development of Multistate Bar Examination

The multistate bar examination was the result of an exhaustive and searching study of the entire bar examining process, initiated in 1967 by the National Conference of Bar Examiners. A committee was appointed to conduct the study, the members of which included bar examiners, law school deans, law school professors and professional testing experts. The committee reached the conclusion that, with 52 different jurisdictions in the United States presenting and grading bar examinations, there was a great duplication of effort and waste of manpower. They became aware of increasing concern in all states over the mounting burdens being faced by boards of bar examiners. These reflected increased enrollments in the law schools which resulted in larger numbers of applicants for the bar examination. While some boards solved the problem by employing professionals, those boards which, like our own did all the work themselves of preparing the questions and grading the answers faced a burden which which became constantly greater and threatened to become overwhelming. Although in this state, the lag between the taking of the exam and the release of grades had been kept under control by extraordinary efforts by examiners to get the examination books graded promptly, in some states the lag was immense. For example, one state gave its examination in July and worked hard to get its grades out by Christmas. The committee also discovered that remarkable progress had been made in the science of testing during the past two decades; in the words of John Eckler, the Chairman of the Bar Examination Committee of the National Conference: ". . . perhaps as spectacular and as forward-looking as the work that has been done in the nuclear sciences and in electronics."

As a result of their studies, the committee recommended that the National Conference prepare a multistate bar examination which could be made available to any of the states interested in using the examination. The examination which was developed is a multiple-choice test, which consists of 200 questions. The questions consist of a statement of facts, which is not unlike that used in the typical essay question, followed by a number of questions, each of which may be answered by checking one of four answers. The applicant is directed to select the best of the four answers. The questions require a knowledge of the field of law examined in and the ability to analyze the fact situation in light of the legal questions and apply the law accurately. The test requires a high degree of discrimination and informed reasoning.

The multistate examination was prepared on the premise that each state would supplement the multistate bar examination by its own essay examination prepared by its examiners. This permits each state to comply with any rules which may be established concerning subject matter and coverage of the examination.

The examinations are prepared under a contract with the Educational Testing Service of Princeton, New Jersey, which prepares the college and law school admission tests. The National Conference of Bar Examiners set up a separate committee for each field of the law covered by the examination, the membership of which included at least three prominent scholars in the particular field and two experienced bar examiners. These committees acted as teams to develop the questions which were used in the examination. The work of the committees was done in conjunction with the Educational Testing Services' experts.

The examination was first given on February 23, 1972. For security reasons it and subsequent examinations have been given on the same day throughout the country. In February, nineteen states gave the multistate examination to approximately 5,000 applicants. In July of 1972, twenty-six states gave the examination to about 12,000 applicants. The examination was first given in February of 1973 in this state to 154 applicants, who joined the 6,182 applicants tested in twenty-two states (some states give only one bar examination per year).

After the examinations are given, the score sheets are sent to the Educational Testing Service, which machine-processes them and extracts the grades of the applicants, assembles various statistical data about them and returns them to the states, which grade them and combine them with the grades on the essay questions pursuant to their own standards. To make sure that the examinations are satisfactory to the states which will use them they are submitted in draft form to the board of bar examiners in advance of the examination for analysis and evaluation. It is only after an inspection that we decide whether to accept or reject the test. In this state, a committee of examiners goes over the examination carefully, and sends back critical comments or questions which arise to the Bar Examination Committee of the National Conference. In the interests of security, the examinations are brought to the state by a member of the natioal five-man committee, and the comments of the examiners, with the draft, are carried back. To make sure that, despite the months of preparation of the examination and the critical analysis of the various boards of bar examiners prior to its use there are still no unfair questions left, after the test is administered throughout the country and before the final scoring, an "early-item analysis" is made. One or two thousand answer sheets are scored, and the scores are carefully analyzed. The analysis indicates how well the test is operating. As a result of such an analysis, the scoring may be changed. For example, analysis may indicate that a particular question was not as good as it was hoped it would be, or, instead of one best answer, it may be determined that two best answers should be counted. Or, in rare cases, it may be that all answers will be counted. After the scoring, the results are mailed to the participating states within two weeks after receipt of the answers.

**Object of the Bar Examination**

The object of our bar examination is to test the qualification of an applicant for admission to the bar to practice law. The bar examination does not attempt to test his capacity for memorization or his academic skills. He is required to know, generally, certain unique statutory landmarks under Washington law; for example, community property laws and particularly those aspects which are unique to the State of Washington and important in local practice. But the purpose of the examination is to determine whether he possesses the qualities which are essential to the adequate practice of the legal profession: sufficent knowledge of basic legal principles; the ability to analyze facts in the light of those principles and identify problems arising out of those facts; the ability to apply legal principles to the problems presented by fact situations and to present a reasoned and coherently organized solution to the problems. As a result, there is seldom only one acceptable answer or point of view in the essay portion of the test. Sometimes, applicants can receive equal credit for solutions which reach opposite results, if they are adequately and validly reasoned on the basis of a logically permissible interpretation of the facts and application of the legal principles.

On the other hand under the multistate examination there is room for only one answer. The questions are so structured that, although more than one of the four possible solutions may appear to be eligible answers, one of them is determinable, through careful analysis, to be the best answer, and that is the only answer for which an applicant receives credit. The multistate test is both more or less stringent than the essay test. Under the essay test, the applicant is permitted to make an interpretation of the facts, in some instances, which may not, in the opinion of the examiner, be the best interpretation and, yet, if his answer is well-reasoned and discerning and if he displays a sound knowledge of the legal principles involved, he will receive some, or even full, credit for the answer. Under the multistate examination, he is not required to organize and present his ideas in any original and creative fashion. And he may have some slight benefit from chance if he reduces the choices down to, let us say, the two best and then selects one of them arbitrarily. On the other hand, the test imposes upon him a precision of thinking and interpretation which permits no theoretical tolerance of error. The multistate test does involve very sophisticated judgments and hard and informed thought. Between the two tests, the applicant receives a thoroughly searching examination of his qualifications to practice law.

**Why the Bar Examination?**

It is sometimes argued, particularly on the part of students at law school and those who have only recently finished, that the bar examination is unnecessary. The contention is that any graduate of an accredited law school already has proven his capacity to practice law; that examinations prepared by practicing lawyers who are non-experts are inferior to those prepared by law school professors and that the bar examination serves no purpose except to limit entry into the field of legal practice according to the desires of the organized bar. Some argue that it is a discriminatory tool aimed at limiting entry into the profession by minority persons.

This question is important, not only to applicants for admission to the bar but to the members of the bar. Because it should be obvious from the foregoing discussion that the administration of the bar examination, which falls very heavily upon busy practicing attorneys, is an extremely burdensome responsibility, involving compensation which is so slight for the time and effort involved as to be only nominal and little reward to the participants who are called on regularly to sacrifice weekends and vacations to the difficult and exacting work of preparing and administering the bar examination, except the fulfillment of a duty, which those who participate recognize, to their profession and the satisfaction which comes to a person who has done a difficult job well. If the bar examination is superfluous and unnecessary, the bar examiners would be high on the list of those who would applaud its demise, following closely upon the heels of the applicants for admission, and followed closely by the Board of Governors, who devote a good deal of time, too, to problems involving disgruntled applicants and other questions related to the administration of the bar examination. I have a firm conviction, which I believe is shared by all the members of the Committee of Law Examiners and most members of the bar, that the bar examination performs an essential and valid function, and that it should be continued.

1. If the bar association is to be charged with responsibility for the conduct and performance of practicing attorneys, it must have adequate control over the admission of these attorneys to the practice of law. It is a strong consensus of the bar, in this as well as virtually every other state of the union, that the profession should not surrender supervision over admission to practice to any agency outside the profession.

2. The bar examiners are permitted a degree of objectivity which is impossible to law school pro-

fessors in the evaluation of applicants. A professor is, in a sense, an advocate of his students. He becomes personally acquainted with them. In a sense, their performance as a group reflects upon his ability as an instructor. The bar examiner has no such personal involvement. The law schools are subject to other pressures from which bar examiners are immune.

3. The practitioner as bar examiner takes a practical approach to the question of the qualification of an applicant. The question he wants answered is, is the applicant practically qualified to function as a lawyer? Law schools, although perhaps less than most other academic institutions, on the other hand, would tend to give a good deal of weight to academic accomplishments, which may or may not coincide with a student's practical potential as a lawyer.

4. The bar examination and the review required to prepare an applicant for it represent a unique and essential step in the preparation of a lawyer for the practice of law. The examination is unique, because, for the first and only time before he practices law, an applicant is required to identify the fields of the law involved in a question, sort out the facts which interlace the "seamless web of the law" and demonstrate his ability to identify and categorize issues without any external help. During his law school experience, he studies contracts, torts, criminal law, etc., and his tests are specifically addressed to those fields. This is not so in the course of the bar examination, where no one tells him what particular field is involved. Moreover, it is only the bar examination which necessitates a comprehensive, overall review of the law by one preparing to take it.

5. As indicated above, every precaution is made to keep the bar examination utterly fair, impartial and impersonal. It is intended to discriminate only against those who are not qualified to practice law.

### Practical Problems of Administration

Like all states, Washington has faced a steady growth in the number of applicants for admission to the bar, who must be examined. The sheer quantity of work involved in the administration of the bar examination, the writing of questions and the grading is formidable.

Some states have met this problem by buying questions from law professors outside the state and hiring graders to grade examinations. Some use a professional staff to manage the examination. The role of the examiners is limited to taking responsibility for the examination, choosing and revising questions, considering borderline cases among applicants, and coordinating grading by the hired graders.

In the State of Washington, we have taken the position that the examiners should write and grade the questions, since we believe it is less fair to applicants otherwise, and that the other methods, while they save time on the part of the examiners, fall farther from the goal of the examination—to insure that practicing attorneys determine the readiness for admission of applicants to the profession. The quality and quantity of supportive administrative services provided by the professional staff of the state bar association (one staff member devotes full-time to the bar examination and others contribute part-time efforts) have increased greatly, and have contributed much to the continuance of our attorney administered bar examination.

Our determination and commitment to keep the quality of the bar examination high and to improve it constantly means an increasing scrutiny of the questions and an increasing consumption of time in their development and refinement, as well as the grading of answers. It is in recognition of these increasing demands upon the time of examiners that we have both reduced the number of questions asked in the examination and increased the number of examiners participating. For example, only a year ago an examiner was required to prepare six questions and nine examiners were used. Then the number of examiners was increased to twelve and each prepared three questions. At the present time, twelve examiners are used, each of whom prepares two questions. We may be reduced to using one examiner per question and employing twenty-four examiners in a single examination. The fewer the number of questions for examiners, the more manageable the burden. The greater the number of examiners required, however, the more difficult it is to find qualified examiners and the more difficult the administration of the bar examination becomes.

Like every other aspect of our society, the law, its practice and the organization and administration of the legal profession grow constantly more complex. The optimum administration of the bar examination develops constantly unfolding problems. I believe that the current innovations and those of the past several years have improved the quality of the bar examination in this state substantially. Their effectuation is a good measure of the vitality of the bar association in a time of great change and challenge.

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# Convention Shapes up as a Spectacular

A valuable "can't miss it" program in a spectacular, sparkling-new hotel in one of the most fascinating cities in the world: That's the 1973 Washington State Bar Convention.

The hotel experience alone would be worth the price of admission, according to those who have previewed the brand-new Hyatt Regency at Georgia and Burrard Streets, across the street from the Hotel Vancouver right in downtown Vancouver, B.C. And the hotel, despite its newness, will have had a bit of experience in hosting lawyers, since the Canadian Bar Association is scheduled to have its annual meeting there in midsummer.

The big 1973 Bar Convention also will offer:

- Six first-rate continuing legal education seminars designed to be of practical value and interest to all lawyers in their practice.
- Two nationally known speakers to highlight the luncheon sessions Thursday and Friday, September 6 and 7.
- The traditional Dinner-Dance, bigger and better than ever and with top-flight professional entertainment, music with widespread appeal and food unexcelled.
- The Young Lawyers' traditional Saturday luncheon, with all lawyers and their wives invited, and featuring a nationally famed speaker.
- The highly popular Saturday morning Teach-In, which features uninhibited, sometimes controversial and always varied and interesting presentations by ten lawyers representing many interests of the Bar.
- A wide variety of appealing activities to keep the ladies attending the convention well entertained while their husbands are "in school."
- Prizes-prizes-prizes — the convention proceedings and luncheons will be enlivened by the awarding of a big variety of attractive prizes, including, but not limited to, season tickets to University of Washington and Washington State College football games and the traditional vacation trip to Hawaii.

### Early Registrations Advised

At this writing in June, more than half the Regency Hyatt's 700 guest rooms and suites have been reserved for the convention, hotel officials reported, and lawyers wishing to stay at the headquarters hotel should get those reservation requests in very soon.

New rules and new legislation will dominate much of the extensive continuing legal education programming.

Practice under the new, substantially altered state **criminal court rules** will be explained by a five-man panel headed by Frank L. Sullivan of Seattle, chairman of the State Bar's Criminal Law Committee. The seminar will be at 10 a.m. Thursday, September 6. With Sullivan on the panel will be Murray B. Guterson and David Boerner of Seattle, John L. Farra of Aberdeen, and Carl Maxey of Spokane.

James A. Andersen, Jr., Seattle, former state senator, will chair a panel of lawyer-legislators in a second seminar at 10 a.m. Thursday titled **"What Have They Done to Us Lately?: A Review of Recent Legislation."** The panel will explore practical aspects of legislation that affects the practice of law.

There will be two CLE panels Thursday afternoon at 2.

**"Evidence Update,"** chaired by Charles Z. Smith, former King County Superior Court judge who now is associate dean of the University of Washington Law School, was scheduled in response to requests from a good number of lawyers. Sharing the platform will be Hugh Miracle, Irving M. Clark Jr., Paul R. Cressman, William Helsell and William Wesselhoeft.

Also at 2 Thursday, a panel headed by **Robert W. Winsor** will get into the fine points of "Divorce Practice Under the New Statute," the new "no-fault" Dissolution of Marriage Act will be effective in July. It also is expected that forms to be used with the new law will be published in the convention Practice Manual; the forms are being devised by an ad hoc group and are to be widely distributed with the hope they will help develop uniform practice in all counties.

The association's annual **business session** in recent years has attracted far-beyond-average interest and is expected to do so again this year. That session will be Friday morning, September 7.

Seminars at 2 p.m. Friday will be on **"New Federal Rules of Evidence,"** chaired by John C. Coughenour, and **"The Legal Assistant, New Wonder-Child — How, When and Who,"** arranged through the Law Office Management Committee and chaired by Grant J. Silvernale. Members of the latter panel will include Dennis Gaasland, Stephen E. DeForest, Georgia Hinton, Suzanne Smith and Robert S. Mucklestone.

# The Board's Work

Extracts from the minutes of the Board of Governors, meeting May 11-12 at the Hanford House, Richland; all members were present. Also present was Cleary S. Cone, president-designate of the Bar, and William L. Weigand, Jr. of Yakima, representing the Young Lawyers Committee.

### Public Relations Committee — Recommendation

The Board approved the recommendation of the Public Relations Committee that a staff position be created to deal solely with the public relations of lawyers and the Washington State Bar Association so that the Bar Association could better explain the role of the Courts, our system of law and the function of lawyers generally to the public.

### Digest of Enacted Laws for Forty-Third Legislature

A digest of enacted laws of the Forty-Third Legislature shall be distributed to the Bar.

### Legal Services to the Armed Forces

After proper motion to reconsider the Board's previous action with reference to the recommendation of the Legal Services to the Armed Forces Committee relating to a Navy Petition providing for legal services to be performed by certain Naval Legal Officers to certain Navy personnel, it was moved by Mr. Short and seconded by Mr. Ripple that the proposal as presented by the Committee be approved with the following changes:

(1) By amending sub-section (g) under Section II of the Committee report relative to an appraisal and review of the program so that the new sub-section (g) shall read as follows:

"(g) That the entire pilot program shall be analyzed, appraised and reviewed by the Board of Governors after a trial period of one (1) year from the date of the Order of the Supreme Court approving the program (if the Court does in fact approve the program) and that the program will expire at the end of that one year trial period unless it is recommended to be renewed by the Board of Governors."

The vote on this motion was 7 to [illegible] with Mr. Champagne abstaining.

### Bar Examination

It was decided that the entire question of whether there should be a limitation on the number of times any applicant could take the bar examination should be explored in depth and placed on the June Board agenda. A recommendation was to be requested from the Chairman of the Board of Law Examiners, a survey made of the practice in other states in this regard, the appropriate ABA committee was to be contacted and as much information as possible be made available to the Board.

The request of the Board of Law Examiners that the Board of Governors tentatively authorize the use of the Multi-State examination for February of 1974 was approved.

### Prepaid Legal Services

William Roberts and Joe Davis were invited to meet with the Board to discuss the Prepaid Legal Services Program and the Prepaid Legal Services legislation.

### Rules for Discipline of Attorneys

Following the recommendations of the Disciplinary Board, the following proposed changes in the Rules of Discipline for Attorneys were submitted to the Supreme Court for approval and adoption:

1. The following is a proposed rule to include "Reasonable attorney's fees" expended by the Association.

A. The last sentence of Rule 7.1 (a) *Costs and Expenses Defined*, is changed to add the underlined material:

" . . . Expenses shall include, by way of illustration and not of limitation, necessary expenses of panel members, bar counsel, charges of expert witnesses, charges of court reporters, *and reasonable attorney's fees in an amount to be fixed by the Disciplinary Board.*"

2. The following is a proposed rule to provide for suspension of an attorney for failure to pay assessed costs and expenses.

A. Added to Rule 7.1 Costs and Expenses, is a new sub-paragraph (3):

"(e) *Payment of Costs and Expenses.* In all cases of censure or reprimand, the respondent attorney shall pay the assessed costs and expenses within thirty (30) days or such other period of time as is determined by the Disciplinary Board. Should the respondent attorney fail to pay the costs and expenses as herein provided, such failure shall be grounds for suspension and the Association may move the Supreme Court for an order suspending said attorney from the practice of law until said costs and expenses are paid."

3. The following is a proposed rule to provide for the assessment of a fine on the respondent attorney.

A. Added to Rule 7.1 Costs and Expenses, is a new sub-paragragraph (f):

"(f) *Power to Fine.* The Disciplinary Board, in addition to assessing costs and expenses against the respondent attorney, shall have the power to levy a fine against the respondent attorney in an amount not to exceed $10,000.00."

4. The following is a proposed rule regarding suspension. The existing Rule XI would be changed to Rule XII, and the following is the proposed Rule XI.

"XI. Suspension for Cumulative Discipline.

*Rule 11.1 Critiera.*

(a) From the effective date of this rule, any attorney who shall accumulate the following discipline, with at least one such offense and resulting disciplinary action having occurred subsequent to said date, shall be subject to suspension from the practice of law:

a. Any accumulation of three (3) or more censures or reprimands; or,

b. Any combination of a prior suspension or a prior disbarment plus one (1) or more censures or reprimands.

Rule 11.2 *Procedure.*

(a) Upon an attorney's accumulation of discipline as provided in Rule 11.1, the Disciplinary Board may recommend to the Supreme Court suspension of said attorney.

(b) The Association shall file with the Supreme Court the respondent attorney's prior record of discipline and its recommendation for suspension. The respondent attorney shall be served with a copy of the record filed with the Supreme Court.

(c) The Supreme Court may allow the Association and the respondent attorney the opportunity to submit written briefs or oral argument, under such conditions and within such time as the court directs."

## Statute Law Committee

Charles P. Moriarty, Jr. of Seattle and Charles R. Olson of Bellingham were reappointed for six year terms as members of the Statute Law Committee, such terms to expire March 31, 1979.

## Credit Card Use for Legal Fees

The Board adopted in principal the use of credit cards for legal fees under appropriate supervision and appropriate guidelines. The Committee on Law Office Management and Economics was asked to draft a proposal with the necessary rules, regulations and forms for the use of credit cards after consultation with the Code of Professional Responsibility Committee and with attorneys working for banking institutions and credit card companies.

## Appellate Delays

A letter of Roy J. Moceri be forwarded to the Judicial Council Task Force which is in the process of studying Appellate Rules and Procedures.

The Board expressed its continued concern in the area of the prompt disposition of matters on appeal as was evidenced by the financial commitment made by the Bar Association to the work of the Task Force.

## Proposed By-Law Amendment — Term of the President

The following amendment to the By-Laws was adopted:

By amending Article IV, Section 1 (a), so that the new Article IV, Section 1 (a) shall read as follows:

"(a) On or before July 31st of each year, the Board of Governors shall elect as President an active member of the Washington State Bar Association. Except as otherwise determined by the Board of Governors, the President shall take office at the close of the next Annual Meeting of the Association and serve for a period of one year.

The newly-elected President shall attend the last meeting of the Board of Governors held prior to the time he takes office, and shall be invited to attend such other meetings prior thereto, if any, as shall be designated by the Board of Governors."

## Resolution — Compensation for Public and Governmental Lawyers

The following resolution was adopted:

WHEREAS, the need for skilled and experienced legal representation of the public interest by attorneys employed by public and governmental agencies, departments and institutions has become increasingly pronounced, and

WHEREAS, compensation of attorneys employed by public and governmental institutions have been too often been inferior to earnings of attorneys in private practice, business or industry, and

WHEREAS, compensation levels of public and governmental attorneys more nearly equal to those of the profession in general would tend to attract to, and retain in the public service, greater numbers of attorneys of the highest qualifications,

Therefore, be it

RESOLVED, by the Board of Governors of the Washington State Bar Association that all public and governmental employers are hereby urged in the public interest to establish and maintain for staff attorneys, compensation levels commensurate with earnings of attorneys in private practice, business and industry.

The motion for the adoption of the Resolution was made by Mr. Champagne and seconded by Mr. Short.

**Committees' Authority to take Public Positions on Issues**

The Board reaffirmed its previously established policy that releases to the media or to the public or to any member of the public, of any committee action, or position or report, must have the prior approval of the Board of Governors.

**Additional Member of the Board from King County**

It was decided that the composition of the Board not be expanded by the addition of another member from King County. The vote on this motion was 5 to 3 with Messrs. Short, Curran and Gates voting "no."

**Clients Security Fund Claim — B. Rolf Espedal**

On the recommendation of the Client Security Fund Committee, payment of $8,426.62 to a certain estate was approved.

## You Are Cordially Invited to a Mugging

In Locri, in ancient Greece, legislators who proposed new laws were required to appear with a noose around the neck. If the proposal was rejected, the penalty was death by strangulation. Small wonder no laws were introduced for 200 years.

Modern legislatures are much more compassionate. It has been pointed out that we now have millions of laws on the books to enforce the Ten Commandments. With so many laws it isn't surprising there is duplication and overlapping. Yet every now and then a truly original proposal comes along. And that brings us to the Texas legislature.

A state representative in Texas is pushing an amendment to the state's criminal code that would require criminals to give intended victims 24 hours notice, including the time, place and nature of the offense to be committed. Notice may be written or oral, but failure to comply would add additional punishment to existing penalties.

The idea might well have possibilities. Not only does it seem to be fair, at least compared with the existing arrangement, but it has the additional virtue of introducing civility to areas where it has been too long neglected. And it could even go a long way toward reviving the lost art of letter writing (e.g., "My dear sir, begging your indulgence, this is to inform your eminence that the undersigned plans to mug you on Tuesday next, outside your domicile, the appointed hour 5:30 post meridiem, punctually . . .").

And yet. . . .

And yet we confess to harboring doubts, the state of manners being what they are today — even, presumably, in Texas. For as that old Whig, Edmund Burke, once put it, manners are more important than laws, since to a large degree laws depend on manners. And people bereft of breeding and manners, which would seem to include most muggers, strong-arm men and murderers, would not likely consider themselves bound by the Texas legislator's proposal.

On the theory that the proposal is probably unworkable, and therefore, probably worse than no law at all, we would tend to oppose it, even though it is no doubt well-intentioned. The betting is that the Texas legislature also will vote it down. But that shouldn't discourage its author. After all, there are a lot worse things than merely having one's law rejected, as any Locri legislator could well have attested.

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# King County Studies Arbitration Plan

A special study committee composed of three lawyers and two King County Superior Court judges has been formed to study the Los Angeles-Attorneys Special Arbitration Program to determine its potential use in the King County Superior Court. The committee members are as follows:

Arthur D. Swanson, President, Washington State Trial Lawyers; William L. Parker, President, Seattle-King County Defense Bar; Leo A. Anderson, Chairman, Judiciary and Courts Committee of the Seattle-King County Bar Assn.; Judge Frank H. Roberts, King County Superior Court; Judge Frank D. Howard, King County Superior Court.

The Los Angeles-Attorneys Special Arbitration Program (LA-ASAP) that has been adopted is as follows:

The purpose of the program is to arbitrate any pending Superior Court case submitted voluntarily by all the parties to the LA-ASAP Committee before a top flight trial attorney, picked at random, who will try the case within a twenty to eighty day period of receipt of the stipulation for a maximum possible recovery of $7,500 per plaintiff or at any other maximum figure as agreed by all parties. Arbitrators would not be paid. To proceed with arbitration all parties must sign the form stipulation re arbitration and forward such stipulation to the administrator of the program at the headquarters of the Superior Court in downtown Los Angeles.

Upon receipt of the stipulation, the administrator of the program pulls a name from a box containing the names of 100 top trial attorneys picked as a blue ribbon panel to arbitrate the cases. The 100 trial attorneys, 50 plaintiff lawyers, and 50 defense lawyers, are picked by the opposite side; specifically, the 50 plaintiff lawyers are picked by the defense bar and the 50 defense lawyers are picked by the plaintiff bar.

Once an arbitrator's name is selected for a particular case, the administrator contacts the parties and the arbitrator selects a mutually convenient date in the evening beginning at 6:00 P.M. in the downtown Los Angeles County Courthouse. The date selected for arbitration must be no sooner than twenty days from the date of stipulation and no later than eighty days from the date of a selection of the arbitrator. Once an arbitrator's name has been selected for an arbitration, his name remains out of the container holding the other names until all other arbitrators are used so that the problem of having one arbitrator trying five cases and another arbitrator not trying any will not be presented.

There is no right of any party to reject the name of an arbitrator upon a case. Reports from California to date indicate that no grievance has been filed upon any award whatsoever.

Continuances are not allowed except in case of an emergency. The parties are allowed, however, a continuance as a matter or right if said continuance is received within ten days of receiving notice of a hearing date.

Upon the commencement of an arbitration all parties agree to execute the following documents:

1. A stipulation for judgment in blank, and
2. A request for dismissal.

These forms must be executed prior to commencement of the arbitration by all parties so that the problem of having a party not agree to accept the award after posting of the award will not be presented. At the commencement of the hearing the arbitrator is administered an oath and a clerk of the Court who is deemed able to administer oaths administers oaths to all witnesses. A court reporter is not provided; however, either side may appoint a court reporter at their own cost.

Each side may offer oral testimony if desired which, except for cross-examination, shall generally not aggregate more than two hours per side except where agreed. The total trial time is expected not to exceed over five hours unless an exception is granted.

All medical reports and items of special damage are admitted without further foundation. Therefore, medical witnesses need not be called by either side. It is provided, however, that all items of medical reports and special damage must be shown to the opposite side at least seven days prior to the arbitration. In addition, any party may offer a police report without having to call the police officer, although the opinions of the officers are not admissible except under the proper evidentiary rules.

The average wait from the time of stipulation to arbitration in Los Angeles is 31 days.

If anyone has any comments, suggestions or questions concerning this plan, please contact Arthur D. Swanson, P.O. Box 626, Renton, Washington 98055.

# Market Shrinking for Lawyers' Malpractice Insurance

by John D. Quinan
Morris, Guedel & Quinan
Seattle

Since 1960 it has been our pleasure to provide professional liability insurance for hundreds of Washington attorneys. However, if our insurance carrier used the term "pleasure" I am afraid that it would be with considerable irony.

Here are excerpts from three pieces of mail received in our office in the last 90 days:

March 16th: "It appears that there is liability from failure to act promptly of about $20,000. My problem has been alcoholism."

March 25th: "Wherefore, plaintiff prays for a judgment of $250,000."

May 30th: "Insured failed to file suit within statute of limitation." Prayer $75,000.

Since 1960 the lawyers E & O market has changed for the worse in many ways. Thirteen years ago more than forty carriers wrote the coverage freely with premiums for $100,000 limits in the area of $40.00 annually. Now, we find that there are two principal underwriters and perhaps three or four others in the field somewhat marginally. Premiums in the meantime have advanced to the $150 to $185 range and underwriting restrictions are multiplying. Coverage may now be declined by some carriers for adverse experience, individual attorney 65 years of age or more, less than 2 years experience, practice in patent law, more than 25% plaintiff negligence, more than 30% title abstracting, specialty in admiralty, specialty in tax work and, most important, since the National Student Marketing case, SEC work.

### Divorce Client Wins $100,000 Judgment Against Her Attorney

**A California attorney advised his client that her husband's retirement benefits, worth $161,000, were not community property. He failed to raise the question in a divorce action. The decree vested all benefits in the husband.**

**The attorney later moved to set the decree aside, claiming "extrinsic fraud." The motion was denied.**

**The client sued her attorney. She obtained judgment in the amount of $100,000. The judgment has been affirmed by the California District Court of Appeals.** ***Smith v. Lewis,*** **31 C.A. 3d 677 (1973).**

### Profits Disappear

The shrinking market and reluctant underwriting are the result of lack of profitability for the insurance carriers. Part of the problem is due to the difficulty in setting adequate rates. Unlike fire insurance where shortly after a year ends, losses may be accurately determined, E & O carriers must deal with incurred losses and projected losses for an estimated ultimate loss. It is this "long tail" in E & O which may return to haunt the carrier new in this field. In the early years premiums are increasing and the losses have not yet been discovered.

To illustrate: This is how the year 1969 developed for one company. Reviewing loss experience in 1970, insured claims were found to be $24,000 and ultimate loss was projected at $50,000. Reviewing the year 1969 again as of September 1972, incurred claims were found to have $100,000 and ultimate loss was now projected at $149,000. This meant that as of September 1972 each dollar of premium had resulted in $1.75 of incurred loss and an ultimate loss projection of $2.50. Who is to say that this may not require a substantial revision in 1974? I must add that 1969 was not just an isolated bad year. Unfortunately, it was almost typical.

### Lawyers Will Sue Lawyers

When in 1960 we first began discussing E & O with attorneys, we often found that it was considered unnecessary. There was the comfortable assumption that fellow lawyers would be unlikely to sue. Most often we wrote $25,000 limits per claim. As the 60's progressed we found that lawyers were demanding $100,000 and often $1,000,000 limits. By 1968, it was estimated that approximately 40% of Washington lawyers carried malpractice. We think that a lucrative field for plaintiffs attorneys was beginning to emerge. It was no longer a case of suing a colleague, it was, "please refer this matter to your insurance carrier."

We think it is reasonable to expect that all forms of professional liability insurance will experience a continuing increase in loss ratio, i.e. the relationship of premium to claims. Some authorities point to the effect of no-fault auto with the resulting search for new fields by the plaintiffs' bar. One company experienced 3.9 claims per 100 policies in 1967. This is expected to increase to 4.7 by 1975. During the same period this company projects an increase in the dollar value of the average claim of 70%.

It was suggested by the WSBA Insurance Committee in 1968 that the insurance carriers were experiencing a problem because too few lawyers were buying coverage and that with the low level of premium income, the companies were subject to losses for which no adequate fund was established. We think the fact is that there is a direct relationship between the number of people insured and the number of losses sustained. Moreover, we suspect that the lawyers who have purchased and maintained E & O coverage voluntarily over the years probably represent the most prudent sector of the bar.

### Mandatory Malpractice Insurance

The May 1973 Bar News refers to mandatory insurance and opens the subject with a reference to the Bar's discipline program. We draw the inference that insurance is being considered as a device to protect the public from the "sloppy lawyers who are becoming the bane of the bar" to use the language of the same article. We would have to remark that the carrier's experience has been bad enough insuring what we have conceived to be the good risks. We think it is fair to say that a mandatory program would require drastic increase in individual premiums to offset the adverse effect of insuring undesirable risks together with an increased claims activity by the plaintiffs bar aware that insurance dollars were available to satisfy judgments. Additionally, such a program might encourage the public to sue.

It is our understanding that Michigan, Wisconsin and Kentucky have considered mandatory insurance. Michigan, we are informed, was unable to secure the approval of the State Supreme Court.

While mandatory malpractice insurance would give increased protection to the public for damage caused by a lawyer's mistake, we suggest that it would not be an unmixed blessing to the Bar. □

AGO No. 1: OFFICES AND OFFICERS — PUBLIC — ATTORNEYS — FINANCIAL REPORTING

Under § 24 of Initiative No. 276, requiring periodic reports of the financial interests of candidates and elected officials (except President, Vice-President and precinct committeemen), a candidate or elected official who is an attorney must include in his report:

(a) The names of all clients from whom he received *any* compensation during the reporting period for preparing, promoting, or opposing legislation, rules, rates, or standards, together with the amounts of such compensation; and

(b) The names of all of his own governmental, corporate or other business clients from whom he received compensation of $500 or more during the reporting period, together with the approximate amount of such compensation (as described in § 24(2)) and the consideration therefor; and

(c) If a member of a law firm, the names of all of the firm's governmental, corporate or other business clients from whom the firm received $500 or more during the reporting period — and the consideration therefor; and

(d) The name of any "clients" by which the candidate or elected official-attorney was actually employed as a salaried employee during the reporting period.

AGO No. 2: CITIES AND TOWNS — TAXATION — BUSINESS LICENSES — MUNICIPAL EXCISE TAXES ON GROSS RECEIPTS OF FUEL OIL SALES

Because of the legislature's enactment of §§ 6 and 7, chapter 134, Laws of 1972, Ex. Sess., a city or town may only impose a license fee or excise tax upon the business of making retail sales of fuel oil measured by the gross receipts from such sales to the extent that such city imposes the same gross receipts tax at the same rate upon all other retail sales of tangible personal property occurring within the city.

AGO No. 3: DISTRICTS — SCHOOLS — EMPLOYEES — CONTRACTS.

A school district, as a condition of reemployment of its certificated teachers for a new school year, may require such teachers to sign and return their formal written employment contracts within a specified, reasonable period of time after the mailing of these contracts to the teachers.

## SEATTLE-KING REPORT
*By* GERALD G. TUTTLE

Ziontz, Pirtle & Morisset are pleased to announce that **Barry D. Ernstoff** has become a partner in the firm and the firm will hereafter be known as Ziontz, Pirtle, Morisset & Ernstoff. They also announce that **Steve Chestnut** has joined the firm as an associate effective May 1, 1973.

**Barbara Durham**, 30 year old graduate of Stanford Law School and a partner in the firm of Wacker & Durham, has been confirmed by the County Counsel as Mercer Island District Court Judge. Ms. Durham was formerly a trial deputy with the King County Prosecutor and is filling a vacancy in the part time position formerly held by Lee Olwell.

Recipients of the Liberty Bell awards from the Seattle-King County Bar Association for 1973 are **Jennifer James** and **John C. Little**. Dr. James is the director of the Female Offender Project in the Seattle City Jail and is active in sociological research concerning female offenders. Mr. Little has been active in work with Central Area youth developing a school for dropouts in the Central Area and was a founder of the Community Talent Bank. He was past president of the Central Area Youth Association and director of the Wilderness Program, which enabled hundreds of Central Area youngsters to spend summer months out of the city.

**Art Piehler** and **Robert Allerdice** announce that **M. Wayne Boyack** has become a partner of the firm to be called Piehler, Allerdice & Boyack.

**Stanley E. Stone** has been appointed membership chairman of the Family Law Section of the American Bar Association for the State of Washington.

**Robert C. Mussehl** has been appointed by Chesterfield Smith, ABA President, as a member of the Advisory Committee to cooperate with the World Peace Through Law Center.

May 13, 1973 saw the presentation by Gonzaga University of its Law Medal to **Alfred E. Schweppe**. Presented by the Very Rev. **Richard E. Twohy** at commencement exercises, the medal represents "a way of holding up to the legal profession and to the community at large a model of personal and professional distinction."

**Richard J. Powers** has joined Kempton, Savage and Gossard.

**Beverly S. Wilkerson**, chief attorney for the Veterans Administration in Washington and Alaska, has retired after more than 30 years of government service.

# Insurgents Win SKCBA Election

Led by Robert R. Beezer, a four man slate of "insurgent conservatives" swept to victory in the June election of officers of the Seattle-King County Bar Association. All members of the slate, nominated by petition, won election.

Beezer, who had previously served as a trustee of the Association and who is a partner in Schweppe, Doolittle, Kurg, Tausend, Beezer & Beierle, was elected Second Vice-President. John Hackett was elected Secretary. George Klawitter and John Roberts were elected trustees.

The only candidates submitted by the nominating committee for contested slots who were successful were Lee Campbell, Treasurer, and Luvern Rieke, trustee.

In uncontested races, Burroughs Anderson was elected President and William Wesselhoeft Vice-President.

## SOUTH KING REPORT
*By* CHARLES R. BRANSON

The King County Superior Court for the first time conducted a contested trial away from the County Seat in Renton, with Judge **Gil Duckworth** presiding pro tem. **Morton Hardwick**, representing one of the parties, arranged this first ever event with the cooperation of **James Young**, representing the other party, who videotaped the proceeding. All of the participants were pleased with the advantages offered by using the newly allowed procedure and were thankful for the encouragement of Judge **Solie Ringold** and the assistance of Court Administrator, **L. P. Stephenson, Jr.**

At our regular May meeting **Joseph A. Thibodeau**, Court Commissioner, presented do's and don'ts of appellate practice.

Our special guest at that meeting was Judge **Keith M. Callow.**

The new officers for the new year were installed at a banquet held at Meridian Valley Golf & Country Club. Special guests at that event were Judge **David C. Hunter**, Judge **Peter K. Steere, William H. Gates**, member of the Board of Governors, and our own representative to the Board of Governors, **James P. Curran.**

The new officers are headed by **Kenneth F. Ingalls,** President. The other officers are **Donald G. Holm**, Vice President, **Richard C. Conrad**, Secretary and **William L. Donais**, Treasurer. The newly elected members to the Board of Directors are **Charles P. Curran, John K. Pain, Jr., Donald W. Watson** and **Ross N. Kingston.**

## PIERCE REPORT

*By* KENYON E. LUCE

The Pierce County Young Lawyers sponsored a program of speakers on the new criminal rules of procedure as established by the Supreme Court. **Hugh Ellis, Douglas Atwood, John Klein** and **Richard Vlosich** were the speakers.

Pierce County Bar Association held its regular June meeting and the program presented by Superior Court Judges **Hardyn Soule, John Cochran** and **William Leveque** and Justice **Vernon Pearson** from the Court of Appeals was entitled "Critique of Lawyers and Observations relative to the Bench."

The Pierce County Bar office is moving to a new location, and will be set up on the second floor of the County-City Building in Tacoma.

**Edward A. Hibbard**, (University of Kansas Law School), a Vista volunteer, is assigned to the Pierce County Legal Assistance Foundation.

**Leslie Edmundson**, (Vanderbilt Law School), Clerk for Justice **Vernon Pearson**, Division 2, Court of Appeals, will be joining the firm of Seinfeld and Seinfeld.

**Alfred Kucklick** has withdrawn from the partnership of Combs, Small & Kucklick and is now practicing at 8849 Pacific Avenue, Tacoma, phone 475-4800.

The Pierce County Bar Association's Board of Trustees voted unanimously to establish a defender program in Pierce County, a program administered by a separate bar association — sponsored Corporation with features of salaried employees and private practicing attorneys participating in the program.

New Rules: The Pierce County Superior Court Judges on June 4, 1973 adopted revised special rules for civil procedure which will be effective on September 1, 1973. These rules are now being printed and it is expected they will be available for distribution not later than July 31, 1973.

## SKAGIT REPORT

*By* PAUL N. LUVERA JR.

Judge **Walter J. Deierlein, Jr.** has left for a trip to Greece and other exotic countries leaving Judge Harry A. Follman working hard during the jury term (at least that's the way Judge Follman describes it!)

**George McIntosh** of Mount Vernon has returned for a visit to his family home in Iowa.

**James Anderson** of Anacortes and his stewardess wife have just returned from a trip to Hong Kong. It is unknown if Jim brought back the Hong Kong flu with his other momentos.

**Earl Angevine** continues to serve on the Governor's task force relating to criminal matters.

Skagit County is preparing for the annual grudge match and picnic with Whatcom, San Juan and Island counties this summer.

## Seattle Lawyers Softball Champs

A team of young lawyers from the Seattle area are the reigning champions in the Seattle Park Department's Columbia League for slow-pitch softball.

Playing approximately once a week, the team plays ten league games each season, plus various tournament games in July. Their season record last year was 10-0; so far this year, they are 3-1. The opposition teams are from throughout the Seattle area, with most sponsored by taverns. The lawyers, however, appear "Pro Se," which is the name of the team.

The team was organized prior to the 1970 season, and took as its nucleus a group who had played in a softball league together in Olympia while law clerks to justices of the Supreme Court.

"Pro Se's" regulars include Jim Grutz (also manager), Bill Creech, George Bennett, Bruce Pym, Steve Crary, Wayne Booth, John Hoerster, Jack Strother, Fred Frederickson, Tom Clark, Clem Barnes and John Weinberg.

Slow-pitch softball is one of the nation's fastest growing participant sports. The rules require each pitch to have a "perceptible arch" of at least three feet, which definitely makes it a hitter's and fielder's game.

## CHELAN REPORT
*By* JOE R. WOOLETT

On May 22, 1973, the Chelan-Douglas County Bar Association held a function at which time the new officers of the Chelan County Bar Association were presented.

The new officers are: **Jim Danielson**, President; **Pete Young**, Vice-President; **James Blinn**, Secretary-Treasurer.

## EAST KING REPORT
*By* CHARLES F. DIESEN

The East King County Bar made its annual trip to the Snoqualmie Falls Lodge for its May 14 meeting. The attendance was laudable despite the time involved and according to President **Bill Kinzel** reflects the interest the membership has shown this year in the Association's excellent list of speakers. Father **Bill Young** of St. Edward's Parish and Director of the Institute of Life, spoke on the "Power of Personal Motivation." While your reporter was unable to attend, it is my understanding that the speaker inspired those present to re-examine their motivation in the practice of law. Those of us who were not present should recognize in our future dealings with Eastside lawyers that our success or failure might very well be attributed to our absence from the May meeting.

The final meeting of the Association before the summer recess will be held at the Thunderbird Inn on June 18, at which Senator Peter Francis will review recent legislation passed governing landlord-tenant relations and other legislation of interest to lawyers.

President Kinzel stated that the evident success of the East King County Bar forums has led the board of trustees to the conclusion that the forums constitute a needed public service and tentatively will be scheduled again next fall.

Regular monthly meetings of the Association will resume in September.

## THURSTON-MASON REPORT
*By* STEPHEN J. BEAN

The Thurston County Commissioners announced that they had purchased the Capitol Center Building and would move into the building within the next year. This means that our firm, Bean & Gentry, and the firm of Parr, Alexander, Cordes & Sutherland, had better start looking around for a new building in which to move. The thing that really aggravates me is that I have been fighting the air conditioning battle in this building for three years. The owners finally got the system working and then they sell the building out from underneath us. Hell of a deal.

Mr. **Gayer Dominick**, formerly of the Attorney General's Office is now associated with the law firm of Owens, Johnson, Weaver & Davies.

## WHATCOM REPORT
*By* CRAIG DAVIS

New members (**salus ubi multi consiliarii**[1]) — Since July 1972 we have acquired additional strength (and litigation):

**Donald P. Kirkpatrick**, U.W. 67, former JAG officer has joined in partnership with yours truly under the name of Davis & Kirkpatrick; **Denny Hindman**, Willamette, after being sworn in spent three months down under (in Australia), returned to work with the legislature and is now back with us freelancing; **Richard Platt**, U. of Ore. has associated with Voris & Lipscomb; **Michael Muir**, U. of Cal. at Berkeley, is associated with **Bob Sherwood** in the practice of law after Bob lost his partner, **Marshall Forrest**, to the public as our new Superior Court Judge (this breaks up the famous and only Sherwood (&) Forrest known in the country); **Mark Packer**, Harvard, has associated with Millhouse & Nelle; Northwest Washington Legal Services have acquired Vista Volunteers, **William Johnston**, U. of Conn. and **Robert Scott**, Harvard; **David Syre**, Gonzaga, and **Jerry Johnson,**, U. of W., have joined the firm of LeCocq, Simonarson & Durnan which is now LeCocq, Simonarson, Syre & Johnson; **Dean Brett & Larry Dougert**, both of Stanford, immediately formed a partnership and established their practice in Fairhaven, located in South Bellingham; **Frank Morrow,** U.W. '71, teaches Philosophy at WWSC and also has hung out his shingle; **Jack Swanson**, Willamette, has joined the Prosecutor's staff as a deputy and as have **Steven Sissin,** Wayne State U., who is serving as a legal intern until this summer's Bar.

Trials and Tribulations (**honeste vivere, alterum non laedere, suum ucique tribuere**[2]) — Senator **Frank Atwood** has returned to the practice of law (after a stint in Olympia) firmly believing that the Governor has miscontrued the item veto by striking words instead of sections. **Ernie Bentley** has just completed serving as a panelist on a symposium on child abuse (especially important where we have had two cases in the past six months resulting in the death of a child); **Harold Lant** has been (or is) in Switzerland for the Rotary International at Lausanne and will follow this by a trip through Europe; **Dan Olson** is to be found on (hopefully not under) the beautiful waters of Northern Puget Sound sailing at every opportunity; **Dave McEachran** and **Jack Swanson** of the Prosecutor's Office, and **Mike Lipscomb** (a favorite prosecutorial adversary) have all had additions to their families (is trial work that hazardous?); Dave has moved out to Emerald Lake; **Larry Dougert** married his legal secretary and we've just had a hot flash that his garage burned down; **Gus Burnfield**, our new Juvenile Court Commissioner since october 1, 1972 recently made a trip to Cascadia for a first hand view and feels that the program is a well worthwhile effort.

New Firms (**juncta juvant**[3]) — McCush, O'Connor & Thompson regret the loss of **Dave Nichols** to greener pastures where he is sharing office space with **Sam Peach**, but are pleased to announce that **Craig Hayes** is giving up the trial and vicissitudes of being a lone practitioner and has joined them as a partner effective the first of this month; a new professional building is going up close to the courthouse which is due to be ready by November-December and we find that **Bob Sherwood**, with **Mike Muir**, Asumundson, Rhea & Atwood and Flynn & Rusing are looking forward to moving (in time for a Christmas party); the firm of Bushnell & Burnfield of Ferndale is delighted to have **Richard Langabeer** join them as a partner and the firm will now be Bushnell, Burnfield & Langabeer (and in the process they are remodeling for bigger and better things); **J. Kevin Downes**, Georgetown U., is joining Davis & Kirkpatrick as a partner and will be sharing new quarters in a colonial style building one block from the Courthouse — the firm name will be Davis, Kirkpatrick & Downes.

Errata (**vox emissa volat; eitera scripta manet**[4]) — The past year has seen the loss to retirement of Judge **Bert Kale** whom we understand is just plain enjoying life; **Sam Peach** finally took a two week break and went to Hawaii; and our Bar Officers for this year are President: **Richard Nelle**, Vice President: **Dan Olson**, Secretary-Treasurer: **Mike Muir.**

*What did he say (?):*

1. *where there are many counselors there is safety;*
2. *To live honorably, to hurt nobody, to render everyone his due;*
3. *In union there is strength; and*
4. *The spoken word flies away the written one remains.*

We are pleased to share the above tiding with you and look forward to doing so in the future. If you are up our way our Bar meeting is the first Wednesday Noon of each month and would be pleased as punch to have you as our guest.

Hello to **John McDouglass** of Republic and Colville. Whatcom County's loss of John as a practitioner and Court Commissioner from the firm of Abbott, Lant & Fleeson is felt but the rigors of being a sole practitioner is a challenge in which we all wish him success.

Last, but by no means least, we find ourselves with a new practitioner on the distaff side with **Judy Busch,** UCLA, of Northwest Legal Services joining **Jane Mason**, our Prosecutor.

Errors and Omissions (next issue please).

## YAKIMA REPORT

*By* RANDY MARQUIS

**Fifth Judge:**

Outgoing Bar President, **H. Howard Hettinger**, has been appointed by Governor Dan Evans to the newly created fifth Yakima County Superior Court judgeship He will assume office on July 16.

**Bar Elects:**

**J. W. "Bill" McArdle** of the firm of Willis, McArdle & Dohn, has been installed as President of the Yakima County Bar Association. Other new officers are: Vice President **Howard W. Elofson;** Secretary **Dennis Fluegge;** and Treasurer **Robert Leadon**. Members of the Board of Trustees are: **Leonard M. Cockrill, Walter G. Meyer, Jr.,** and **Robert Redman.** Members of the Law Library Board are: **Max Vincent, Ronald Whitaker, J. Hugh Aaron** and **Wesley Wilson.**

**Acquisitions and Changes:**

**Charles C. Countryman** and **Richard R. Greiner** announce that they have associated together in the practice of law at 115 N. 4th Avenue in Yakima.

**Jerry Talbott**, Deputy Prosecutor of Yakima County since 1970, has now associated with the firm of Willis, McArdle & Dohn.

**C. James Lust** is now associated with the firm of Velikanje, Moore and Shore.

**Harry Hazel** and **Walter E. Weeks** have announced the formation of the new partnership of Hazel and Weeks. They are located at 307 North 3rd Street in Yakima and share offices with **Neil C. Buren.**

**James S. Hogan** announces that he has recently moved his offices from the City of Union Gap to 329 East "A" Street in Yakima.

With the appointment of **Howard Hettinger** to the Superior Court bench, **Don M. Tunstall** and **Kevin S. Kirkevold** have announced the formation of the new partnership of Tunstall and Kirkevold effective June 1, 1973. Offices remain on the 10th floor of the Larson Building in Yakima.

**Toppenish Honors City Attorney:**

Toppenish Commissioners recently adopted a resolution honoring **Joseph C. Murphy** for his 25 years of "superior and unselfish service" to the city. Joe retired as City Attorney. However, there is no change in his private practice in Toppenish. **Gary G. McGlothlen**, Yakima attorney has been appointed to fill the vacancy.

**Lawyers in the News:**

**George F. Velikanje** has been re-elected to a three year term on the Board of Directors of the Greater Yakima Chamber of Commerce.

## GRAYS HARBOR REPORT

*By* JOHN L. FARRA

This year's Grays Harbor Fishing Derby will be held on August 17, 1973. This year's committee is composed of **J. K. Hallam** of Aberdeen, **Warner Poyhonen** of Montesano, and **Curtis Janhuen** of Aberdeen. Those members of the Washington State Bar Association interested in going to his year's Salmon Derby should write to Box 105, South Broadway, Aberdeen, Washington. This year's Derby promises to be the best of all.

**Jerry Hallam** and **Bob Landi** have opened new offices located on Broadway in the City of Aberdeen.

The County Commissioners of Grays Harbor County have decided to remodel the Courthouse. Presumably this will mean a complete renovation of the court rooms and the jury facilities. Amen.

## BENTON-FRANKLIN REPORT

*By* NEAL J. SHULMAN

The Benton County District Court has become a reality. On June 7, Benton County Commissioners voted to bring the county under the State Justice Court Act. The effective date of the commissioners' action will be August 31. Thus, Benton County becomes the 34th county within the state to fall within the District Court System.

Under the plans submitted by the Districting Committee and adopted by the county, two departments will be established, Department No. 1, sitting in Richland, and housing the central office, and Department No. 2, sitting in Kennewick. Both Richland and Kennewick have decided upon the establishment of municipal departments within the District Court.

District Court judges are yet to be named. Both Richland and Kennewick have been operating their Municipal and Justice of the Peace Courts with interim judges, pending a decision by the County Commissioners on the District Court.

The decision by the County Commissioners to establish a District Court in Benton County is the culmination of enthusiastic and time consuming activities by many progressive persons and groups within the community who have been working long and hard toward this goal. Special acknowledgment goes to Mayor **Joe Shipman** and City Manager **Larry R. Coons** of Richland, and Mayor **Lawrence Mabry** and City Manager **Art Colby** of Kennewick, who, together with their respective legal staffs, spearheaded the campaign for the District Court.

Thanks also to the Benton-Franklin Bar Association and President **Phil Raekes** for bar support, and to the League of Women Voters for their support, in bringing about a judicial system which will benefit and serve the people of Benton County in the highest legal tradition.

## Defense Counsel Name Officers

The Board of Trustees at the Washington Association of Defense Counsel has proposed the following slate of officers and trustees for the 1973-1974 period: Eugene Knapp, President; Martin Crowder (now Secretary-Treasurer), Vice President; Harold Fosso, Secretary-Treasurer; Leo Anderson, R. Jack Stephenson, John Bergmann, and Richard Jensen (of Tacoma), Trustees.

Trustee Robert Thomas' term expires next year, and William Parker, as immediate past president, succeeds trustee Mike Mines.

## Need a Manager?

Is your law firm one of the increasing number who are thinking of hiring a professional office manager? The Bar Office has received several inquiries from apparently qualified persons interested in obtaining such positions. The Bar Office can put you in touch with these persons.

# McLauchlan at Large

Bob Day, Pasco and Gene Anderson, Anacortes

Hal and Betty-Em Vhugen, Seattle

Larry Daugert and Dean Brett, Bellingham

Betsy and John Piper, Seattle

**Landlord-Tenant Act**
(Continued from Page 6)

to arbitration and where no other legal action has been initiated. An emergency defect (24 or 48 hours to repair) is not subject to arbitration until after a remedy has been used. Once the arbitrator is selected, he or she has ten days to schedule and hold a hearing and five more days to issue a decision. Rapid dispute resolution is therefore possible.

### Access

Section 15 sets out the right of the landlord to access to the dwelling. The tenant may not unreasonably refuse to let the landlord in, but the landlord, in turn, cannot use his or her right of access to harass the tenant. Two days' advance notice is ordinarily required so unexpected invasions or privacy should be at an end. Current state law does not generally forbid entry by the landlord onto the premises. The only possible applicable concept is constructive eviction. *Cline v. Altose*, 158 Wash. 119, 290 Pac. 809 (1930).

### Unlawful Detainer

The judicial proceeding for restoring possession of the premises to the landlord has been altered. (Sections 38-42.) Existing law provides two procedures for eviction, once the tenancy has been terminated: 1) the landlord can file a bond and obtain a writ of restitution at the same time he or she files the summons and complaint. The writ could be executed by the sheriff before the tenant's return date; RCW 59.12.080 or 2) the landlord could serve his or her summons and complaint and, on the return date, either take a default, if the tenant does not appear, and get the writ issued, or set the case for trial. The unlawful detainer action takes precedence over other civil actions (RCW 59.12.130) but trials often still take several months to be scheduled in some counties. Judgment for the landlord results in mandatory double damages against the tenant. (RCW 59.12.170) As we have commented before, limited defenses are allowed in this summary action.

The new act makes the following major changes in those unlawful detainer procedures:

1. requirement of an opportunity for a judicial show cause hearing prior to issuance of the writ of restitution,
2. reduction of the time allowed the sheriff to return the executed writ from 20 to 10 days,
3. right of the tenant to raise legal and equitable defenses in the unlawful detainer action;
4. elimination of mandatory double damages against the tenant, and
5. trial within 30 days if defenses are raised at the show cause hearing.

### Notices

A variety of notice requirements appear throughout the bill. It may be helpful to list them all.

1. Termination of month-to-month tenancy (without cause) — 20 days written notice in advance of rental due date for either party. (Section 20.) Old law said 30 days notice for tenants (RCW 59.04.020) and 20 days for landlords. (RCW 59.12.030(2).)
2. Termination of month-to-month tenancy (non-payment of rent) — three days written notice to pay rent or vacate. The present law is not changed by new Washington act. (RCW 59.12.030(3).)
3. Termination of month-to-month tenancy (for breach of lease other than non-payment of rent) — ten days notice to perform or vacate. Present law not changed by new act except as provided below. (RCW 59.12.030(4).)
4. Notice of defects by tenant to landlord — varies from 24 hours to 30 days. See *supra* under "Landlord Duties."
5. Notice of landlord's rule change (including change in rent) — 30 days written notice. (Section 14.)
6. Notice of intent of tenant to contract for repairs — 24 or 48 hours, or 7 or 15 days, depending on the seriousness of the defect. (Section 10).
7. Notice to tenant by landlord to repair substantial hazards caused by tenant— 30 days' notice (or promptly in emergency), after which landlord can enter, repair and bill tenant, or he can commence an unlawful detainer action. (Section 18). A question arises how to reconcile this 30 day notice which terminates the tenancy, and the 20 day and 10 day notices which appear to accomplish the same thing. Query also whether the present statute's three day notice to quit for permitting waste or a nuisance is still viable. (RCW 59.12.030(5) ) It was not changed by the new act.
8. Notice to tenant, who has abandoned, of landlord's intent to sell abandoned personal property — "After sixty days from the date of default in rent,

and after prior notice of such sale is mailed to the last known address of the tenant . . ." (Section 31)

9. Notice of intent to arbitrate a dispute— "reasonable notice" shall be given to the other party. (Section 32(2) )

10. Unlawful detainer show cause hearing— Six to twelve days written notice by the court. Same time as present law provides for an appearance, but currently no hearing is allowed at that time. (RCW 50.12.070.)

11. Notice of intent to execute writ of restitution — Sheriff must wait at least three days before removing tenant. The tenant can stop the sheriff by putting up a bond. The sheriff's return must be in 10 days; it used to be 20. (Section 39.)

**Problems with the Act**

The act was subject to a great many amendments and extensive lobbying. Political dynamics played a large part in the bill's passage. Therefore, problems in drafting and interpretation have arisen. I will attempt merely to discuss those problems and propose answers, though by no means do I possess the final answer.

1. *Arbitration* — when the bill was redrafted in the Legislature, certain elements of the bill regarding arbitration were deleted. By eliminating the mandatory character of that process, the Legislature left the bill with no adequate procedure for selecting an arbitrator. If the two parties cannot agree to an arbitrator, then they must petition the court to select one. The major benefit of arbitration is thereby lost. The expense of a judicial proceeding and the delay which will necessarily result are avoided if arbitration can be used. An amendment failed which could have provided for swift selection of an arbitrator by the American Arbitration Association from a pre-selected panel.

Also the section imposing a fee of $70 for arbitration was left in. (Section 34.) While the fee can be waived on grounds of indigency, the fact remains that, without reference to any public or private agency it is not clear where the fee goes or for what. The fee was set by the drafters of the bill based on information from the American Arbitration Association. It was intended to cover administrative costs only since the A.A.A. committed itself to providing volunteer arbitrators who would not charge for their services. However, it is not now clear whether the fee is for the arbitrator or the agency, nor is it clear whether additional charges can be made.

2. *Exemptions and Waivers* — the act contains a number of across-the-board exemptions. Section 4 exempts housing incidental to "medical, religious, educational, recreational, or similar services." In addition, exemptions are provided for earnest money agreements, bona fide options to purchase, hotel and motel living, condemned houses in the path of a freeway, tenant farms, migrant housing, certain publicly-owned dwellings, and live-in employees. Section 36 allows individual waivers by agreement. A landlord and tenant who agree can waive most rights and duties under the act if the agreement is not in a standard form lease; "there is no substantial inequality in the bargaining position;" the exemption does not violate public policy; and it is approved by a county prosecutor, the consumer protection division of the Attorney General's Office, or an attorney for the tenant. The result may well be loopholes which will receive a great deal of attention from landlords who wish to avoid the new duties the new act imposes. Use of the waiver section will have to be carefully monitored to ensure that collusion and market pressures do not result in waivers beyond those clearly intended.

The act is not intended to cover industrial or commercial properties. Sections 44-46 create two separate procedures — one for residential property covered under the new act, and the presently existing procedures which will now cover all property not covered by the act. Questions will arise on the advisability of having two separate statutory schemes. One example of the confusion which may result is the failure of the Legislature to amend the Deed of Trust statute so that it will refer to the new act. RCW 61.24.060 provides that after sale of the property by the trustee, the purchaser may use the summary proceeding in chapter 59.12 RCW to regain possession. Of course, the proper reference, if the property involved is residential, is the newly-created chapter in title 59 RCW. (Sections 38-42.) It is hoped that the courts will consider RCW 61.24.060 to be amended by implication, at least until the Legislature has an opportunity to correct the confusion.

3. *Conditions Precedent* — In section 8 of the act, the tenant's right to use his or her remedies is conditioned on the payment of rent. Exceptions are provided to allow him to bring tort actions and to raise certain defenses in an unlawful detainer action. However, it is common among low-income tenants to be behind in rent. Requiring a tenant to be current in rent will stop many tenants from taking advantage of the act. While the con-

cept may be justifiable generally, because of the landlord's need for his or her income, it is particularly inappropriate in certain situations. The "diminution in value" remedy was designed to reflect the *actual* situation between the parties. To require a tenant to be paid up before arguing that he or she should not have to pay all the rent is difficult to comprehend.

Where the landlord has locked a tenant out, shut off his or her utilities or attached personal property, it is usually because the tenant is behind in rent. If that is so, the conditions precedent of being current in rent will effectively eliminate any remedy except a suit for damages for those violations of the law. An amendment to exclude those situations from the obligation to pay rent would create a more effective law.

4. *Mutual and Dependent Covenants* — The original bill included a section which provided that:

> Material promises, agreements, covenants, or undertakings of any kind to be performed by either party to a rental agreement shall be interpreted as mutual and dependent conditions to the performances of material promises, agreements, covenants or undertakings by the other party.

That section was deleted from the final act. A question arises as to the significance of the provision's deletion. The original intent of such a section was to eliminate the concept of independent covenants and apply contract law principles to the landlord-tenant relationship. By deleting that language, it can be argued that the Legislature intended *not* to replace old property law concepts with the contractual idea of dependent covenants. If that were true, then it may be that a failure of the landlord to comply with the act would *not* release the tenant from his obligation to pay rent. Covenants would still be enforceable, but independent. The other view is that the concept of dependent covenants is clearly established by the creation of the new remedies. The argument would suggest that covenants are dependent and that a failure of a landlord to repair defects would release a tenant from his obligations, but only to the extent and pursuant to the procedures in the act.

This problem takes on significance perhaps only when a tenant attempts to use a remedy *not* authorized in the act (e.g. rent withholding). If the concept of mutual and dependent covenants can be considered to have been adopted by the Legislature for landlord-tenant relationships, then it can be argued that remedies and defenses not specifically provided in the act are still available so long as they are consistent with the overriding concept. If, on the other hand, there is an affirmative intent *not* to change old property law principles, then it is likely that no remedy will exist in addition to those authorized in the act, and that covenants of the landlord and tenant would remain independent of each other except as specifically provided in the act. The result will be a continuation of the archaic principle that a landlord's failure to maintain the dwelling does not effect the tenant's duty to pay rent.

5. *Effective Date* — When the bill was filed it contained the following effective date section:

> Sections 1 through 35 and 43 through 45 of this 1973 amendatory act shall not apply to any lease entered into prior to the effective date of this 1973 amendatory act. All provisions of this 1973 amendatory act shall apply to any lease or periodic tenancy entered into on or subsequent to the effective date of this 1973 amendatory act: PROVIDED That thirty days after the effective date of this 1973 amendatory act, sections 1 through 35 and 43 through 45 of this 1973 amendatory act shall apply to any month-to-month tenancy which commenced prior to the effective date of this 1973 amendatory act.

That material was amended and finally item-vetoed by the Governor.

The problem is when the act should become effective as to rental agreements entered into prior to the effective date. It may be argued, first of all, that rental contracts entered into prior to the effective date are covered as of the effective date since the act merely creates new remedies and does not affect vested rights or obligations of contract. It can also be argued that the act can apply retroactively because there was a clear legislative intent to do so. However, neither of those arguments seems persuasive here, since the new act does establish new obligations and since there is no clear legislative intent to have the statute apply retroactively.

However, many of those "new" obligations in the act already appear in some form in local or state codes or ordinances. They all will apply to pre-existing relationships. Since the code obligation prevails over an inconsistent obligation in the act (section 6), the remedies will often be triggered by a violation of a pre-existing legal duty — at least in those areas that have such codes. Those codes and ordinances are all adopted pursuant to the governmental entity's police power.

That police power is defined by its authority, in the public interest, to restrict or restrain property or contractual rights. Since police power statutes may legally interfere with those rights retroactively, the remedies created by the act to enforce the obligations also apply retroactively.

Assuming for the sake of argument that the act will not be considered to apply retroactively, when will it apply? Except as to those pre-existing obligations discussed above, as to term leases it will probably not be effective until the term ends. Those "contracts" might well be impaired by grafting on the act's provisions in the middle of the term. However, the question is more difficult to answer as to month-to-month tenancies. Are those to be considered month-long contracts, renewed each month by the payment and acceptance of rent? Or is the contract a single one of indefinite duration?

One old case holds that, for purposes of the landlord's tort liability, a month-to-month tenancy is continuing and is not renewed each month when the rent is paid. Therefore, the liability of the landlord depends upon the condition of the property at the beginning of the tenancy and not at the beginning of each month. *Ward v. Hinkleman*, 37 Wash. 375, 79 Pac. 956 (1905). It may be argued that if a month-to-month tenancy is continuing for purposes of liability it is a continuing contract entered into only once and, therefore, would be impaired by a new law passed at any time following the initial agreement.

However, an even older case dealt with the effect of the last amendments (in 1891) to the state landlord-tenant law to a lease executed before the effective date. *Woodward v. Winehill*, 14 Wash. 394, 44 Pac. 860 (1896). The tenant contended that the change in the law which imposed penalties on a tenant who wrongfully holds over, which was passed along with a variety of other changes, so altered the value of the lease executed before the law's passage that it was unconstitutional as applied to that lease. The court rejected that argument and held that the act was binding. Their reasoning was two-fold: First, the statute change was merely to a remedy and rights under an existing contract were not impaired; second, that the act punished (wrongful holdover) was so distinct from the lease that it had no connection with any contract rights thereunder. The lease had been terminated. *Woodward*, at 397. However, the court went on in dictum to say that a law abolishing distress for rent would be applicable to pre-existing leases. *Woodward* at 398. The 1973 act also abolishes distress for rent. (Section 23(4) )

Based on the *Woodward* case, it may be argued that new remedies to be implemented after the breach and termination of a rental agreement can apply to pre-existing landlord-tenant relationships. This would cover the unlawful detainer changes and other rights granted a tenant who has been forced to leave (e.g. lock-outs, utility shut-offs, retaliatory and constructive eviction). It would seem that a strong public policy exists in favor of making the new act effective. If it did not apply to month-to-month tenancies until the tenant moved, the act would take years to be implemented. A more reasonable result would be to make all of the act applicable as soon as rent is paid for the next period following the July 16 effective date. The problem could be solved by the Legislature adopting the language used in Senate Bill 2368 which would make the act apply to rental agreements "entered into or extended or renewed" after the effective date.

**Conclusion**

The new Washington Residential Landlord-Tenant Act of 1973 brings this state into the twentieth century. Balance has been achieved between the right of a landlord to earn an adequate return on his or her investment and the right of a tenant to live in a dwelling which is and will remain fit for human habitation. More can be done to streamline procedures and eliminate inconsistencies in the law. In addition, the changing times will require constant review to ensure that landlords and tenants remain in a substantially equal bargaining position. Alterations in the law may periodically be necessary to retain that balance.

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## SUPREME COURT PRACTICE

*By* **WILLIAM M. LOWRY**
*Supreme Court Clerk*

In the fall of 1968, the 50th Amendment to the Washington State Constitution authorizing a Court of Appeals was approved by the electorate. The 1969 Legislature gave the new court form. Since the appellate backlog manifested an urgent need for the court, it was decided that the Court of Appeals would commence hearing cases in the September 1969 Session. This situation created an emergent need for rules. Time did not permit more than the adoption of appellate rules to provide for the Court of Appeals, and the Supreme Court promulgated the amendments as interim.

What then is the status of these interim appellate rules?

Since June 1972, a task force organized by the Washington Judicial Council has been engaged on an in depth study of appellate rules including a comparison and analysis of Federal and sister state procedures. The study is financed by a federal grant of $56,250 and a contribution from the Bar of $7,500. The Task Force chaired by Byron Crutcher until his recent illness and now by Malcolm Edwards has an unpaid, but dedicated membership of 14, mostly practicing attorneys, and an employed staff research attorney, Karl Tegland.

A proposed draft will be completed for consideration by June 30, 1973. It is hoped to obtain the reaction of the members of the Bar to general concepts at the September 1973 convention. The draft will present some basic changes in appellate procedure.

a. *Unification.* A single uniform set of rules for the Supreme Court and Court of Appeals for both civil and criminal cases.

b. *Functional Organization.* The rules will be arranged functionally so the practitioner can start and proceed step by step chronologically. All rules relating to a single function appear together (briefing, argument, motions, etc.)

c. *Comprehensive.* Insofar as possible statutory and decisional procedure has been picked up and included in the rules.

d. *Traps.* Unspring the traps by referencing statutory irregularities, of which there are many.

e. *On the Merits.* Emphasis is placed on decisions on the merits. For example the distinction between the statement of facts and transcript is eliminated by providing for a single record on review with means of supplementing the record at any time it is found deficient; elimination of the rigid assignment of error requirement in favor of a more liberal, issues presented for review, concept, with the provision for compensation of a party harmed by a failure of his opponent to comply with the rules.

f. *Economy.* Elimination of the expense of certified copies of the clerk's record, by requiring the original papers in the clerk's file to be included in the record on review. Provision that copies of briefs will be produced by the appellate clerks. These two changes should alone save a litigant a minimum of $300.

g. *Piercing the Folklore of the Common Law Writ.* The proposal provides for two means of seeking review, review as a matter of right, called appeal, and review as a matter of discretion, called discretionary review. The remedy of the extraordinary writs including the Writ of Certiorari are available by a simplified motion for discretionary review procedure. The grounds upon which the such relief will be granted are set forth.

h. *Prompt Determination.* The procedural questions which the court is now called upon to decide are reduced. Decisions on the rest are speeded up by the provision for a clerk's ruling from which an exception may be taken.

The Task Force needs the reaction of the members of the Bar at the September convention to general concepts to complete its recommendations to the Judicial Council.

## THE COURT OF APPEALS

*By* **JOSEPH A. THIBODEAU**, *Commissioner*

By an order dated March 7, 1973, the Supreme Court amended CAROA 46 to be effective July 1, 1973 (see 82 Wn.2d 1107-1114). This article is an attempt to highlight some of those amendments.

CAROA 46 (b) (1) provides:

"In order for the Court of Appeals to obtain jurisdiction of an appeal in a criminal cause the original and a copy of a written notice of appeal must be filed with the filing fee paid to the clerk of the superior court unless the appellant is authorized to proceed in forma pauperis, within thirty (30) days after entry of the order, judgment, or decree from which the appeal is taken or, in the event of a motion timely made subsequent to judgment which, if granted, would modify or delay the effect of the judgment, within thirty (30) days after the entry of an order granting or denying the motion. The clerk of the superior court shall forthwith file the copy of the notice of appeal with the clerk of the division of the Court of Appeals to which the notice of appeal is directed and transmit therewith the filing fee, if any. Failure of the superior court clerk to file the copy with, and forward the filing fee, if any, to, the clerk of the Court of Appeals, will not affect the validity of the appeal."

This will now make the procedure for filing a notice of appeal in a criminal case the same as in civil cases. Counsel should be mindful of the procedure for proceeding in forma pauperis. Counsel must either pay the filing fee or secure an order from the superior court authorizing the appeal in forma pauperis and present the order or fee and the notice of appeal to the clerk of the superior court for filing within 30 days of the final decision. This rule is considered jurisdictional — see *Barci v. Intalco Aluminum Corp.*, 82 Wn.3d 152 (1973;.

CAROA 46 (f) provides:

"*When public funds have been authorized for the costs of briefs filed on behalf of a defendant, the briefs shall be reproduced by the Court of Appeals.* Within the time allowed, an original copy of such briefs ready and suitable for photocopying shall be filed with the clerk of the cognizant division. The clerk shall reproduce the briefs and make the following distribution:

| **To Whom Sent** | **Number of Copies** |
|---|---|
| Defendant | 1 |
| Counsel for Defendant | 2 |
| Opposing Counsel | 2 |
| State Law Library | 5 |
| Court of Appeals | As required |
| Supreme Court | 7 if petition for review is filed and 5 additional if petition for review is granted |

This is a departure from the prior rule. The reason for the change is an attempt to reduce the expenditure of public funds. A study was made by the Supreme Court which analyzed the amount of savings that could be accomplished by the court in making the necessary copies of the defendant's brief. A savings of over 50 percent per page was possible. This is an experimental project which, if found successful, may be utilized in civil appeals.

CAROA 46 (b) (3) provides:

"A party filing a notice of appeal shall notify all other parties in the case by mailing a copy of the notice of appeal to the party's attorney of record, or, if the party is not represented by an attorney, then to the party at his last known address. Such notification shall be mailed on the day notice of appeal is filed and shall be sufficient notwithstanding the oath of the party, or his attorney, prior to the giving of the notification. Proof of service need not be filed unless notification is challenged."

The responsibility of notifying the parties of the appeal has been shifted from the clerk of the superior court to the appellant. Notice of cross-appeal shall be handled in the same manner as in CAROA 33.

CAROA 46 (e) (1) provides:

"Within fifty-five (55) days after the filing of the notice of appeal, unless the chief judge shall previously order otherwise, the appellant or his counsel must file a statement that:

> Arrangements have been made with the court reporter to transcribe any statement of facts necessary for the appeal, and for the payment thereof, and with the clerk of the superior court for the transcript which is to be filed pursuant to CAROA 44,"

This again is an attempt to bring the criminal appeal procedure in line with civil appeals. Failure to comply with this rule may be grounds for imposition of terms or dismissal upon the motion of the parties or the clerk of the Court of Appeals.

CAROA 46 (e) (4) provides:

"If an indigent defendant is authorized by the chief judge to supplement the brief of his appointed counsel, his appointed counsel shall have the copy of the statement of facts served on the defendant within ten (10) days after service of the appellant's opening brief. Proof of service will be promptly filed with the Court of Appeals. The defendant will provide appointed counsel a copy of his supplemental brief for reproduction within sixty (60) days after the statement of facts was served upon him. The copy of the statement of facts will be returned to his appointed counsel with the supplemental brief. If the copy of the statement of facts is not returned the supplemental brief will not be reproduced and the appeal will proceed as if a supplemental brief had not been authorized."

This amendment is an outgrowth of the decision in *State v. Theobald*, 78 Wn.2d 173 (1970).

## SUPERIOR COURT NEWS

*By* ROBERT M. ELSTON, *Judge*
*King County Superior Court*

The following judges chair current committees of the King County Superior Court: Executive, **Stanley C. Soderland**; Budget, **Warren Chan**; Courthouse Facilities, **James A. Noe**; Criminal Justice System, **David W. Soukup**; Family Law, Juvenile and Mental Illness, **Nancy Ann Holman** (Family Law and Metal Illness) and **James A. Noe** (Juvenile); Human Relations, **Solie M. Ringold**; Jury, **William C. Goodloe**; Legislation, **Jerome M. Johnson**; Orientation, Education and Ceremonies, **Peter K. Steere**; Pretrial and Settlement, **James J. Dore**; Probate, **Howard J. Thompson**; Public Relations and News Media, **Frank D. Howard**; and Rules, **David C. Hunter.**

## COURT ADMINISTRATOR

*By* PHILLIP WINBERRY
*Administrator of the Courts*

The following information is submitted in the hopes that it will better acquaint the members of the bar with the administrative organization of the courts of this state.

The first effort to establish a court administrative system within the state of Washington occurred in 1957 when the office of Administrator for the Courts was created by the legislature. The late Albert C. Bise was the State's first court administrator, taking office July 1, 1957 and serving until his death on June 23, 1972. This writer has served as court administrator since September 1 1972.

The specific duties and responsibilities of the court administrator, as set forth in RCW 2.56, are generally to continuously study the operation of the courts of the State of Washington and make recommendations for their improvements. Under the direction of the Chief Justice, the office also collects and compiles statistical data relating to the courts, as well as coordinating the superior court visiting judge program.

Court administration is not limited to the state level of the judiciary. Several court administrators serve at the superior and district court level. The first court administrative office at the superior court level was established in King County in February, 1967. At this time there are six local superior court administrators serving the following courts: Benton-Franklin Superior Court District, Grays Harbor Superior Court, Yakima County Superior Court, Thurston-Mason Superior Court District, Kitsap County Superior Court and King County Superior County

In recognition of the increased importance of effective court administration, the superior court administrators have organized themselves into the Association of Washington Superior Court Administrators, whose purposes in brief are:

(a) To increase the proficiency of court administration through further education of its membership;

(b) To improve the administration of justice through the application of modern management techniques;

(c) To work toward standardized judicial terminology and statistical reporting methods by furnishing a forum for the interchange of information relating to court administration; and,

(d) To support the independence of the judiciary through effective court legislation and court rule change.

There are also court administrators in the courts of limited jurisdiction filling positions in the municipal courts at Tacoma, Seattle and Everett and the district courts in Pierce, Yakima, Snohomish, Spokane and King Counties. The district court administrators have also organized an association in conjunction with the court clerks serving at this court level. The objectives of this association are to add to the knowledge of court personnel, improve court administration and cooperate with other organizations dedicated to the improvement of court procedures and the administration of justice.

It is the goal of all court administrators in the state to cooperate with the bench and the bar in an effort to upgrade and improve the delivery of fair and equal justice to all citizens.

A change in the site of the 1973 Judicial Conference was recently announced by the Supreme Court. the Conference will now be held in Seattle at the Washington Plaza Hotel instead of Rosario's Resort on Orcas Island as originally planned. The dates remain the same, September 4-7, 1973.

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## Pattern Instruction Group Seeking Aide

The Washington Pattern Jury Instruction Committee has been seeking applicants for the position of Staff Assistant.

The Committee is composed of members of the judiciary and the bar appointed by the Chief Justice of the Washington Supreme Court. The Committee is to prepare and publish pattern jury instructions. Civil instructions prepared by the Committee are published in 6 Washington Practice (West Publishing Company).

The Committee is presently preparing instructions to be used in criminal cases. A staff assistant is to be hired for a period of 10 months at a salary of $10,000. The staff assistant will be working under the direction of the committee coordinator and the committee chairman, Judge Stanley C. Soderland. The applicant should be an attorney, preferably one with experience in the criminal process or drafting instructions or both.

The staff assistant will research and brief all pertinent decisions of the Washington appellate courts and the United States Supreme Court pertaining to the assignment received from the coordinator, be familiar with and furnish to the subcommittees outside material, including form instructions used in Washington and other states, and formulate suggestions to the subcommittees.

Application may be made to Joan Smith Lawrence, Committee Coordinator, 1020 Norton Building, Seattle.

Okanogan goes international. Okanogan Bar reported meeting with the Yale County Bar, British Columbia, at Penticton, B.C. There was considerable discussion of common problems such as divorce and laymen practicing law. It was attended by a Supreme Court Judge (trial) of B.C., Mr. Justice Davies, and, from Okanogan County, Judge **Joseph Wicks, Herbert A. Davis, John N. Leavitt, Rhesa E. Mansfield, Robert J. Murray, Earl K. Nansen, Donald S. Watson** and **Rodney E. Young.**

A long program was outlined for the Bellingham convention. Addresses were to be made by President **Philip D. Macbride,** lawyer-governor **Arthur B. Langlie** and President of Superior Court Judges **Donald A. McDonald**. Especially noteworthy was the invocation to be given by **J. V. Linden**, S.J., Spokane. The Bar's wag, **Tracy Griffiin**, introduced popular Father Linden as the dean of the only law school where a student atended two years then made a fortune as a crooner — Bing Crosby, of course.

**Eugene A. Wright**, as chairman of the Public Service Committee, filed a long report making suggestions for the improvement of the bar's image generally and attorney-client relationships particularly. Among the recommendations were special courses in public relations and professional responsibility in law schools. He said appropriate recognition of the subjects should be given in future bar exams.

**Michael Copass**, chairman of the Committee on Unauthorized Practice of Law, with typical zest opened the subject as follows: "The late Judge McEwen reportedly quipped — 'Justice is just the struggle of a lawyer for a living.' In line with this philosophy, our critics have said that our unceasing attempt to define and defend the domain of 'the practice of law' is selfishly motivated and inspired solely by economic reasons. Every thoughtful lawyer knows the falsity of this accusation."

### Births

Walla Walla bar elected **Robert J. Williams**, President; **Herman H. Hahner**, Vice-President; and **Carlton G. Conkey**, Secretary-Treasurer.

### Crossed the Bar

Everett: **Wayne Gallegher**, trust officer, Everett Trust and Savings Bank.

**John Walsh**, deputy prosecutor, former justice of the peace. Also mourned the passing of long-time baliff **August Sensmeier.**

Editor Rupp cried salty tears over the erroneous report that **Stewart Lombard** had opened an office in Salt Lake City instead of Lake City, King County, some 1500 miles away. Salt Lake City's anguish was stifled, of course.

A Beansprout from the Seattle Daily Journal of Commerce:

"In the last couple of decades there has been a fair number of foreign government officials who have told us to go home and just leave them a loan."

**David J. Williams**

# Office Practice Tips

### IBM's New Mag Card II

The seminar on Law Office Management and Economics sponsored by the Washington State Bar Association at Hanford House in Richland on June 8th and 9th of this year had a session entitled "Turning out the work; the whys and hows of automatic typewriters." The presentation was devoted to proper use of equipment rather than to a demonstration of the equipment itself. One of the great problems in law offices is that sophisticated equipment of this type is purchased and not properly utilized. If this is the case in your office, you are simply building up monthly expense without a proper return.

The recent trend in utilization of automatic typewriters has been to develop typing centers with central dictation recorders, with hand sets on the dictators desk and making the transcribers skilled experts with adequate form libraries. This is a natural evolution from the development of the Administrative Assistant who has resulted from divorcing the skilled paraprofessional from the typewriter and permitting him or her to do productive work above the level of the largely mechanical process of the typist. We should all discourage the paraprofessional segment of our staff from spending time on a typewriter.

After lunch a movie was shown designed to give specific information on the newly developed mag card II typewriter. This unit will not be available for general distribution for from 4 to 6 months and is so new that a demonstrator was not available at Richland.

Just last week a lawyer friend called me from the coast asking if all the forms they had developed for their mag card could be automatically transferred to the new machine. It now appears that all of the forms and all of the mag cards developed for the old mag card machine are completely compatible with the new machine and can be used without being redone.

His second question was whether they should sign a two year contract on their present 2 mag card machines, or wait for the new model. It appears that the contract rate is lowered so that a renter pays for 18 months and gets 24. Consequently, if he contracted one machine he could push it out the door at the end of 18 months and have lost nothing, but he is locked in for 18 months.

When IBM first brought out the mag card machine, many offices felt they were locked into the MTST model because there was no way to mechanically transfer their programmed material from tape to cards. But now they have an answer. A computer in Austin, Texas has been programmed to read the tape and transpose it on the mag cards and the tape machines are being phased out of production.

The outstanding feature of the new machine is that it has a memory bank with a storage capacity of 8,000 characters which is equal to 2½ pages of a typed copy. Because the material is in a memory bank rather than locked down to the card the new machine is simpler and easier to use for revision work than either the old mag card or the magnetic tape machines. When a point is arrived at in a form or a rough draft where a modification or change is called for, by utilization of the memory bank capability once the new material is inserted all of the following material that is pertinent is moved down and the margins are automatically adjusted.

On first drafts of instruments we are all annoyed by the customary strike-overs for corrections on the present machines, because they are hard to read and we always wonder if the correction is accurate. On the new machine the typist has a lift-off ribbon which permits her to actually erase the incorrect material just as your secretary back spaces for corrections on her standard machine. Consequently, the first draft does not have the confusing strike-overs that we were so accustomed to.

The memory bank allows the machine to use automatic centering and automatic decimal tabulation. These esoteric terms mean that a title or heading can be typed into the memory bank without appearing on the sheet of paper and the memory bank can be instructed to center it by utilization of the proper tab. It will then play it back, putting it in the exact center of the page. Figures in columns are always a problem for a secretary because all items had to be back counted in order to know where the first figure should start so that the last digits would be in line with one another. Now, they are simply typed into the memory bank with instructions by utilization of the proper tab key to line them up and the machine will type them back in exactly the right position.

The automatic word underscore is also a memory function. A code key is pressed after each word to be underscored and the machine automatically goes back and completes the underscoring before the next word is typed.

With the old mag card machines, if the girl came to the end of a ribbon and didn't notice it, the machine would keep right on going. With the new one, you have an automatic end of ribbon shut-off that stops the machine when the ribbon is exhausted.

The machine has a capacity for adjusting the top and bottom margins on each page upon being instructed to do so. For example, if a two page instrument had been typed in the memory and the first page was started ten lines from the top and ended six lines from the bottom the next page would automatically be typed in the same fashion.

The present machine has its cloth ribbon in a cartridge but the carbon ribbon on a spool. We have always used the carbon ribbon on our machines and prefer it. The new machine has the little liftoff ribbon for corrections on a spool which is good for 2,000 corrections, but the carbon ribbon is in a cartridge which greatly simplifies ribbon changing. It is also 2½ times as long as the present carbon ribbon.

The machine has dual pitch which means that you can select either 10 or 12 characters per inch. Ten characters is generally referred to as pica spacing and twelve characters is generally referred to as elite.

Whereas the old machine would only accept one card at a time, the new machine will accept either a single card or a stack of 50 cards. One bank has an interesting utilization of this feature. They have their letterhead on continuous rolls and put a form letter into the memory of the machine. They then put a stack of 50 cards in the machine which names and addresses of customers and the machine, thanks to its automatic first line registration proceeds to type out 2,500 letters inserting the individual names and addresses on each letter.

One of the principal arguments for the old MTST dual tape machine was that working with the first draft and making corrections on it one could end up with an updated tape. Because of the memory feature of this machine it has the same capacity. The first draft card is used as a basis, corrections are made and an updated card is produced.

Another valuable feature of the new machine is it can duplicate a mag card mechanically without retyping it. At $1.00 per card each operator could keep her own copies of the most commonly used forms.

It is obvious that this new equipment has tremendous versatility and potential and should be used by a highly skilled person to its maximum utilization. Naturally, it costs more, as everything does these days. It is being quoted at $100.00 a month more than the present mag card machine. With full utilization it should more than justify the added expense. However, the key is utilization and that is the name of the game. We must remember that the machine itself can only justify itself if the whole operation is properly programmed from beginning to end. This is very sophisticated and exciting equipment and once they are in general use it is my hope that the state committee on Law Office Management and Economics will find a spot in our general convention agenda to high point utilization. If this happens, we should make it a point to bring our senior typist to the session and expose her to the endless possibilities it presents.

Harry E. Hennessey

*Prepared by the Committee on Law Office Economics and Management, Richard C. Reed, Seattle, Chairman, Harry E. Hennessey, Spokane, Editor.*

*This column is a clearing house for better ways to run the law office. Contributions are solicited from all members of the Bar and should be sent to the editor at Post Office Box 324, Spokane, Washington 99210.*

**Notice:** Resolutions to be proposed to the membership at the September meeting of the State Bar Association should be submitted at least 20 days in advance of the convention. Resolutions may be mailed to the Bar Office, 505 Madison Street, Seattle 98104.

# Public Interest Law Seminar Planned for October

An all-day seminar designed to inform and encourage members of the private bar to engage in public interest law will be held Saturday, October 6.

The seminar will be jointly sponsored by the Washington State Bar Association, the Seattle-King County Bar Association and the Young Lawyers Section of the Seattle-King County Bar Association.

Topics will include environmental law, federal civil rights litigation, discrimination in employment, class actions and consumer protection, among others. The principal focus will be on the practical, nuts-and-bolts aspects of each topic, including recovery of attorneys' fees.

**Roger M. Leed**, Seattle attorney and co-chairman of the ABA Young Lawyers Section Environmental Quality Counsel, will speak on environmental law. Mr. Leed has had significant experience in environmental litigation.

**Charles J. Merten**, partner in a Portland, Oregon, Public Interest law firm, will speak on federal civil rights litigation. Mr. Merten has brought a number of successful actions pursuant to the federal civil rights acts.

**Ms. Betty Bracelin**, Seattle attorney, will speak on discrimination-in-employment litigation. Ms. Bracelin was an organizer of the recent seminar dealing with this topic presented to the Washington State Trial Lawyers Association.

**J. Anthony Cline**, managing attorney of Public Advocates, Inc., a San Francisco public interest law firm, will speak on the subject of recovery of attorneys' fees in public interest cases. Mr. Cline was counsel for the plaintiff in the recent case of *LaRaza Unida v. Volpe*, a leading Ninth Circuit authority on recovery of attorneys' fees.

**William L. Dwyer**, Seattle attorney, will speak on the subject of class actions. Mr. Dwyer is well known through his many Bar Association activities and has had extensive experience in this complicated area of practice.

**J. Richard Aramburu**, a Seattle attorney, will address some special problems associated with representing community groups and organizations. Mr. Aramburu has represented numerous conservation and other citizen groups in Seattle and throughout the State.

The seminar organizers, **Dick Wertz, Paul Silver** and **Doug Hebbell**, all of Seattle, are in need of assistance from volunteers willing to lend their energies to this project. Persons interested in helping should immediately call one of the organizers.

## Wanted and Unwanted

**Position Available:** Leading law firm has opening for experienced estate tax probate and trust attorney with good academic background. Five years experience desired. Send resume to Box PT, Bar News, 505 Madison Street, Seattle, Washington 98104.

**For Sale:** From doctor's estate, one complete and one partial human skeleton. Seattle, 323-1251 or 525-6160.

**Wanted:** Washington Digest. Nelson Christensen, Seattle. 783-4100.

**For Sale:** Person Injury Valuations (8 Volumes); Am Jur Pleading and Practice Forms (22 Volume plus Index); Sessions Laws 1911-1973; O'Bryans Wash Forms (2 Volumes); Nichols Cyclopedia of Legal Forms (10 Volumes); Washington Digest Complete (1972 pocket parts); A.L.R. 2nd Complete; Proof of Facts (29 volumes plus Index); Litigation & Trial of Air Crash Cases by Kennelly (2 volumes); Washington Practice (10 volumes); Rem. Rev Stat & Revised Code of Washington; Washington Court Rules (2 volumes), and Am Jur 1 Complete.

Call Judge G. B. Chamberlin, Port Angeles, Washington, Phone 457-5160.

**For Sale:** Several IBM MTST tapes; Richard G. Jeffers, Wenatchee, 509-662-2146.

**Space Available:** Attractive office space available. Capitol Hill area. Share library and reception area. Secretary by arrangement. Off-street parking available for self and clients. 324-5700. Callies & Barber.

**For Sale:** RCW, filing cabinets, desks, dictaphones, metal bookshelves. Call Clare Litchman, EM 2-1901, Seattle.

## New Practice Manual Available From Bar

A new Bar publication, Aspects of Law Office Management and Economics, now is available from the State Bar Office.

The 93-page practice manual was published to accompany the recent seminar presented in Richland by the State Bar's Committee on Law Office Management and Economics of the Bar. Richard C. Reed is committee chairman and Richard J. Dolack was seminar chairman.

The authors, Roger H. Underwood, Fred T. Smart, Reed and Milton H. Stern of Newark, N.J., the featured seminar speaker, discuss "Making Timekeeping Pay Even Better," "Time Keeping System," "Share the Wealth and Remain Good Friends" (dealing with systems of distributing law-firm income) and "Financial Management."

Price of the 8½ x 11-inch, soft-cover manual is $7.50.

Copies of the new CLE practice manual on Products Liability also are available from the Bar Office. Cost of the 339-page book is $12.50.

## Illinois — Licensed Lawyers Must Register

Effective February 1, 1973, registration of all attorneys licensed in Illinois is required by Rule of the Illinois Supreme Court, regardless of whether they reside, practice or work in or out of Illinois. Attorneys so licensed who have not received such notice are asked to write to Carl H. Rolewick, Administrator, Illinois Disciplinary Commission, 485 Lincoln Towers Plaza, Springfield, Illinois 62704, for registration materials. No fee is charged for those who neither reside, practice nor are employed in Illinois.

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| July 29 - August 4 | College of Advocacy. Hastings Law School San Francisco. |
| August 6-9 | ABA Annual Meeting, Washington, D.C. |
| Sept. 6-8 | WSBA Convention. Regency Hyatt, Box 8650, Station H, Vancouver, 1, B.C. |
| Oct. 6 | Public Interest Law Seminar. Seattle. Sponsored by WSBA and SKCBA. Dick Wertz, Paul Silver, and Doug Hebbell, Co-Chairmen. |
| Oct. 25-26 | Estate Planning Seminar, Washington Plaza Hotel, Seattle. Cosponsored by Estate Planning Council of Seattle and WSBA |
| Dec. 1 | CLE Seminar. Evergreen Inn, Olympia, Washington State Taxes: Substance, Administrative Remedies, Trial Practice. John T. Piper, Chmn; Speakers: Michael L. Cohen, James Ferber, Graham H. Fernald, Harley H. Hoppe, James R. Stanford, S.E. Tveden, E.M. Sandy Murray; Consultants: William R. Anderson, Michael B. Hansen, Robert S. Mucklestone. |
| Dec. 8 | CLE State Tax Seminar. Olympic Hotel, Seattle |
| Dec. 14 | CLE State Tax Seminar. Ridpath Hotel, Spokane. |

## LAWYER PLACEMENT SERVICE

*By* DAVID L. BROOM

The Young Lawyer's Committee of the Washington State Bar Association operates a Lawyer Placement Service at the State Bar Office, 505 Madison Avenue, Seattle, Washington 98104, and at the Spokane County Law Library, Paulsen Building, Spokane. The service is available to members of the Association and recent law graduates seeking legal opportunities and employers seeking legal personnel. The service is offered without cost to either the applicant or prospective employers. The following are summaries of a few of the many applicants on file:

1. Financier seeking Legal Administrator for law office. Requires background in real property law. $17,000.00 plus to begin.
2. Southwest Washington prosecutor's office seeking three to four deputy prosecutors.
3. Two years experience required for opening in Contract Department of large grocery chain.
4. Large city seeking attorney at $18,000.00 plus.
5. Southwest Washington firm seeking general practitioner for possible early partnership.
6. Legal services/public defender position open in small scenic Eastern Washington community. Current Bar applicants also eligible.
7. Federal agency office in Seattle seeking trial attorney.
8. National law consulting service will hire lawyer to work with various corporate legal staffs.
9. Western Washington public defender office has five openings from $11,400.00 to $18,000.00.

WASHINGTON STATE BAR ASSOCIATION
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