Volume 30, Number 6
June, 1976

WASHINGTON STATE BAR NEWS

PLANNING EFFICIENT LAW OFFICES

WE CAN HELP YOU HELP YOUR CLIENTS

If you represent someone who has a personal investment account, or serves as a trustee or executor, or is a financial officer of an educational institution, charitable foundation, or pension and profit-sharing fund, we can help with the financial management. Our custody agency accounts can save lots of time and trouble.

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We handle all the time consuming details, such as making notifications of bonds called for redemption, stock dividends involving fractions, rights offering, securities exchanges, and other changes in capital.

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At the end of an individual's tax year, we issue an accurate record of dividends, interest, and capital gains resulting from the assets held in the account. This way, there is no need to itemize dividends and interest on income tax returns. The return can simply state "detail shown at Seattle-First National Bank."

Let us help.

Put a custody agency account to work for your clients. We can save them lots of time and trouble. Have your client call Pete Peery at 583-3233 for all the details. Or, if you'd like more ideas on how you can help your clients with financial management, give Pete Peery a call yourself.

First Bank
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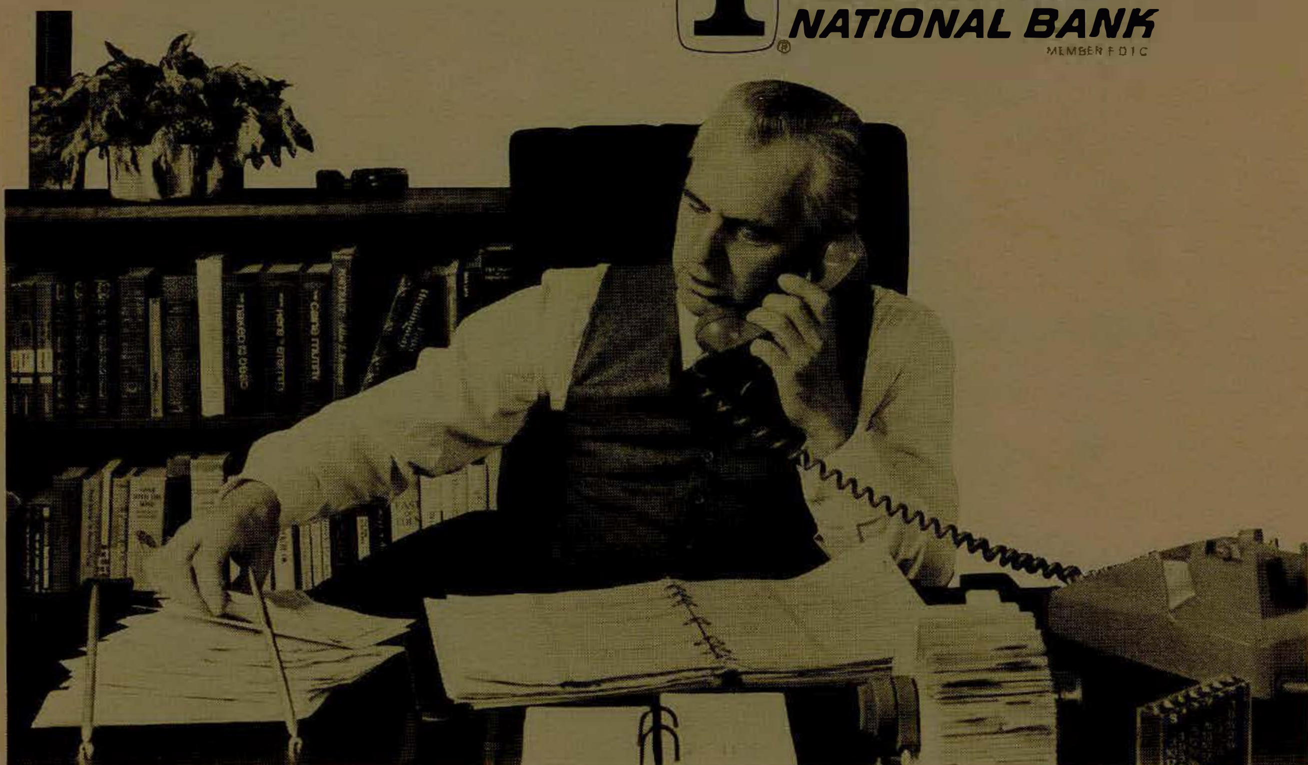

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Volume 30, Number 6
June 1976

WASHINGTON STATE BAR NEWS

FEATURES

IN THE NEWS

DEPARTMENTS

JUNE COVER:
Illustration by Irwin Caplan

Letters

Support for Self-Insured Malpractice Coverage

Editor:

I am writing to offer this lawyer's personal support of your idea of self insurance by the Bar Association for malpractice coverage, as stated in "Editor's Notes" of the April, 1976 *State Bar News*. I think it is a splendid idea and should be pursued by our Bar Association.

GWYNN TOWNES
Seattle

Editor:

Regarding malpractice insurance, I would like to second the motion that the Washington Bar become a self insurer for malpractice insurance, if that is at all possible.

I would like to support the idea of a self-insuring client's security fund for the Bar Association.

Further, the idea of a Bar Association credit union sounds very interesting and if it can be worked out, I believe it would be quite a service to the Bar.

My congratulations to the directors, and other lawyers, who are proposing these innovations. I seldom take the time to write a letter to the *Bar News*, but felt this was an appropriate time to express support of these movements.

I do have one caveat, however, and that concerns the convention locations. Why can't one of the annual conventions be held in Seattle? There must be other lawyers besides me who find it difficult to take the time away from our practices to go to B.C., Spokane, or Hawaii. I have never been able to attend a convention, because of the distance and time involved. Surely the large number of lawyers who practice in western Washington, would make it reasonable to have a convention here at least once in a while.

MARYALICE NORMAN
Seattle

Support for Competitive Malpractice Coverage

Editor:

In RE: The memorandum on Lawyers Malpractice Insurance in your May issue:

We were interested to read that the Bar sponsored Malpractice Insurer would be withdrawing. We were surprised at the conclusion that "it seems certain that there will be an increase, and perhaps a dramatic one, in premiums."

Independent carriers are probably writing the larger share of lawyers malpractice in Washington. Clearly competitors are writing the great bulk of the more complex policies requiring, for example, S.E.C. coverage.

The point is that there is still some competition around, Praise the Lord!

JOHN D. QUINAN
Quinan Pickering, Inc.

Seattle

Discipline

Nels B. Nelson Suspended

Tacoma attorney Nels B. Nelson has been suspended from the practice of law for a period of sixty days, beginning April 29, 1976, with conditions before reinstatement.

Nelson was suspended for four violations of the Canons of Professional Ethics and the Code of Professional Responsibility. It was found that the respondent's actions described in each of the four counts constituted neglect of a legal matter entrusted to respondent in violation of (CPR) DR 6-101 (A)(3). It was further found that the respondent's actions described in two counts constituted a failure to be punctual in attendance, and to be concise and direct in the trial and disposition of causes in violation of former Canon 21. Lastly, it was found respondent's actions described in one count constituted a failure to preserve the identity of funds and property of a client in violation of (CPR) DR 9-102 (B).

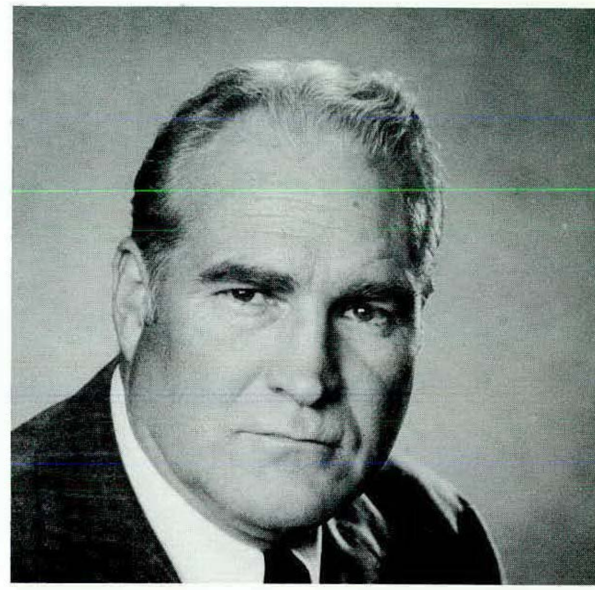
Suspensions for Non-Payment of Membership Dues

The following State Bar members were suspended in May for non-payment of membership dues:

Inactive members — Robert H. Allen, Grosvenor Anschell, Howard Ranney Eddy, James Fernan, Ivor Lusty, Howard Thomas Manion, Robert P. Nelson, Ross Ray Runkel, Charles E. Steensland, William Wesley Stuart, Bruce Murray Wright.

Active members — Lane Baker, Donald MacNeil Barton, William E. Caples, Daniel O. Corthell, Christopher J. Genis, William Lewis Hanson, Thomas P. McCutchan, Jr., James McGuire, Jon W. Pegg, Jr., George F. Ward, George Edward Rennar. □

The Problem of Alcoholism



I am sure that one of the attributes of our profession of which we are most proud is that we have a good working system of discipline. Discipline is an important, meaningful part of our profession and we take justifiable pride in it.

Each of us however is extremely lax in seeking help for and in reporting to the Bar one of the most insidious problems which affect our profession and which is one of the root causes of a substantial percentage of ethical violations of all kinds.

I am speaking of the alcoholic lawyer. I know that each of you who reads this page will immediately think of at least one of your fellows who has problems with alcohol which to some degree affects his performance as an attorney. I practice in a community of about 75 lawyers and at least a half dozen lawyers come immediately to my mind who need help with alcohol related problems.

I feel that we as lawyers must face up to this problem which in so many ways adversely affects our image as a profession. It has been too easy for each of us for too long to simply say to himself that the alcoholic lawyer is hurting only himself. This is the basest self delusion. He not only hurts himself and his family, he hurts his clients, he hurts the public and he hurts the profession of which we are all so proud. We cannot continue to take pride in the practice of law unless we take immediate steps to help the alcoholics among us.

The one way that we do not help them nor our profession is in ignoring the issue. The problem is real. It is persistent and unless we attack it directly, it will continue.

I do not suggest that the way to solve the problem is to turn the alcoholic into the Bar as an immediate candidate for discipline. Far from it! I deeply believe that the alcoholic can be helped before he becomes a disciplinary problem. I do not know exactly how this can be done but I intend to appoint a task force of competent and experienced lawyers to study the problems and work toward a viable solution.

I want your help. If you have ideas as to how the problem may be attacked; if you want to serve on such a task force; or if you know of a knowledgeable person who would be willing to serve, let me know.

We cannot sit back and ignore the problems of our alcoholic brothers at the Bar any longer!

Robert S. Fay

Planning a Law Firm's Offices

By **THOMAS P. HUGHES**

Planning offices for a law firm is not unlike taming a multi-headed beast. The partners may agree on numbers and square footage for private offices and may allow enough expansion space for planned-staff additions, but they may find that inadequate space was allowed for a rapidly-growing library facility. The planning committee may be divided on the question of central versus individual filing systems. Privacy may be a first priority for individual secretaries but too much privacy may mean isolation and a poor back-up system between offices. Decisions on these and a myriad of other details are often made on a piecemeal basis until the day they all come due, when the firm decides to renovate or relocate their offices. What then?

There are no set solutions to layout and design of law firm offices since no two law firms operate alike. A firm's offices should be tailor-made to the firm's own operations, accommodating teams of practice or attorneys working individually, one-on-one secretary to attorney work relationships as well as word processing pools, a large probate department and adjacent accounting staff or secured rooms for all files and related material on special cases. All of these and other requirements can be met, but the first order of business is to define the firm's operations.

Well before the decision is made to move or remodel the law firm should assess its overall plans. Long-range planning is more than simply a projection of annual expenses versus annual fees for the next five years. It should be a projection of staff growth and also a projection of any major changes in the business operation of the firm—the introduction of new accounting procedures, word processing systems or microfilm/fiche data retrieval equipment, for example. And, in addition, the plan should project space requirements—that is the square feet of office space needed to house the firm now and in the future.

Statistics on space requirements must cover a breadth of details. The firm should ascertain not only the number of employees, present and projected, and their individual office and workstation requirements, but also the number and type of conference rooms and of reception/waiting areas, the amount of file space and the size of the library collection and required library facilities. The important adjacencies—attorney to attorney and attorney to secretary—should be determined and basic inter-office traffic patterns established. Once compiled, these figures become the firm's master occupancy plan, applicable to any office space the firm might consider.

With this master occupancy plan in hand, the firm is in an excellent position to review its options. Again there is no one solution to layout or design of a law firm, so the firm should review as many options as possible to arrive at the alternative best suited to its needs. Decisions must be made about building or renting office space, being a landlord or designing a building for single occupancy, relocating offices or renovating existing space.

Most firms will choose a rental situation and this too requires a review of numerous options from building to building—location, number and layout of floors, length and terms of lease and workletter concessions. Although attorneys are often well-versed in the wording of leases, they are not as often knowledgeable of the terms of a landlord's workletter. A landlord may offer concessions on remodeling of office space in order to attract tenants; he may offer anything from partitions constructed of better sound-proofed material to an interior architectural stair for interfloor traffic. These concessions represent major savings to the tenant.

Whether renting or building space, the firm should keep in mind growth projections over the next five to ten years. If the number of professional staff is expected to increase, adequate allowances now will avoid over-crowding, and perhaps the necessity of another move, later. There are two ways of planning for expansion in a rental situation. The required space can be rented at move-in and used for alternate functions until it is appropriate to convert it to office space. Or the space can be guaranteed available on a given date under lease options; any option to lease additional space should be strictly defined in the original lease with all rates and dates outlined.

Once the offices have been chosen, broad layout considerations should be reviewed. One of the foremost prerequisites of law offices is privacy, and, therefor, the law firm is tied by traditional enclosed private office plans in most instances. Such floor plans limit the use of available space, but variations on the typical perimeter office scheme can be developed in certain buildings. The office standards will be one of the first important determinations; one size may be standardized for partners, another for associates. Once these standards are established, other enclosed conference or waiting rooms can be designed to these specifications so that they can be easily converted to office use as required if the firm expands.

Standardization plays an important role in furniture selection as well as office layout and size. As in office planning, furniture planning with standardized elements will ensure flexibility. Once approved, furniture can be specified and reordered at a later date with minimum inconvenience. Standardized furniture will be applicable to only certain areas of a law firm—general office/secretarial, reception, conference and library and perhaps junior associates. Rarely if ever will attorneys agree on standardized furniture for their private offices; each office will in most instances be furnished by the individual. However, standardized furniture can save money and time; the larger the firm, the more important these furniture standards will be. At the time of a move or renovation, the firm should inventory all its existing furniture and determine what should be scrapped, re-used or refurbished.

For acoustical privacy, walls should be slab-to-slab construction. All ceilings, walls and heating, ventilating and air conditioning systems should be treated to avoid undue noise transfer which might impair client or attorney-to-attorney conferences. Another planning detail—positive exhaust air conditioning systems—may be advisable for conference areas where heavy smoke accumulation may occur.

Office layout should accommodate all primary adjacencies. Some firms group attorneys in teams of practice, while others stress one-on-one working relationships between partners and associates. In the smaller firms, adjacencies will not be as important as in larger firms.

Whether a law firm uses word processing secretarial pools or provides a private secretary for each attorney, or chooses a system somewhere in between, will obviously affect the office layout. Certain requirements can be considered universal however. First, whatever the office layout, a secretary should be placed in a position to cover each attorney's office and screen all visitors as well as phone calls. Each secretary should have a back-up co-worker who can cover phone calls and assist during peak work periods; this necessitates a tandem working relationship between secretaries, with at least partial visibility between workstations.

How general office areas are laid out will again depend on the clerical system. In some instances, secretaries will be provided with semi or com-

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pletely private working offices, located directly in front of the attorneys' offices. These can be partitioned from the corridor by glass rather than solid wall, to provide some visibility. In other offices, secretaries may be placed in corridors but given some privacy by half-height partitions, file cabinets or extended interior columns. Even if private offices are located on all the window walls, natural light can be brought into the inner corridors by extending these corridors to windows at the corners of the building, or by allowing borrowed light through glass partitioning at certain key points. The secretarial workstation can also be semi-enclosed to lend privacy in open areas; it can be detailed to provide maximum convenience-personal storage areas as well as file cabinets, tack-up surfaces for notices, individual task lighting and alternate work surfaces for sorting and non-typing tasks—in a limited space.

Security and privacy should also be ensured through careful planning of reception and waiting areas. Traffic control must be considered not only in the main reception room, but also at alternative entrances or exits on the same floor or other floors. The reception area should provide enough seating to accommodate the average traffic, a figure which can be obtained by clocking the number of visitors per day and at peak hours over a period of several days. A similar "clocking" procedure can be used to ascertain the size and number of conference rooms necessary for a firm.

Special features can reinforce security and traffic control, while offering clients added comfort and convenience while they wait. The reception room should be separated visually, perhaps by a second set of doors, from the firm's inner offices. One-way glass baffling can be used to block the visitors view into the office area while allowing those in the office to see the reception room. A private holding room, partially divided from the reception room, may be designed for short client interviews. Whatever the details of this reception room, it will define the initial image of the firm; through subtle planning, for instance the nearby location of an interfloor stair, the design can reflect the size and the prestige of the firm.

Interfloor communicating stairs, if required, should be centrally located for maximum convenience. The stair can be decorative, appropriate near a reception room, a simple scissor variety or even a converted fire stair. In any case, the stair should be planned early as construction is costly; in fact, it can be completed at the least cost while the building itself is under construction. It might be noted at this point that any renovation or new construction details should be planned early to minimize cost; if expansion at a later date will involve construction revisions, areas under construction should be contained to avoid disturbing the office in general.

The library collection may be housed in an actual library facility or, in smaller firms, on shelves in corridors. The latter solution is inadvisable for a firm of any size, since the collection cannot be monitored when shelved in corridors. The rate of growth of the library should be gauged as the growth rate of the firm overall is gauged. The collection may expand as much as twenty percent per year without any major new set additions.

Adequate space for present and projected numbers of library users should be provided at the outset; ideally the facilities should include a variety of work areas—study carrels, work tables, lounge chairs and possibly enclosed rooms for dictating, microfilm and microfiche equipment—to accommodate the various work habits of the attorneys. The library should be laid out for good control of book circulation and for logical referencing of materials. Stacks should be used to divide the space and add privacy to individual work areas. These stacks are heavy and require substantial floor load capacity; the 70-100 pound floor load capacity typical of newer commercial office buildings is adequate for stack weight but in all cases, old or new buildings, the capacity should be verified.

Another special area—the file room—will require substantial floor load capacity. Not all firms will have a central file room; in some—normally the smaller firms' offices—files will be located in or immediately adjacent to each individual attorney's office, and monitored by a secretary rather than a file clerk. Some files—for instance those for large litigation cases involving several attorneys—may be centrally located while others—probate clients handled by a single partner and perhaps an associate—should be kept immediately accessible to those individuals. Wherever located, files should be secured. The most valuable documents may be kept in a separate bank vault rather than the firm's own facilities—a privately-owned full-security vault would be extraordinarily expensive and require a basement facility. In the future file systems may be replaced by micro-reproduction but, without dramatic revisions in the work process of the law office, actual paper copy will continue to be a necessity.

Administrative and general office functions may be grouped to facilitate intercommunication and avoid disturbance to other parts of the offices. These functions can include word processing—an increasingly important support function in many law offices—accounting, data processing and mail service. Design of word processing facilities should offer a comfortable as well as efficient setting for this systematized and oftentimes tedious work. After-hour heating, ventilating and air conditioning should be provided for any word processing or data processing facilities. Accounting will handle certain services for probate attorneys and should be convenient to this department, if applicable; accounting personnel should be provided with enclosed, private and secured facilities for their confidential work. The mail room may be combined with other support facilities—for example, photocopying equipment—for efficient use of clerical personnel at peak hours; since these services work with messengers, they should be located on or near an entrance/exit, preferably a location removed from the general office/reception areas.

In addition to these general office facilities, a lounge and/or coffee station should be planned where appropriate according to the traditions of the firm and the available facilities in the building or in the general community in which the firm is located.

Planning offices for a law firm requires not only definition of general layout requirements, but also definition of engineering requirements. Lighting, acoustics, heating, ventilating and air conditioning must be designed to meet the working requirements of the individual firm.

In general, lighting should be between 60 and 100 foot candles at desk level throughout the offices. This foot candle figure is lower than past figures which were often unnecessarily high; today concern for energy conservation and escalating electrical costs has forced a redefinition of general office lighting requirements. Specific areas of the firm, for example the library and stack areas, should be carefully designed to ensure that enough light is provided for the tasks involved. Task lighting—that is, an individual light source for a specific work area—may be considered for secretarial workstations but this type of light will not eliminate the need for general overhead lighting.

Fluorescent lighting is efficient and considerably less expensive than incandescent lighting; it produces less heat than the latter source, thus eliminating the need for additional air conditioning. However, incandescent lighting should be considered for non-working areas such as the reception room or even certain conference rooms; this light source is warmer and produces a better quality of light appropriate to featured public spaces in the offices.

Acoustical privacy, as noted above, is a primary prerequisite for any law firm; construction details should be planned accordingly. In addition to slab-to-slab wall construction and sound treated mechanical systems, carpeting is a virtual necessity as a sound absorber throughout the offices. In the library the books themselves will absorb sound to a large extent.

After-hour work is common in many law firms and offices should be designed to accommodate these workers. After-hour heating, ventilating and air conditioning should, if required, be stipulated in any lease/workletter for the office space.

Again, all these requirements should be defined as early as possible. A law office is a diverse working operation; it houses a variety of functions, each of which necessitates certain planning details. The earlier these functions are defined and the planning details specified, the less time and cost will be expended to achieve a working environment which is convenient, efficient and above all, productive. □

Professional Responsibility and the Lawyer

Avoiding Unintentional Grievances

Introduction

The likelihood of such a complaint can be substantially reduced if the fee arrangement is made clear at the outset and reduced to writing. Ethical Consideration 2-19 of the Code of Professional Responsibility provides:

> "As soon as feasible after a lawyer has been employed, it is desirable that he reach a clear agreement with his client as to the basis of the fee charges to be made. Such a course will not only prevent later misunderstanding but will also work for good relations between the lawyer and the client. It is usually beneficial to reduce to writing the understanding of the parties regarding the fee, particularly when it is contingent. A lawyer should be mindful that many persons who desire to employ him may have had little or no experience with fee charges of lawyers, and for this reason he should explain fully to such persons the reasons for the particular fee arrangement he proposes."

The likelihood of a complaint concerning fees can be further reduced if the lawyer, in explaining and reducing to writing the fee arrangement with his client, incorporates what is and what is not included.

Most fee complaints are made by clients with little knowledge of the legal system, its processes and the factors determining the amount of the fee to be charged. They have a tendency to accept a "ball park" fee estimate as a binding figure. Clients tend to equate the employment of a lawyer with an obligation on the part of the lawyer to deliver the most favorable result contemplated by the client rather than as an obligation of the lawyer to render appropriate legal services which may or may not, depending upon the law and facts, accomplish exactly that result.

A clear explanation of the fee arrangement and a written agreement at the outset will not only reduce the likelihood that a fee dispute will develop, but if there is a dispute, the lawyer will be in a proper position to substantiate the fee because a contract between lawyer and client made after the relationship has been established is generally construed most strongly against the lawyer.

Procrastination

The most common complaint made by clients is that the lawyer "hasn't done anything."

Many such complaints may be avoided by the simple expedient of forwarding to the client copies of pleadings, briefs, memorandums and relevant correspondence as the matter progresses.

—The case is coming along nicely; we're making rapid strides.
—That's what you told me four years ago; if we keep striding on much longer I shall be barefoot before we get there . . .

Despite their honest intentions to complete matters expeditiously, lawyers do sometimes procrastinate in violation of Disciplinary Rule 6-101(a), which provides that:

> "A lawyer shall not: . . . (3) Neglect a legal matter entrusted to him."

Such violations can result in disciplinary action.

Actual neglect can be prevented by a systematic priority list, conscientiously adhered to, and by office procedures under which secretaries or other assistants are made responsible for reminding the lawyer of deadlines.

Neglect of a client's affairs is often aggravated by the lawyer's failure to respond to the client's phone calls or letters. Such failure can cause complaints even when the lawyer has not actually neglected the client's matters. When a lawyer is unable to respond to a letter or phone call from his client, the lawyer should delegate to his secretary or assistant the initial responsibility for responding to the client's inquiry. Thereafter, as soon as possible, the lawyer should respond to the client directly.

Withholding Services Until Fee Is Paid

Refusal by a lawyer to complete a matter he has undertaken to handle for a client until the client has paid the remainder of his fee is a frequent complaint.

Although not caused by the unintentional acts of the lawyer, this type of complaint has, nevertheless, been included here because many lawyers erroneously believe that they have the right to condition completion of their representation of a client upon receipt of full payment of the fee. However, a lawyer has no such right under the Code of Professional Responsibility.

A lawyer may condition initial acceptance of employment upon payment of the fee in advance, but once services have been contracted for he may not condition completion of the services on payment of his fee. Disciplinary Rule 7-101(A) provides:

> "A lawyer shall not intentionally: (1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law . . . [or] (2) Fail to carry out a contract of employment entered into with a client for professional services, . . ."

Once a lawyer undertakes to represent a client he is obligated to exert his best efforts to advance the client's legitimate interest with fidelity and

—My dear Sir, it is quite impossible for me to take on your case . . . You lack the most important piece of evidence . . . (aside) evidence that you can pay my fee! . . .

diligence until he is relieved of that obligation either by his client or by the court. The failure of a client to pay for his services does not relieve a lawyer of his duty to perform completely and on time.

''No fee—no services'' complaints can be prevented by conditioning the initial employment on payment of the fee in advance in those cases susceptible to such a fee arrangement. Yet in many other cases, the lawyer's specific recourse on refusal or failure by a client to pay fees on request or as they become due is to withdraw from the representation as permitted by Disciplinary Rule 2-110(C)(1)(f), because the client ''[d]eliberately disregards an agreement or obligation to the lawyer as to expenses or fees.'' Under this rule the lawyer can properly withdraw, but he must first obtain permission from any tribunal before which he has acted as lawyer of record for that client. Further he must take:

> ''. . . reasonable steps to avoid foreseeable prejudice to the rights of his client, including

giving due notice to his client, allowing time for employment of other counsel, delivering to the client all papers and property to which the client is entitled, and complying with applicable laws and rules.'' See Disciplinary Rule 2-110(A)(2).

Otherwise, the lawyer could be obliged to complete his representation of the client notwithstanding the failure of the client to honor his financial obligations to the lawyer.

Refusing To Be Discharged by a Client

A related complaint is that the lawyer, who has been informed of his client's desire to retain other counsel, refuses to withdraw from the representation when requested to do so by the client. This refusal is often predicated on the erroneous assumption that it is justified by an existing lawyer's lien for his fee. There is no authority for such a position under the Code of Professional Responsibility. Disciplinary Rule 2-110(B) states:

> ''A lawyer representing a client before a tribunal, . . . and a lawyer representing a client in other matters shall withdraw from employment, if: . . . (4) He is discharged by his client.''

Withdrawal from representation is mandatory upon discharge by a client.

Disciplinary Rule 2-110(A)(2) further sets forth the duties of a lawyer upon withdrawal from employment, and Disciplinary Rule 2-110 (A)(3) provides:

> ''A lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned.''

A lawyer can avoid this type of complaint by promptly taking the necessary steps to withdraw from employment as soon as a client has indicated to him that his services are no longer desired. If the lawyer wishes to assert a statutory or common law lien or recover any unpaid portion of his fee, he must rely on the civil procedures available for assertion of such rights.

Creating Great Expectations

Another common complaint is the allegation that a lawyer upon accepting employment, ''promised the moon'' but has delivered ''only green cheese.''

Lawyers should recognize that optimistic statements about the soundness of the cause of a client unsophisticated in the legal system tend to create unjustifiably great expectations as to the ultimate results.

When the final outcome does not measure up to the client's expectations, he becomes frustrated and may file a complaint against the lawyer. Although such complaints rarely result in disciplinary action, they do embarrass and harass the respondent lawyer and consume the time and effort of those serving in the disciplinary process.

Such malfeasance complaints can often be avoided if the lawyer moderates his optimism

continued on page 31.

—You are very pretty . . . we shall easily prove that it was all your husband's fault . . .

McLauchlan-at-Large

Chuck Twede, Burlington
and John Ward, Sedro Woolley

John D. McLauchlan

John Blankinship and Ted Watts, Seattle

A Respected Member Joins Us . . .

A special introduction given at the May 12 Thurston County swearing-in ceremony held in Olympia distinguished it from all previous ones in our state's history. Lester G. Britton, a new admittee, was presented by his son, William L. Britton, Olympia. At 76 years of age the senior Mr. Britton is the oldest attorney ever to be presented at a swearing-in ceremony, and the oldest to have taken the State Bar Exam.

Born in Hemingford, Nebraska, in 1899, Lester G. Britton received his law degree from the University of Chicago Law School in 1924. A respected member of the Chicago firm of Schiff Hardin & Waite, Mr. Britton has been a member of the Chicago, Illinois State and American Bar Associations since 1925.

His recent move to the Northwest prompted him to take the Washington State Bar Examination in order to continue the practice of law.

He and his wife have made Shelton their new home.

Notes from the Minutes...

Board of Governors Meeting
North Shore Hotel
Coeur D'Alene
May 14th and 15th, 1976

The Board of Governors of the Washington State Bar Association convened at the North Shore Hotel, Coeur D'Alene on Friday, May 14th and Saturday May 15th beginning at 9:00 A.M. each day.

Those present were: Robert S. Day, President, Richard H. Riddell, Charles R. Olson, Willard Walker, Robert R. Redman, John E. Heath, Jr., Robert H. Peterson, David D. Hoff, Betty B. Fletcher, Edmund B. Raftis.

Also present was Lawrence Bailey, Ex-Officio Member of the Board, representing the Young Lawyers Section. G. Edward Friar, Executive Director, acted as Secretary of the meeting.

The Bar Examination

The installation of a General Practice Course was discussed as either a supplement to the bar examination or in lieu of the bar examination. The discussion centered around the potential value of such a course, whether or not it should be mandatory, and other such details including possible length of time involved and cost. It was agreed that the experience of other States should be researched, that the subject should be explored with all interested parties and entities including the law schools and the Young Lawyers Section, and that the matter should be on a future agenda for further discussion.

Delegate to the ABA

Cleary Cone of Ellensburg was elected for a two year term as one of the Bar Association's delegates to the ABA, such term to expire at the close of the Annual Meeting held by the ABA in August of 1978.

The Legislative Committee

The Board decided that the same restrictions applying to the President of the Bar Association be applied to the Legislative Committee's Legislative Representative with reference to the endorsement of candidates for political office and to the taking of public positions on issues being submitted to the voters or pending before the Legislature, except when specifically authorized to do so by the Board of Governors on a matter relating to the work and function of the Bar Association.

The Idaho Experience

Thomas A. Mitchell, the President of the Idaho State Bar Foundation and a member of the Board of Commissioners for the Idaho State Bar Association, met with the Board of Governors to discuss problems of mutual interest and concern.

Unauthorized Practice of Law Committee

George Kain of Spokane, the Bar Association's attorney in certain litigation recommended by the Unauthorized Practice of Law Committee, met with the Board to discuss the status of that litigation.

Code of Professional Responsibility Committee

Recommendations of the Committee on the Code of Professional Responsibility relating to certain changes in DR-2-103-D were discussed, as were recommendations relating to changes involving DR 2-104 (a)(3); DR 5-105 (a); DR 5-105 (b); DR 5-105 (d); DR 7-110 (a) and DR 7-110 (b)(4).

Board Member Betty Fletcher was commissioned to conduct an investigation with reference to certain proposed changes in DR 7-102 (b)(1) and report back at a subsequent meeting of the Board.

Action on the other recommendations of the Code of Professional Responsibility Committee was delayed for further consideration. The Chairperson of that Committee will be requested to be present to give the Committee's views and thinking to the Board.

Young Lawyers Section

Lawrence Bailey, the Chairperson of the Young Lawyers Section presented the Board with a resolution adopted by the Board of Trustees of the Young Lawyers Section requesting that the Board change the Bar Association By-Laws to provide that the Chairperson of the Young Lawyers Section be made a full voting member of the Board of Governors. Thereafter,

A. It was moved and seconded that (1) the Chairperson of the State Bar Young Lawyers Section, (2) the representative of the Seattle-King County Young Lawyers Section in attendance at the Board meeting and (3) the Editor of the *Bar News* or his or her representative in attendance at the Board meeting all be allowed to remain in the Board meetings during Executive Sessions of the Board. This motion failed with there being two votes in favor of the motion and seven votes opposed.

B. It was moved, seconded and carried that the request that the Chairperson of the Young Lawyers Section be named as a full voting member of the Board be declined. The vote on this motion was six to three with Board members Fletcher, Hoff and Raftis voting no.

Specialization

On motion of Board member Charles Olson, Henry Scott Holte of Everett was named as a member of the Board of Specialization to replace Paul Luvera who resigned.

It was agreed that it be suggested to the Chairperson of the Specialization Board and to the Chairperson of the Code of Professional Responsibility Committee that at least the two of them, and perhaps their entire joint membership, have a joint meeting(s) to discuss mutual problems arising out of, or in connection with, the Specialization Program.

It was agreed that the Chairperson of the Board of Specialization and the Chairperson of the CPR Committee be invited to meet with the Board of Governors jointly to discuss the problems arising out of the implementation of the Specialization Program.

Medical Malpractice

The President was authorized to execute an agreement with the Washington State Medical Association and the Booz-Allen Company relating to a closed claims/actuarial study in the field of medical malpractice insurance.

The President was also extended the authority to designate the Bar Association's representative on the management team for the closed claims study, and was further authorized to negotiate appropriate financial arrangements with the person selected to serve in this capacity.

Advertising

The Board requested that the Chairperson of the Committee on the Code of Professional Responsibility and the Bar Association's Director of Public Affairs put together a suggested form and format for a proposed legal directory which the Bar Association would publish and make available to the general public. It was further agreed that these suggestions be made available to the Board at the earliest possible time, preferably the June meeting of the Board. □

Troup & Christnacht
Attorneys at Law
Tacoma, Washington 98466

Dear Mr. Hennessey:

Currently, I am employed as a Legal Intern with the firm of Troup & Christnacht, in Tacoma.

Presently our law firm finds itself in a cramped position, with a surplus of old files. Having utilized no orderly manner to call these files at future ''destruct'' dates, we must now devise a method to pull and thin out these old files, as well as coordinate a plan for the future.

Knowing full well your expertise in this area, I am hoping you may be able to suggest a set procedure that has been found to work in other firms. Alternatively, perhaps you can direct us to the latest publications or studies in this area.

Any advise you can give us in this area would be greatly appreciated.

Sincerely,
Troup & Christnacht
By: Michael J. McKassy, Legal Intern

Michael J. McKassy
Legal Intern
c/o Troup & Christnacht
Tacoma, Washington 98466

Dear Mike:

I have had several letters lately in the same vein as yours. At the time the file is set up, we place a rubber stamp on the outside of it, a copy of which I have affixed on the back of this letter. Whenever the file is completed, the attorney or legal assistant in charge enters the date of transfer and his initial. At that time it is his responsibility to thin out the file, removing all extra copies and unnecessary material. It goes without saying that anything which should be returned to the client will be returned at this time. Note that for transfer purposes, the file is indexed by subject matter as well as names. This is only done when the subject matter is distinctive or there is a brief or memorandum on a specific subject that should be preserved. Beyond that, please refer to an article in the May, 1971 *Washington State Bar News*, covering Filing Systems, which may be of help.

TRANSFERRED ON ____________

AUTHORIZED BY ____________

NAMES INDEXED ____________

____

SUBJECT MATTER INDEXED ____________

____

We retain most of the files for ten years and then destroy 90% of them.

Very truly yours,
Harry E. Hennessey

Prepared by the Office Practice Committee, Harry E. Hennessey, Editor, Spokane, Washington.

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

Around the State

SNOHOMISH REPORT

By **GERALD L. KNIGHT**

Some time ago, the president of our Bar Association, **Herman Michelson,** indicated that at the next bar meeting, he intended to appoint attorneys to several committees and that the only way to prevent an appointment was to attend the meeting. Yours truly put in one of his rare appearances to protect himself but still got appointed by Mr. Michelson to the Bar News Committee. The only benefit from said appointment is the fact that now when I call Herman on the phone in regards to cases, he promptly returns my calls simply so he can remind me to get in an article. Thus, here goes.

At this time of the year, normally, the courthouse becomes somewhat of a ''sleepy hollow'' but this has been interrupted due to present grand jury proceedings ably presided over by the Honorable **Phillip Sheridan.**

Royce Ferguson, who was practicing in Lynnwood, has announced that he has relocated his practice at 1310 Pacific in Everett. And now to the real newsworthy items. **Ron Castleberry** and **Jim Sherman,** of the public defender's office, will be attending a Criminal Defense Seminar in Houston for three weeks. At least that's what they have told their wives. Additionally, **Don Lyderson, Dennis Jordan, John Shields** and **Roger Fisher** are planning a motorcycle expedition and at this time, the destination is unknown. This surprises no one.

Bob Milligan recently back from a hiking expedition at Mount Zion National Park and Las Vegas (?) plans to tackle Mt. Rainier next. Hope he does better with Rainier than he did in Vegas.

Jim Twisselman and his lovely wife, Pat, are spending three weeks in Paris. Wish they would stop sending postcards. Most disrupting. And it goes on. Your scribe, if lucky, might be able to spend a weekend in Mukilteo.

SAN JUAN REPORT

by **MICHAEL C. REDMAN**

L. D. (Dan) Kuhn has bid goodbye to San Juan County for the joys of security regulation in the Department of Motor Vehicles in Thurston County. A farewell luncheon for Daniel at the Wounded Pig was attended by 87.5% of the local Bar, who agreed to meet the following week to finish the agenda. The trophy subcommittee is considering challenging the Bar Associations of 8th class counties to annual competitions in attendance. **Charles C. Schmidt,** had an excused absence — off to the big rock to obtain medical attention for his arm which now appears completely recovered.

The Prosecutor, ex-officio Law Librarian, is offering a Deferred Prosecution to the miscreant who has taken Volume 13 of Washington Digest from the San Juan County Law Library, if the same will be returned. The missing volume constitutes 7.6% of the library. And so it goes.

SKAGIT COUNTY REPORT

By K. R. ST. CLAIR

On May 7, **Robin Welts** appeared before Judge James for a matter on the appellate court settlement calendar. This happened to be his 85th birthday and his 62nd year in the practice of law. Appellate courts have changed somewhat during this period. When Robin began, Volume 77 of *Washington Reports* was newly published and at that time our Supreme Court was busying itself with such matters as reversing the granting of a divorce for insufficiency of evidence, reasoning that: " . . . it is not enough to show want of regard for each other . . . disposition to quarrel over trifles . . . so that they no longer live together in peace and harmony."

During his years before the Bar, Robin served as President of the Washington State Bar Association, a member of the House of Delegates of the A.B.A., and State Representative to the A.B.A.

When Robin applied at the Skagit County Prosecutors office for their $80.00 per month position, it was not enough that he had a degree from the University and his law degree, the Skagit County Prosecutor's Office had the additional requirement that an applicant must be able to type and take shorthand. Robin trained further and qualified as a court reporter.

During the course of his long practice, it is interesting that he never represented a guilty person. This is obvious from the fact that he had 24 acquittals in as many major felony cases.

As an additional family note, during this same week his son, David, was obtaining a record $255,000.00 verdict which he followed with a $35,000.00 verdict. In addition to getting jurors in this area to say "yes" to everything he asked for, I understand that Nancy said "yes" and she and Dave will be married sometime this summer.

As a final comment, as I got off the elevator, Robin said, "St. Clair, I've been working hard to get you some attorney's fees. And I thought, "You old codger, you still know how to settle cases."

THURSTON-MASON REPORT

By FRED D. GENTRY

Stanbery Foster, Jr., has joined as a partner with the firm of Mooney, Cullen & Holm.

Don Ingersoll has joined **Evelyn Foster** and **Stephen Foster** at their palatial quarters in the Evergreen Plaza Building.

At the Annual Thurston County Legal Secretaries' Bosses' Night Banquet, **Tom Adams** of Lacey, was selected Boss of the Year. Superior Court Judge **Gerry Alexander** was MC for the affair and there was some talk about resurrection of some old campaign photographs by our senior Superior Court Judge.

WHITMAN REPORT

By **RONALD R. CARPENTER**

This writer would like to "thank" in print those members of the Whitman County Bar who recently assisted in the presentation of the Law Day programs, to interested pupils, in the various schools throughout Whitman County. They are as follows: **Lloyd Peterson, Robert F. Patrick, Larry Simonsmeier, Claude Irwin, Jr., Al Schauble, David W. Savage** and **Howard Neill,** all of Pullman; **Don Burcham** of Oakesdale; **Edward McBride, Wesley Nuxoll, Ronald Webster** and **Gerald R. Fuller,** all of Colfax. As Chairman of the Law Day Committee it was indeed a pleasure to have these gentlemen assist in the traditional presentation, which this year, because of law and motion day, was presented on May 3, 1976.

The Whitman County Bar Association met at a noon luncheon on May 14, 1976, and elected the following individuals to office for the 1976-77 term: **Howard M. Neill,** President; **Dolores Jane Cooper,** Vice President; **David W. Savage,** Secretary - Treasurer; and **Ronald R. Carpenter,** Recorder. On behalf of the members of the Whitman County Bar, let me use this forum to express the appreciation of the Whitman County Bar to **Edward McBride** of the firm of Savage, Nuxoll and McBride, Colfax, for his fine service and enthusiasm as president of the Whitman County Bar Association for 1975-1976. The members attending the luncheon meeting welcomed **Stephen Bishop,** a recent graduate of UPS, to the practice of law in Whitman County. Steve took the oath of attorney before Judge **Philip H. Faris,** Whitman County Superior Court Judge, on the afternoon of Tuesday, May 11, 1976. Welcome Steve and good luck.

The firm of Irwin, Friel & Myklebust, a five member legal firm in Pullman, is currently working toward the construction of a new law office on Johnson Road adjacent to the now existing Professional Mall in Pullman. It promises to be a fine facility which I am sure will serve the public well.

Recently, the Whitman County Board of Commissioners called for bids for the remodeling of the Courthouse in Colfax. The proposed remodeling would provide new office space for the Whitman County Prosecuting Attorney's Office.

SOUTH KING REPORT

by **JAMES L. VARNELL**

New Admittees. **Gary M. Abolofia,** a May 1975 graduate of the University of Puget Sound School of Law, is now associated with Bonjorni, Harpold, and Fiori in Auburn. Abolofia was admitted in November of 1975 to the Washington bar. **Kameron C. Cayce,** a December 1975 graduate of U.P.S., was recently admitted to the bar and is now associated with **Charles A. ("Jack") Burgeson,** whose offices are at the Sea-Tac Office Center. Cayce is no stranger to the South King County bar, as he has served as a Rule 9 Legal Intern for three different law firms.

CLE — Criminal Law. In a precedent setting order a judge on the Western District of Washington bench has required the United States Attorney's office to turn over Jencks Act material at six o'clock on the morning set for trial. Upon the representation of all defense counsel that they would be present at the appointed time, the court turned down a prospective request for terms by the Assistant United States Attorney against any absent defense attorney.

At a suppression hearing involving this same case, an agent of the Drug Enforcement Administration, when questioned by **Anthony Savage** as to apparent inconsistencies in his morning and afternoon testimony, made the Zieglerian observation that he had had an opportunity to "re-edify" his thinking. Alert defense counsel should have immediately requested the court to rule that his morning testimony was thereby deemed "inoperative."

Sporting Endeavors. This correspondent was approached by **Malcolm Bell** in the courthouse recently as to why his name had not been mentioned in the South King Report. Our readers will be pleased to know that the tennis duo of **Malcolm Bell** and Airport District Court Judge **Gary Utigard** were drubbed in the recent Seattle-King County Bar Association tennis tournament. The team of **Paul Codd** and **Art Swanson** fared somewhat better.

The Pro Se softball team is off to a good start despite the loss of last year's leading hitter, **John Hoerster,** for the month of May. Hoerster was optioned to the state of Alaska for a month-long trial. U.S. Magistrate **John L. Weinberg** appears to have recovered from last year's injury. He has hurled two consecutive victories, including an iron man effort in an extra inning affair. **Tom Clark** is really taking his law practice seriously, as he was the first to leave the post-game gathering, claiming that he had two trials set for the next day.

Classified. A sure sign of spring is the annual "For Charter" listing by **Dave Koopmans** of his sailboat. (See the April, 1976 issue of the *Bar News*.) Such a deal.

Law School Alumni Notes. The picture of Dean **Harry M. Cross** and the mention of **Ken Cornell** in the Seattle-King County Report of the May, 1976

Bar News brought to mind the numerous times in which this correspondent and Cornell were called upon in Professor Cross' community property class, and the confusion resulting from his pronunciation of our names. Fortunately, Ken usually thought that he had been called on, was always prepared in any event, and usually provided the correct answer, much to the relief of this reporter.

YAKIMA REPORT

By **GARY M. McGLOTHLEN**

Leo Kendrick is still expanding his law expertise as reported last month. His son, **Kip Kendrick,** the newest deputy prosecuting Attorney this month saw his wife and Leo's daughter-in-law, **Kathy Kendrick,** admitted to the Bar. Leo, there must be an easier and faster way of increasing the size of your law firm. Just ask **Fred Velikanje. Earl Bladow,** Domestic Relations Court Bailiff was also admitted to the bar on May 21, 1976. We're not saying anything but maybe that narrows down who threw the pie in Commissioner Hopkin's face last Christmas.

Paul M. Larson has joined the Yakima Bar with the firm of Brooks and Larson officing in the Brooks-Larson Building at 105 North Third Street, in Yakima.

Yakima finally has some real store front lawyers with **Rodney Fitch** (Willamette 1973) and **Judy Dugger** (Missouri LL.M. 1975) having remodeled the window panes at 105 East ''A'' Street in Yakima with general practice of law. So far they have not made any arrangement with parking meter maids and they are the only law firm in town able to observe their clients violating the parking regulations when it is happening.

The State Bar in their ever pursuing problems with advertising, have made a wise choice in retaining **John Gavin** to represent the Bar in the Sanders Case of Seattle. Yakima lawyers, not to be left for last, have jumped on the advertising bandwagon but along a more difficult and time consuming route. **Dick Wiehl** and **David Crossland** have both joined the American Trial Lawyers Association and the president of that association made the appropriate news releases to the press. Not to be left out of the press, **Will Halpin** took a harder route. Will won the City wide Class C racquetball handball tournament to obtain the headlines ''Attorney takes C Racquetball.'' **John Vanek** took a route to be followed by none to obtain headlines when he was struck by a Yakima motorist while John was riding his bicycle to Court to pursue his duties as City Prosecutor. John has come out okay with a few scratches and it is reported the driver has asked for a pro-tem City Prosecutor.

It's reported by a reliable source (his secretary) that **Ray Reid,** of Toppenish is still having difficulty on Thursday afternoon appraising real estate. You'd think that after all these years, he would know what Mt. Adams Golf Course should be valued at but he is still out chipping away at the turf.

District Court Judge, **Tom Grady,** surprised everybody by clearing off the sixteen year accumulation of files that had been on his desk before he left for a training conference. District Court Judge, **George H. Mullins,** was recently elected to the office of Grand Director of the Yakima Chapter of International Footprinters Association and **Gary G. McGlothlen,** its legal counsel.

SEATTLE-KING COUNTY REPORT

by **JOHN SOLTYS**

The Seattle-King County Bar members are known to celebrate high on the hog, as is evidenced by **William H. Gates** of Shidler, McBroom, Gates & Baldwin, who, along with certain delegates to the American Bar Association and wife Mary Maxwell Gates, a Regent of the University of Washington, celebrated their 25th wedding anniversary at the Turbulent Turtle with hamburgers and champagne.

The Young Lawyers' annual Art and Craft Auction was attended by 145 persons who purchased 47 works of art and yielded a net profit of about $1,000 to be donated to worthy criminal reform. **Chris Bailey, Irwin Schwartz, Kirkland Taylor** and Professor **John Junker** tended to and at the bar.

Leroy Jeffers, Esq., past president of the State Bar of Texas, will be the guest speaker at the Seattle-King County Bar meeting which will be held at the Pacific Science Center on June 2, 1976.

The present officers and trustees of the Seattle-King County Bar Association are relieved to announce and welcome the new officers, **Murray Guterson,** President; **F. Lee Campbell**, first vice president; **William Helsell,** second vice president; **John Blankinship,** treasurer; and **David Lycette,** secretary. Six candidates, **Lawrence Bailey, Jerome Hillis, Lewis Reefer, Roy Moceri, Barbara Onecik** and **Richard Thatcher** are still involved in the run-off election for the remaining three trustee positions.

Captain **Richard B. McNees,** U.S. Navy (Ret.) has joined **Dwight Holloway** in the firm of Holloway and McNees, whose offices are located at 5516 White-Henry-Stuart Building, 1318 Fourth Avenue, Seattle.

Jon M. Schorr, former tax manager with Arther Andersen & Co., has become a member of the newly named firm of Wickwire, Lewis, Goldmark, Dystel & Schorr, and **Kevin F. Kelly** has become an associate of the firm.

The firm of Young and Cole, P.S., announces the relocation of its offices to 1035 Dexter Horton Building, Seattle, Washington 98104.

A. Kyle Johnson and **Shannon Sperry,** formerly of Brown and Johnson, have joined the firm of Lasher & Sweet, P.S. The firm has been renamed Lasher, Johnson & Sweet, P.S., and has relocated with offices at 1122 Denny Building, 2200 Sixth Avenue, Seattle, Washington 98121.

20 Years Ago

Memories of 20 Years Ago

Are rules to confuse or to clarify? The Supreme Court Justices must have been asking themselves that question when they received from the Judicial Council no less than 13 suggested amendments to the existing rules. The Court bravely stated "The court will give consideration to all letters or memoranda commenting on such proposals received by the clerk on or before July 10. Ten legible typewritten copies of any such letter or memorandum should be submitted."

Bothell Way: **Richard C. Shanks** decided to reform and abandon insurance adjusting to enter private practice there.

Spokane: Optimistic new president of the state bar **Harold Coffin** lectured the bar generally on its lackadaisical attitude toward the Board of Governors and the committees appointed by them to better the bar. He stressed that such received no compensation but apparently had great affection for their profession.

Walla Walla: Professor **J. Gordon Gose** of the University of Washington Law School delivered the principal address at Whitman College for graduation.

Tacoma, Queen City: We overlooked the earlier issue reporting the marvelous Lincoln Day Banquet. The speakers included **Judge Hale,** who spoke on adoption proceedings, and **Judge Rummel,** on guardian ad litem procedures and minor settlements. Other judges that orated the group: **Judge George Boldt, Judge Fred Hamley,** and **Judge Bertil Johnson.** Dean of the Oregon School of Law, **Orlando John Hollis** made an excellent closing address.

Seattle: It was reported with a mixture of glee and alarm that **Julian O. Matthews** was married. The wonder spread as to whether **George Nickell** would do the same. He did.

Warren L. Dewar joined **Lightner Smith** in the Hoge Building. **James D. Dubuar** moved to the American Building. **Lee Coulter** joined the legal staff of the Association of Washington Industries. **F. A. Walterskirchen** appointed chief criminal deputy under prosecutor **Charles O. Carroll. Harold J. Shea, T. Patrick Corbett** and **James J. Caplinger** also became **Carroll's** deputies.

Speaking of speeches, we are reminded of Editor Emeritus of the Seattle Daily Journal of Commerce, **M. W. Bean,** who liked to say: The real trouble with public speeches is not that the speakers don't know when to stop. It is that they don't know when not to begin.

David J. Williams

continued from page 17
about the client's case with a strong caveat to the client explaining that "air-tight" cases do not exist and that the possibility of unforeseen circumstances or developments arising is always present.

Conflicts of Interest

A substantial number of complaints arise out of the acceptance of employment involving potential conflicts of interest without full disclosure to the parties of the potential for conflict and the necessity that the lawyer may later have to withdraw if the conflict becomes a reality. Should the lawyer attempt to continue to perform incompatible roles he may subsequently be embarrassed should it be necessary to withdraw precipitously.

To avoid complaints of this type, the lawyer should decline employment whenever the exercise of his professional judgment on behalf of his client is likely to be affected by his representation of another client, or by his own financial,

—Don't forget to make a reply to my plea, and I shall reply to your reply . . . that will mean two more speeches for our clients to pay for

business, property or personal interests. See Disciplinary Rules 5-101(A) and 5-105(C).

Disciplinary Rule 5-105(C) provides:

> ". . . a lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each."

However, this should be done only with utmost caution. Even though the parties may desire to reduce costs by having one lawyer serve the interests of all parties, once a conflict arises those parties may adamantly blame the lawyer, each party having looked upon the lawyer as exclusively his representative.

Financial Involvement with Clients

Many complaints allege that the lawyer failed to fully represent and protect the interests of the complainant as a result of the lawyer's own financial interests in the matter.

Such a complaint may arise when, during the representation of a client in contemplated or pending litigation, the lawyer has acquired a financial interest in the outcome of the matter.

Disciplinary Rule 5-103(B) provides:

> ". . . a lawyer shall not advance or guarantee financial assistance to his client, except that the lawyer may advance or guarantee the expenses of litigation, including court costs, expenses, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses."

In complaints of this type the lawyer usually has advanced or guaranteed financial help to his client with the purest of motives, a desire to assist a client in serious financial need. Nevertheless, such well-intentioned acts create serious ethical problems. The lawyer's financial interests or obligations in his client's cause limit the exercise of his independent professional judgment.

This type of complaint may also arise when the lawyer engages in business transactions with a client not represented by other counsel. He fails to consider the arrangement as involving a lawyer-client relationship.

—Take him to Court . . . that would be a good trick to play on your neighbour . . . he would have to eat into his savings to the extent of at least three hundred francs . . .
—Yes, but I would have to eat into my savings too and I have no appetite for that . . .

Disciplinary Rule 5-104(A) provides:

> "A lawyer shall not enter into a business transaction with a client if they have differing interests therein and if the client expects the lawyer to exercise his professional judgment therein for the protection of the client, unless the client has consented after full disclosure."

When a lawyer enters into a business transaction with a non-lawyer the relation of lawyer and client is generally found to exist. Usually a lawyer is deemed to be practicing law, whenever he furnishes to another advice or services under circumstances which imply his possession and use of legal knowledge or skill. The relationship of lawyer and client could also arise or evolve if the non-lawyer entered into the transaction with the lawyer partly because of his status as a lawyer, or if, during the course of the transaction, the non-lawyer looks to the lawyer for advice or services because he is a lawyer.

Such complaints should be avoided by making clear to any non-lawyer with whom one engages in a business transaction that no lawyer-client relationship is intended. As in most other business relationships, the roles of the parties are more clearly defined when the terms of the business agreement are reduced to writing. A lawyer should refrain from rendering advice or services to such an individual which would create a lawyer-client relationship, insisting that he seek the advice and assistance of another lawyer whenever the need may arise.

Commingling Funds

Many complaints involving the manner in which lawyers have handled funds for their clients are caused by poor law office management rather than by misappropriation or misuse of clients' funds. Often, the lawyer knows that the funds or property of the client have been properly preserved, but, due to poor office management, he is unable to demonstrate this fact or make prompt disposition of funds or property. Further, regardless of good intentions, if in fact the client's funds or other property have been commingled with those of the lawyer, there would be a violation of the Code of Professional Responsibility.

The handling of funds by a lawyer is governed by Disciplinary Rule 9-102(A) as follows:

> "All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts . . . and no funds belonging to the lawyer or law firm shall be deposited therein except as follows: (1) Funds reasonably sufficient to pay bank charges may be deposited therein . . . [and] (2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved."

Every lawyer and law firm should establish office management procedures designed to insure clear accountability for all funds and other property of each client. □

"Being the Best You Can Be"

By **H. KENT MUNSON**

It is no mystery that outstanding lawyers are not born legal scholars, master trial lawyers, effective corporate attorneys or great legal counselors. The Cardozos, the Brandeises, the Holmes, the Nizers, the Blackstones of our legal heritage were once young fledgling lawyers. Their transition from novice to master entailed years of diligent effort. Skills were sharpened by experience and practice. Knowledge increased with constant study. Character was molded through trial and error, success and defeat. The young lawyer has much to learn and many attributes to master if he or she is to attain distinction in the legal profession. The purpose of this article is to suggest a few of many things a young lawyer might do in order to become an outstanding and distinguished lawyer.

Continuing Legal Education

The recent law school graduate has learned the analytical approach and some of the techniques used in solving legal problems. The young lawyer has a broad overview of the law. However, to become a mature and competent lawyer, a concerted and systematic program of continuing legal education is required to sharpen his skills and update his knowledge of the law and its developments.

The backbone of such a program of legal education should be some method of keeping apprised of the developments of the law in general. Regardless of the degree of specialization, a lawyer, whether involved in tax, patents, real estate transactions or any other specialty, must be ever cognizant of other areas of the law. Legal problems seldom are so narrow in scope as to involve only one aspect of the law. Normally they cut across many fields of law and have wide ranging implications. Most lawyers soon realize that to approach all problems solely from the vantage point of taxation is a serious mistake. One must be mindful of the ultimate possibility in any transaction of litigation and the accompanying considerations of evidence and qualifications of witnesses. Most business decisions have their labor relations implications and divorce has its tax considerations. Every competent lawyer, regardless of his specialty, must to some extent be a general practitioner.

How can a lawyer upgrade his knowledge of the law in general and keep abreast of its new developments? A very good way of accomplishing this task is a systematic review of the advance sheets from the state's reporter system. In addition to state law developments, a knowledge of judicial developments on the federal level is also essential. Advance sheets from the United States Supreme Court and the other various federal courts are a must.[1]

H. Kent Munson is an associate of the St. Louis law firm of Stein & Siegel which he joined immediately after receiving his J.D. degree from Duke University in 1973. His B.A. degree is from Brigham Young University. He is a member of the American Bar Association and The Bar Association of Metropolitan St. Louis.

This article was first published in the Spring, 1976 issue of *The St. Louis Bar Journal*. It is copyrighted and has been reprinted with the kind permission of the author and the Bar Association of Metropolitan St. Louis.

Equally important is an awareness of the many legislative developments coming from both our General Assembly and the Congress. Recent or pending legislative developments can have wide ranging ramification on a lawyer's approach to legal problems. For example, we all now realize the tremendous impact that the Pension Reform Act of 1974 has had on many areas of our practice. Its ramifications are felt in corporate practice, labor relations, criminal practice, and even civil rights litigation. The young lawyer should establish, as part of his program of continuing legal education, a study of a source of information relating to new laws and regulations promulgated by our legislative and administrative rule making bodies. The Pocket Supplements to the annotated statutes or various state legislative services are possible sources of information on the new state legislation. Also, there are several legislative services available which are sources of information on new federal legislation.

Seminars dealing with a wide variety of subject matter are used by lawyers with increasing frequency to keep up with the many new developments in the law or to sharpen their skills. The Young Lawyer's Section Continuing Legal Education Committee of this Bar has sponsored over the past few years numerous very worthwhile seminars. The Missouri Bar Association, as well as any number of regional and national associations, treat almost any subject of interest at least once a year. The use of seminars to enhance one's program of continuing legal education can be particularly beneficial in obtaining a quick birdseye view of a new area of the law. With a broad overview, the lawyer can then dig into the details back at the office. Another attractive feature of seminars is the fact that it gets the lawyer out of his office, away from the telephones, and into a situation where concentration on the matter at hand prevails.

In addition to keeping abreast of the law in general, a lawyer must continually be aware of the intricate developments within his particular area of concentration and specialization. No one needs to point out that this also requires a systematic and routine program of learning. Numerous bulletins, looseleaf services, and other periodicals dealing with all areas of interest are available. Again, there are many useful seminars which are designed to furnish the lawyer with new ideas, new concepts and the developments in a field of special interest. The use of these specialized resources rounds out a successful program of continuing legal education.[2]

Advocacy

A retired police officer in describing his many years on the police force, recited experiences involving the arrest of suspects of criminal activity. When quizzed about his feelings regarding the suspect's rights to legal counsel, the ex-officer referred to lawyers as the suspect's "mouthpiece." "This suspect's 'mouthpiece' came down and bailed out his client or that suspect's 'mouthpiece' stopped a fruitful session of interrogation." Although few attorneys would be endeared by a reference to themselves as the "mouthpiece," that retired officer did aptly describe one of the most important roles of a lawyer. A lawyer is a spokesman. He is an advocate. A lawyer speaks for the client before the courts, before administrative agencies, in labor negotiations, in business transactions, in disputes with landlords and in a myriad of other settings. A lawyer must communicate with force and effectively. Without effective communication the Biblical saying is fulfilled.

> "For if the trumpet gives an uncertain sound, who shall prepare himself for the battle? So likewise, ye, except ye utter by the tongue words easy to be understood, how shall it be known what is spoken? For ye shall speak into the air." (I Corinthians 14:9 and 10)

The goal of the young lawyer is to become an effective advocate, to eliminate "uncertain sounds" and not "speak into the air." A young lawyer can improve his skills of advocacy and his ability to communicate effectively. Principles of good advocacy apply in all aspects of a lawyer's practice, whether addressing the court in oral argument, preparing a written brief, arguing before a jury, conversing by telephone with a client or opponent, writing a letter to another lawyer or holding an informal conference with a client.

No successful advocate needs to have great oratorical powers, although it will be of great advantage to possess them. And, even the greatest orator will fail miserably with mere rhetoric. As Lord Erskine once said: "Remember that no man can be a great advocate, who is no lawyer. The thing is impossible."[3]

Preparation is the keystone to success in advocacy. The first step must always be to acquire a thorough and minute knowledge of the facts, as they relate to each other and as they relate to the law. How does one imbue the mind with the subject to be represented? How can one put a handle on a complicated factual situation? A great 19th century advocate in Great Britain, the Lord Chief Justice Charles Russell, described an approach which is still valid today.

> "First. I do one thing at a time, whether it is reading a brief or eating oysters, concentrating whatever faculties I am endowed with upon what I am doing at the moment. Secondly. When dealing with complicated facts, to arrange the narrative of events in order of date — a simple rule not always acted upon, but which enables you to unravel the most complicated story, and to see the relation of one set of facts to another set of facts. My third rule is never to trouble about authorities or case law supposed to bear on a particular question until I have accurately and definitely ascertained the precise facts. My fourth rule is to try and apply the judicial faculty to my own case in order to determine what are its strong and weak points, and in order to settle in my own mind what is the turning point in the case. This method enables you to discard irrelevant topics and to mass your strength on the point on which the case hinges."[4]

Sometimes factual gaps appear as the lawyer analyzes a problem. Relentless probing of the client, examining pertinent documents and concentrated investigating brings clarity to a transaction or incident. Only after a lawyer knows all there is to know about his subject can he commence to prepare to speak or write.

Before speaking or writing, a lawyer must know the audience. What you say, your vocabulary, how much background material you must present and how you express something all depend upon your listener or your reader. For example, it probably would be a mistake to speak to a jury with a highly esoteric vocabulary, employing technical, legal or trade terms. The average jury probably would not be that sophisticated. It is always a mistake to assume that a person or an audience knows as much about the subject at hand as the lawyer knows. The lawyer has lived with it for weeks; to the audience, the subject probably is new. Moreover, a lawyer can never forget that even the simplest concepts may not be understood by the audience. For example, not all jurors will know what corporate "directors" are or a "deposition". Not every lawyer or judge knows what a "buy-in" of securities is, or a "variable annuity". On the other hand, a laborious and detailed explanation of the intricacies of a subject to a judge who is himself an expert in that area may be harmful to a cause. Before speaking or writing, know your audience.

In any matter, the first impression received by the judge, jury, opponent or audience is critical. The successful advocate is one who makes a favorable impression in his opening statement, whether oral or written. Great thought ought to be given to those first critical words so that the advocate brings home his case immediately. The experienced lawyers and judges unanimously agree that the cardinal rule of oral or written argument is to begin by telling the listener what the case is about. Many lawyers consider it a good practice to write out or memorize the opening statement in order to get the presentation off to a good start and to avoid omissions of an important point of the case. (This practice also helps the advocate get through the initial nervousness.)

After the listener knows what the matter is about, the successful advocate immediately drives home the strong points of his case. When the advocate succinctly and forcefully informs the listener of the nature of the matter and then efficiently erects the sturdy pillars of the case, the judge, jury or any other audience begins with as favorable an impression as is possible. The remainder of a presentation shores up and bolsters the case and parries or counters the thrusts of an opponent.

The experience of those involved in the discipline of lawyers shows that most complaints could be prevented if lawyers realized that the unintentional grievances they may unwittingly cause, or fail to prevent, are potential pitfalls they can avoid.

Such complaints generally result from:

1. Inadequate lawyer-client communication,
2. Poor law office management, or
3. Ignorance of the Code of Professional Responsibility.

The purpose of this booklet is to alert lawyers to some of the more common unintentional grievances which can be avoided, if common-sense measures are taken. It does not cover culpable conduct.

Fee Disputes

One of the most common complaints against lawyers concerns the amount of the fee. Many complaints couched in other terms turn out to be fee disputes.

This article has been reprinted with the permission of the American Bar Association. It is based on a booklet prepared by the Standing Committee on Professional Discipline and the Center for Professional Discipline of the ABA.

—Beaten, Sir . . . beaten on all counts . . . yet this morning you told me I had an excellent case.
—Yes, damnit . . . and I am ready to handle your appeal . . . but I must warn you, I never take a case to the Royal Court (Appeal Court) for less than three hundred francs.

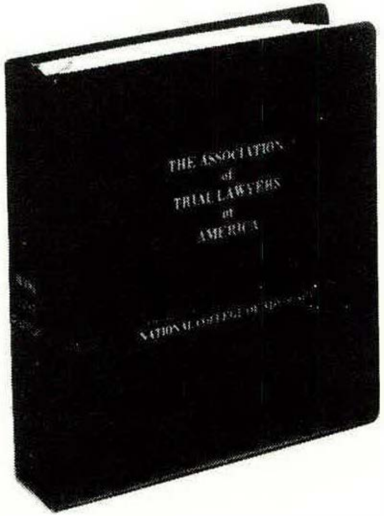
RENO, NEVADA
JULY 11 - 17, 1976

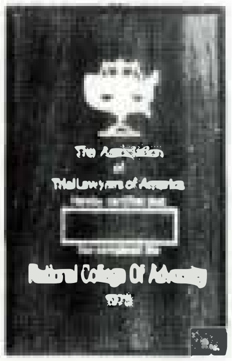
HISTORIC BEACON HILL
IN BICENTENNIAL BOSTON
AUGUST 15 - 21, 1976

A glimpse of the program ...

Charles Garry on Jury Selection; Elizabeth Loftus on the Psychology of Eye Witness Testimony; Cyril H. Wecht on Direct Examination of Medical Experts; Harry M. Philo on Sources of Information; Ann F. Ginger on Jury Selection; Julius Fast on Body Language in the Courtroom; F. Lee Bailey on Summation; Dorothy Jongeward on Communications through Transactional Analysis; Henry B. Rothblatt on Handling the Notorious Client; Robert G. Begam on Word Structure in Advocacy; Herald Price Fahringer on Representing a Client Before the Grand Jury; Theodore I. Koskoff on Cross Examination; Honorable Charles R. Richey on Sentencing; and the list goes on......

Registrants at the NATIONAL COLLEGE OF ADVOCACY will receive with their registration a copy of a new book prepared expressly for the College entitled How to Handle a Professional Liability Case, plus a handsome wall plaque indicating completion of the College





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Hotel reservation information will be sent to you upon registration.

Tuition travel hotel and living expenses of attending legal education programs are deductible for federal income tax purposes See Coughlin v Commissioner 203 F.2d 307 (2nd Cir 1953) Treas Reg 1 162 5

In addition to these very basic foundations for effective advocacy, the books are full of other helpful advice on advocacy, for example, how to field questions from judges or how to develop the comparative strengths and weaknesses of the contending parties or how to use sentence structure more effectively. All of these techniques can also be implemented to further aid a lawyer in becoming a successful advocate.

Each letter, brief or memorandum dictated and each oral argument, presentation, talk or conference of the young lawyer is an opportunity to apply the principles set forth above. Constant awareness and application of these principles cultivate the habitual and subconscious application of the principles of good advocacy. Only then has the young lawyer become an effective advocate.

Client Relations

Another characteristic of a good lawyer is an ability to handle effectively the complex aspects of the attorney-client relationship. Whether it be a businessman, a wife with marital difficulties, a suspect in a criminal case, a corporation, or the government, a lawyer represents a client. The lawyer's effectiveness many times turns upon the client's confidence in the lawyer and the client's reliance upon the lawyer's professional skills and judgment. It is, therefore, imperative that the young lawyer be cognizant of how to foster good relationships with the client. A few suggestions along this line are in order.

All clients, regardless of who they might be, desire that their matters be held in confidence. To breach the trust of confidentiality of client matters not only destroys the attorney-client relationship, but is a serious breach of the canons of ethics. (Canon Number 37.) Moreover, the attorney cannot effectively act for the client without knowing all the facts. What can a young lawer do to assure the client of confidentiality?

Since all clients are not aware of the lawyer's ethical obligation to not divulge confidences, certain new clients should receive from the lawyer an explanation of the confidential nature of their relationship. They need to be assured that what they tell the attorney will not leave the office. Great care should be taken to have conversations with clients in private surroundings. Closed doors and sound-proof walls are conducive to full disclosure.

A client cannot be favorably impressed when he sees correspondence or documents relating to his matter or matters of other clients laying in broad view of the public on secretary's desks or upon the library table or upon a lawyer's desk. Likewise, a discussion of various aspects of a matter with the client around other people, if avoidable, doesn't impress the client with the lawyer's dedication to keeping confidences.

One important factor in maintaining an effective relationship with the client is a frank, concise and clear understanding, from the outset, of the fee arrangement. Truly the most tender part of a man's anatomy is his pocketbook. Fee arrangements are close to his heart. A client should understand each factor of the particular fee arrangement. A client should know the various considerations, such as complexity of issues, experience of attorneys or results obtained, which were pertinent in arriving at a fee arrangement. Once the client understands the fee arrangement he should express his agreement or commitment to meet his obligations under the arrangement. Therefore, the better practice is to reduce to writing each and every fee arrangement.

The client should understand the nature of the expenses which will probably be incurred in handling his matter. The client needs to know about filing fees, bond costs and other court expenses.

One of the most difficult tasks of a young lawyer is to realistically evaluate the position of the client. Many times a new client walks in with a position or claim which, to the client, is worth all the tea in China, or all of the oil in the Middle East. The young lawyer, of course, wants to believe that too. It would be a nice piece of business for the novice. However, the claim has a few problems. The apparent dilemma for the young lawyer is the dread of offending or losing this new client by letting him know of the difficulties of his position. In reality, however, the client usually will be offended only if the weak points and the vulnerable areas of his position are not pointed out with frankness. Nothing destroys the faith of a client in the attorney more than a promise of a particular result in a matter, or allowing a client to habor a false hope. The pros and cons of a problem must be weighed, business considerations and economics explored and other intangibles probed by the attorney with the client each step of the way. Sometimes, the lawyer must tell the client that a particular course of action is wrong. He must warn him of the dire consequences of not heeding his advice, regardless of any fear of losing a client.[5]

One of the most frequent complaints of clients about lawyers is that lawyers often fail to keep the client informed. The attorney-client relationship languishes if time passes and routine actions are taken without informing the client. Of course, all attorneys know that the canons of ethics require a lawyer to pass on to his client each and every offer of settlement, regardless of its merit, and to apprise the client of the developments in a case. In addition, much good will and confidence is generated by such simple acts as sending the client copies of correspondence, pleadings, motions, memoranda and other items filed with the court or by quickly apprising the client, by telephone, of developments in his matter.

Ethically Straight

One of the hallmarks of an outstanding lawyer is an undeviating adherence to the principles of legal ethics and honesty. The late Chief Justice Warren often referred to the "law beyond the law" which must govern the actions of the lawyer, and that in the final analysis, every lawyer must be his "own Chief Justice". Can any young lawyer who practices in the dark shadow cast upon our profession by the events of Watergate, doubt the necessity of being ethically straight?

The young lawyer upon entering practice is probably somewhat familiar with the Canons of Ethics. However, like most of the concepts taught in law school, the implications of the standards of professional ethics come to life only in the everyday practice of law. Therefore, the Canons should be referred to often and religiously followed.

With respect to Ethical conduct, the more experienced lawyers in an office have a responsibility to take time to discuss and examine the principles of the Canons when situations raise an ethical consideration. As is the case with most other aspects of law practice, a young lawyer usually is as ethical as the partners or his older associates in the law firm. Example and constant attention to ethical considerations by everyone in the firm bears good fruit in the training and development of a young associate.

A few simple examples of how the Canons of Ethics should be applied in everyday practice are appropriate. Canon 22 enjoins attorneys to be candid and fair. The scrupulous adherence to this Canon requires that every paragraph in every brief be one hundred percent accurate in quoting testimony or the language of a decision or treatise. It requires strict abstinence from misleading statements or arguments before the judge and jury. Canon 6 demands undivided loyalty and fidelity to a client in avoiding conflicts of interest. The young lawyer must habitually insist upon full disclosure of facts which might influence a client in the "selection of counsel". The fact that an attorney has had former employment which might be in conflict with new representation cannot be lightly glossed over.

Every young lawyer knows that the profession abhors the "ambulance chaser". However, most young lawyers who are encouraged to "develop" clients and business for the office are not sure of the appropriate methods to be used in developing a clientele. Of course, the method employed is governed by the Canons of Ethics. A young lawyer must have in mind the guidelines established by the Canons in those critical areas where initial client contact is made. Law firms which encourage their young associates to develop clients and business have the responsibility to discuss and aid the associate in dealing with potential clients ethically.[6]

Lawyers sometimes get into the habit of winking at small infractions of the Canons, or committing small indiscretions. Lawyers rationalize or justify these peccadillos on various grounds. Often they are justified on the basis of mere convenience. Recently we have witnessed lawyers justify improprieties on such lofty grounds as the protection of the nation (or the protection of the office of the president). Improper notarizations are secured. Instruments are wrongfully back dated. Vague and misleading communications are issued. Trust funds are temporarily co-mingled. Gifts and gratuities are given to curry favor with Court or public officials (or to keep up with other firms in "obtaining a fair shake").

The young lawyer has a reputation to build. His reputation for being a hard worker, a legal scholar, a skilled advocate and his analytical mind are all important. However, regardless of how knowledgeable or skilled a lawyer may become, a small transgression of the code of ethics can irreparably damage his status in the community and in his profession. Small indiscretions committed upon request or under pressure from clients or fellow attorneys do not enhance the reputation. On the other hand, strict and undeterred honesty and religious adherence to the profession's code of ethics wins admiration and confidence.

Conclusion

Not every editor-in-chief of the law school's law journal becomes a successful practitioner. Likewise, not every graduate at the bottom of the class is doomed to dismal failure as a lawyer. Upon graduation and successful completion of the bar examination, the young lawyer has not arrived; rather, a career in law has barely begun. The road to distinction is available to any young lawyer who is dedicated to the goal of becoming a good lawyer. Dedication, concentration, routine preparation and discipline pave the way. The good lawyer not only will enjoy recognition in the community and from his colleagues, but will enjoy satisfaction from his work and service to the profession.

Footnotes . . .

[1]It is amazing how often, in a review of the advance sheets, you will find a case on point with a particular problem presently in the office. The benefits of a systematic program are often immediate.

[2]Experience bears out the fact that in order for a program of continuing legal education to be effective, it must happen on a routine basis. A definite time of the day or week should be set aside, without interruption, for this program. Otherwise, it usually wanes and dwindles away.

[3]Jeaffreson, A Book About Lawyers, p. 363, quoted in Simeon E. Baldwin, The Young Man and the Law, 108 & 109, 19[illegible]7.

[4]39 Alb. Law Journal 304, quoted in Byron K. Elliott and William F. Elliott, The Work of the Advocate, 1 and 2 (2nd ed. 1911).

[5]Canon Number 8 of the legal profession's Code of Professional Ethics should be considered in this regard.

[6]See Raymond L. Wise, Legal Ethics, chapter 2, P. 5-43, 1966 for a discussion on the right and wrong ways to build a practice.

REFERENCES

Legal Ethics

Raymond L. Wise, Legal Ethics, 1966.
Henry S. Drinker, Legal Ethics, Columbia University Press, 1953.
Frederick C. Hicks, Organization and Ethics of the Bench and Bar, 1932.
Robert E. Mathews, Problems Illustrative of Responsibilities of Members of the Legal Profession, Revised Edition, 1966.
W. M. Trumbull, Materials on the Lawyer's Professional Responsibility, 1957.

Client Relations

Charles O. Brizius, Advice To a Young Lawyer on Building a Practice, 17 Practical Lawyer, No. 2, p. 13.

Advocacy

The Missouri Bar, Missouri Appellate Practice, chapters 4 and 5 (Joseph Nessenfeld and Clem F. Storckman authors), 1963.
Charles W. Fricke, Planning and Trying Cases, chapters 1- , 1957.
Byron K. Elliott and William F. Elliott, The Work of an Advocate, 1-20 (2nd ed. 1911).
Simeon E. Baldwin, The Young Man and the Law, 1-15, 1927.

View from the Bench

The Rule of Law is Not Self-Sustaining

By **W. ARTHUR GARRITY, JR.**

There's much more to the rule of law than constitutions and statutes themselves and their faithful construction by the courts and enforcement by officials of government. The rule of law encompasses the entire process whereby social order is achieved and preserved. In a staff report to the National Commission on the Causes and Prevention of Violence, James S. Campbell said:

> "Public order in a free society does not and cannot rest solely on applications or threats of force by the authorities. It must also rest on the people's sense of the legitimacy of the rule-making institutions, of the political and social order and of the rules these institutions make. People obey the rules of society when the groups with which they identify approve those who abide by the rules and disapprove those who violate

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W. Arthur Garrity, Jr., is judge of U.S. District Court in Boston. He issued the controversial court orders calling for busing to desegregate Boston's schools. This article is taken from remarks Garrity made when he was given the Fourth Boston Bar Foundation Public Service Award.

The article was first published in the July/August 1975 issue of *Bar Leader*. It has been reprinted with the permission of the author and the American Bar Association.

them. Such expressions of approval and disapproval are forthcoming only if the group believes that the rule-making institutions are in fact entitled to rule—that is, are 'legitimate.' . . . This concept of acceptance of rules based upon legitimacy may be termed the 'rule of law.' ''

Approval of rules and of rules-making institutions, in turn, depends in large measure upon another body of rules that exist independently of constitutions and statutes—those described by Lon Fuller as "the fundamental rules that make law itself possible." These are the traditional principles of liberty, justice and decency commonly called the natural law.

Walter Lippman called these principles the public philosophy. In a book bearing that title, Lippman wrote:

> "Is there a body of positive principles and precepts which a good citizen cannot deny or ignore? I am writing this book in the conviction that there is. It is a conviction which I have acquired gradually, not so much from a theoretical education, but rather from the practical experience of seeing how hard it is for our generation to make democracy work. I believe there is a public philosophy. Indeed there is such a thing as the public philosophy of civility. It does not have to be discovered or invented. It is known. But it does have to be reviewed and renewed."

There's much more to the rule of law than constitutions and statutes themselves and their faithful construction by the courts and enforcement by officials of government. The rule of law encompasses the entire process whereby social order is achieved and preserved.

Unless the relationship between the natural law and a given legal process is also known—or at least sensed—the public-support component of the rule of law cannot be strong and the rule of law will suffer. Consider the scene in the award-winning play, *A Man for All Seasons*, in which Thomas More is rejecting a friend's suggestion that he bend the law to achieve a desired result:

More asks, "What would you do? Cut a great road through the law to get after the devil?"

His friends says, "I'd cut down every law to do that."

More replies, "When the last law was down, and the Devil turned 'round on you—where would you hide, the laws all being flat? This country's planted thick with laws from coast to coast, and if you cut them down do you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil the benefit of the law, for my own safety's sake."

More's confidence in the law is readily explained. He lived in the 16th century and saw positive laws as the extension into secular affairs of the natural law declared and guarded by his Church. There is of course no modern exponent of natural law with moral authority approaching that of the medieval Church. In America today the principal repository of the natural law is the Constitution of the United States and the principal guardian of the natural law, the Supreme Court.

The Supreme Court's reliance on natural law beyond what is stated explicitly in the Constitution, has been examined in countless treatises and articles. A striking example appears in the court's decisions on the question of whether the privilege against self-incrimination in the Fifth Amendment is included in the basic rights protected by the Fourteenth Amendment against state encroachment.

The court answered negatively in 1947, stating that the privilege is not "among the fundamental and inalienable rights of mankind" nor "an unchangeable principal of universal justice." But the court answered affirmatively in 1964, stating that the privilege is "one of the 'principles of a free government' " and quoting Dean Griswold's characterization of the Fifth Amendment as "an expression of the moral striving of the community and 'a reflection of our common conscience.' "

Whether or not the Supreme Court should rely on natural law has been the subject of vigorous debate dealing with such matters as the breadth of natural law concepts, the evolution of basic values, the scarcity of generally recognized moral standards and the doctrine of judicial restraint.

I do not seek to join in the debate except to say that, in reaching the decisions which have aroused the passions of this community, on abortion and school desegration, the Constitution gives the Supreme Court no alternative to some degree of reliance upon natural law. For the constitutional provisions underlying the court's decisions in these areas are the undefined, merely directional concepts of "due process of law" and "the equal protection of the laws." In the words of Judge Learned Hand, these Fourteenth Amendment guarantees of individual freedom are only "moral adjurations, the more imperious because inscrutable, but with only that content which each generation must pour into them anew in the light of its own experience."

Unless the relationship between the natural law and a given legal process is known — or at least sensed — the public-support component of the rule of law cannot be strong and the rule of law will suffer.

Thus, the rule of law is a process in which we all participate not only when we judge or counsel or prosecute or defend, but indirectly when formulating and expressing the values which govern our daily lives. The advance or retreat of the rule of law is a responsibility we share, whether we think about it or not.

The rule of law is not self-sustaining. What human process is? What human being is? □

The Courts

SUPREME COURT PRACTICE
By **JOHN J. CHAMPAGNE**

No. 44105 — *Chicago, Milwaukee, St. Paul and Pacific Railroad Co., et al. v. Human Rights Commission*

1) Is a job applicant who has had cartilage removed from his knees entitled to the protection of the handicap discrimination law?

2) What is the scope of review of a determination of the appeal tribunal of the Human Rights Commission?

3) Is a person who is legally blind disqualified by that factor from serving as a member of an administrative hearing tribunal?

4) Would the enforcement of Ch. 49.60 RCW with respect to the requiring of an interstate carrier to hire a person with a history of knee problems, and alleged safety risks incumbent thereto, constitute an unpermissable burden upon interstate commerce?

No. 44115 — *State v. Cummings*

Does the entry of an order dismissing criminal charges with prejudice in a District Court bar any subsequent action on the same charges filed in a Superior Court?

No. 44120 — *Duckhead v. Anderson*

Is an Indian tribal court order entered in Montana regarding custody of an Indian child entitled to full faith and credit in Washington?

No. 44124 — *Alexander Myers and Company, Inc. v. Hopke*

Does a buyer of land have a right to rely on a seller's representation as to its size when the land is irregular in shape and without a definable boundary? What is the proper remedy for fraud in the formation of a contract?

No. 44134 — *Macomber v. Employment Security Department*

What effect does the redetermination statute (RCW 50.20.160(41)) which grants the Commissioner of the Department of Employment Security discretion to make redeterminations when, in his judgment, certain claimants might be in a similar position to other claimants involved in a final court decision, have on traditional res judicata principles?

No. 44135 — *Leonard, et al. v. City of Bothell, et al.*

Does the change of a comprehensive plan to allow a regional shopping center constitute legislative action and thus subject said action to a referendum election?

JUDICIAL COUNCIL REPORT
By **DEAN R. SARGENT**

Decriminalization of Minor Offenses

In 1975 the Washington Supreme Court decided that counsel must be appointed for indigents in every criminal case where a statute provides the possibility of a jail sentence. The impact of this decision is enormous, since in Washington even a parking violation is a criminal offense carrying at least the possibility of jail time. The legislature responded to the Supreme Court's decision by amending the traffic code, removing the possibility of a jail sentence for all but eight offenses. It seems clear that the legislature did not intend to decriminalize minor traffic offenses, but merely to remove the possibility of a jail sentence and thus relieve cities and counties of the burden of having to appoint attorneys.

While city and county officials are breathing a sigh of relief, lawyers, judges, law enforcement officers and officials of the Department of Motor Vehicles are becoming worried about a host of problems which may have been created by the amendment.

The first of these problems is that the state's new criminal code, which becomes effective on July 1, 1976 defines a crime as an offense, "for which a sentence of imprisonment is authorized." The new code applies not only to offenses which are defined within it, but to any offense, "in this title or the general statutes." Consequently traffic offenses which no longer carry the possibility of jail time will no longer be criminal offenses. The first impact of this is on law enforcement. What authority is there for a State Patrol officer or a police officer to stop a person for committing an offense which is not criminal? If they do so, are they exposing themselves to a civil lawsuit for false arrest? If a person is stopped for a noncriminal violation, does the officer have any authority to perform a search of the person or of the vehicle?

The courts will also have problems to face. For example, it is not clear whether a violator is entitled to a full trial or whether some limited form of hearing may be used. Is there a right to a jury trial, and an appeal? A major problem will be the method of enforcing payment of fines. A person cannot be jailed for debt, nor can jail time be imposed and then suspended on the condition that a fine is paid, for a noncriminal violation. The methods for enforcing civil judgments may be available, but it is doubtful that the financial return will justify their use.

Courts already have a problem with the large number of people who fail to appear after having been issued a ticket or a summons. Washington law makes failure to appear a separate offense in itself, but this currently applies only to crimes. This leaves the question of whether there is any remedy for failing to appear on an offense which is not a crime.

The new amended statute provides that fines of up to $250 may be imposed for all violations which do not carry a jail time possibility. The Uniform Traffic Bail Schedule will still apply to these offenses if they are crimes, but after July 1 if these violations are no longer crimes, the municipal and district courts of the state will be free to go back to the system of being able to impose any penalty they choose between zero and $250 without regard to uniformity. There will again be the possibility that a person from one part of the state, stopped for a violation in another part of the state, will have to pay a substantially higher fine than a local resident.

Traffic violations are not the only minor offenses contained in Washington statutes. There are hundreds of others, including violations of licensing laws, fish and game laws, drug laws, dog leash laws, and the laws and regulations associated with the state's many administrative agencies. The problem of appointed counsel may be most accute for traffic violations, but it nevertheless exists for all of the others.

Last year the Judicial Council authorized the appointment of a task force to study these problems. Members of the task force have been appointed by the Chief Justice and it will be meeting for the second time in June. Recommendations concerning both legislation and court procedures will be made by the task force to the Judicial Council. Comments and suggestions are invited to be made to the Judicial Council, Room 510A Condon Hall, University of Washington, Seattle, Washington 98195. □

Briefly Noted

Board of Governors member Robert H. Peterson is shown briefing soon-to-be Pierce County lawyers in Tacoma last month.

Peterson introduced the Pierce County group to the Superior Court Judges, who were sitting en banc. The oath was administered to thirty new lawyers, the largest single group ever to be admitted in Pierce County.

1976 Survey of Law Firm Economics

Three hundred and twenty-one law firms throughout the United States and Canada participated in the 1976 Survey of Law Firm Economics, conducted by Altman & Weil, Inc., management consultants. Earnings and fees in the current survey were somewhat higher than a year earlier. The study is conducted among selected law firms, and is not necessarily representative of all attorneys in private practice.

The median earnings of partners and shareholders in the U.S. and Canada in 1975 were $55,000 in contrast to $54,200 a year earlier. Median earnings of associates were $20,000 in 1975, up almost $1,000 from 1974. The median earnings of paralegal employees were reported as $9,900.

This survey reports earnings information pertaining to 4,297 lawyers in private practice and to 295 paralegal employees.

Median earnings of partners and shareholders by location were: Canada — $52,200, Midwestern United States (except Ohio) — $53,250, Ohio — $53,400, Western States (except California) (including Alaska and Hawaii) — $51,000, California — $62,900, Southwestern States — $62,200, Southern States (except Florida), $53,400, Florida — $53,600, Northeastern States — $55,100.

According to the survey, the earnings of lawyers generally have a relationship to firm size. For example, the median compensation of associate lawyers relates to firm size as follows:

2 to 6 lawyers — $15,900; 7 to 11 lawyers — $16,950; 12 to 19 lawyers — $18,300; 20 to 39 lawyers — $20,000; 40 or more lawyers $22,000.

The full report analyzes earnings by years in practice, size of firm, geographic region and similar factors.

Other factors analyzed are starting salaries, gross receipts, and operating expenses, and fees and billing rates.

The full survey report contains over 130 pages and is available to law firms from Altman & Weil, Inc., Ardmore, PA.

Seattle University Offers Tax Course

A special evening graduate course designed especially for attorneys, as well as accountants and tax specialists, is planned for Summer quarter at Seattle University. The course, entitled "Taxation of Capital Assets" will be taught with the goal of assisting those who desire to remain abreast of latest developments in the field of taxation.

"Taxation of Capital Assets" will be offered from 5:30 to 7 P.M. every Tuesday and Thursday from June 22nd through August 12th. Further information can be obtained from Don Walter or Felicia Gilmour at Seattle University's Albers School of Business, 626-5455.

NALA Annual Workshop

The National Association of Legal Assistants will hold a two-day workshop for legal assistants in San Francisco, California, at the Hyatt Regency Embarcadero Center, on July 8 and 9.

The workshop will offer two days of intensive study and education for legal assistants.

Registration fees for the workshops, including lunch on July 8 and handout material, will be: $75.00 for non-members; $35.00 for NALA members. For further information, contact NALA Headquarters, 3005 East Skelly Drive, Suite 120, Tulsa, OK 74105.

"Town Hall Program" Transcript Highlights Criminal Justice Issues

The American Bar Association's Criminal Justice Section has published proceedings of a "Town Hall Program" held at the 1975 ABA Annual Meeting in Montreal.

Moderated by *NBC-TV* news correspondent Carl Stern, the forum produced debate on such questions as:

— Can mandatory minimum sentences reduce crime?

— What safeguards are necessary in use of electronic surveillance?

— Did the pardon of President Nixon undercut public confidence in the criminal justice system?

The monograph may be ordered from the Criminal Justice Section Staff Office, 1800 M St., N.W., Washington, D.C., 20036. Cost is $2.00, which includes postage and handling.

Notices

For Sale: Complete set of American Law Reports, 1st, 2nd and 3rd editions, through Volume 68 (the latest volume) of ALR 3rd, complete with all later case service supplements and indexes. Best offer. Call Dan Kellogg, 255-4542, Seattle.

Space Available: Uni-C Office Building, Bellevue, Washington, for 1 attorney, sharing of office expenses. Use of small law library, receptionist-secretary, reception area, and CPT Automatic Typewriter. Call 454-6131, Bellevue.

Space Available: IBM Building (Seattle) for one attorney in a three-attorney suite. Call Mr. Johnson, 624-2832, Seattle.

For Sale: ALR, ALR 2nd, ALR 3rd through Volume 24, plus Digests, Quick Index, Blue Book and mahogany bookcases. Contact Wm. M. Gerraughty, 620 Lincoln Bldg., Spokane, Washington 99201. (509) 838-8659.

Space Available: 24th Floor, The Financial Center, beautiful view of harbor, well-equipped library-conference room, space for secretary — $600 per month. 624-5606, Seattle.

For Sale: Book Publishing Company Annotations to the Revised Code of Washington, excluding latest supplement. Nominal sale price. Contact George Riemer at the Washington State Bar Association office. 622-6054, Seattle.

For Sale: A.L.R. 2d and 3d, A.L.R. Later Case Service, and A.L.R. 2d, 1 to 100 Digest. Laws of Washington, 1889 to present, not all years available. Original leather bound Corpus Juris. Negligent Compensation Cases, Ann., Current Series. U.S. Code Service, current to Jan. 1976. Other treatises and volumes available. List upon request. Last bid date 7/30/76. Make offer to Barbara Rowland, Rm. 302, Court House, Vancouver, WA 98660.

LAWYER PLACEMENT

1. Kitsap Legal Services seeking a staff attorney experienced in poverty law, personal history of commitment to solving social problems especially those of low income people. General practice of civil law for low income people; primary responsibility for domestic relations; carry sizable caseload, appear frequently in court. Position available June 1. Contact Bob Baskerville, 1200 Elizabeth Ave., Bremerton, WA 98310, (206) 377-7694.

2. Law firm seeking an attorney who is able, personable and willing to work, interested in smaller community practice. An ability or interest in business or tax practice desirable. Resume requested prior to interview. Send resume to: Schultheis, Maddock & Bell, P.O. Box U, Port Orchard, WA.

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