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June 1982

WASHINGTON STATE BAR NEWS

MANAGING YOUR OWN MONEY

Volume 36, Number 6
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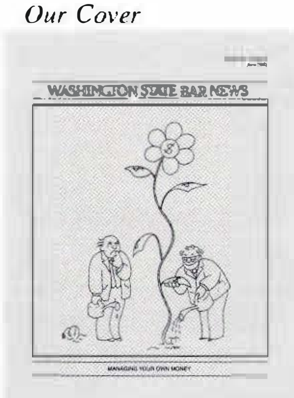
WASHINGTON STATE BAR NEWS

FEATURES

IN THE NEWS

DEPARTMENTS

Our Cover



No, magic beans won't make you rich, but our authors this month explain how hard work and careful investments can make your money grow. Pen and ink drawing by Elaine Y.L. Tsiang.

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Yakima Blasts Board's Action on Limited Practice Rule

Editor:

The Yakima County Bar Association has requested that I send you for publication in the *Bar News* the enclosed letter that I wrote to Dave Welts on April 20. It was the unanimous consensus of our bar that this letter should be published as we are incensed by the action taken by the Board of Governors regarding the Limited Practice Rule for Closing Officers.

Dear Mr. President:

It was with dismay that I learned that the Board of Governors last weekend at its Port Angeles meeting voted to recommend approval of the Limited Practice Rule in its present form. The first opportunity that I had to present the contents of the rule to the Yakima County Bar Association was on April 2. At that time after some discussion, a motion was made and carried that I write to the Board of Governors requesting that they defer action on this rule until after our April 30 meeting. The reason for the requested delay was that I was to mail a copy of it to all our members and appoint a special committee to analyze the rule so it could make its recommendations to our bar association at our April 30 meeting. A report would then be made to the Board of Governors.

On April 2 I wrote a letter to the Board of Governors requesting in essence that the Board not take any action until after our April 30 meeting and further advising the Board that a special committee was being appointed to study the proposed rule and make its report to our bar. I received no reply to my letter and assumed, incorrectly, that the Board of Governors would extend to the Yakima County Bar Association the courtesy of delaying action until we could give the Board of Governors our input.

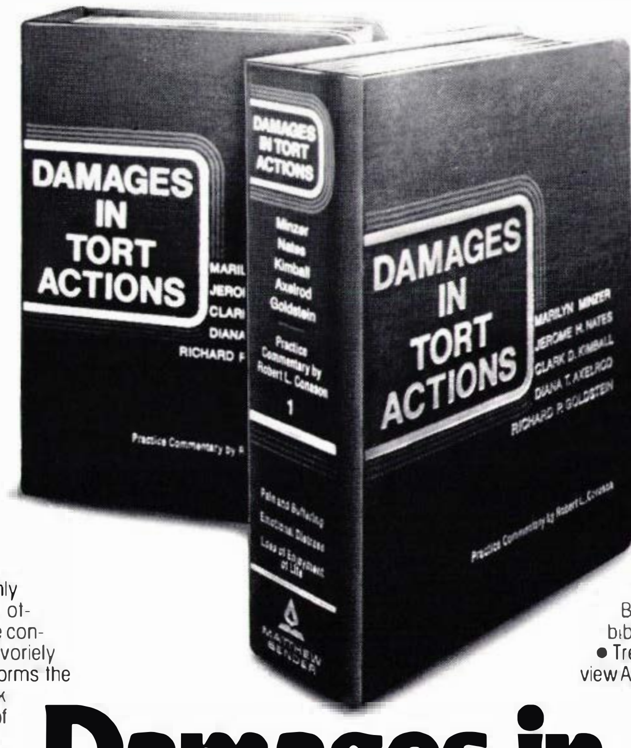
A committee was appointed consisting of approximately a dozen lawyers. The committee has had one meeting and plans to hold further meetings.

Realizing that I had had no reply to my letter of April 2, I called the Bar Association office on the morning of April 16 to determine whether or not our request had been granted. Mr. Michalik was not in but I did talk to a lady in his office whose name I do not recall. I told her of our bar's concern that no further action be taken on the rule until the Board of Governors had heard from us. She stated that she wasn't certain what the status of the matter was but that she believed action would probably be deferred until the May meeting. I reported this to our county bar at its April 16 meeting.

On April 19 I learned from Paul Larson representing the Young Lawyers Section that indeed the Board of Governors had acted on the proposed rule and that the Board of Governors had chosen apparently to ignore us. Had someone advised me that the Board of Governors was indeed going to act on the matter this last weekend, I can assure you that we would have speeded up our process such that we would have had a report to the Board or perhaps a representative at the Port Angeles meeting.

I know from my discussions with members of the committee and other lawyers that many of us have serious misgivings about the rule as it is presently drafted. That is not to say that there should not be a limited practice rule but most of the people I have discussed it with have serious reservations about its present form.

I think that you can appreciate that we are most unhappy with this situation. I can recall that on your last visit to Yakima when the entire Board of Governors was present you made


DAMAGES IN TORT ACTIONS
DAMAGES IN TORT ACTIONS
MATTHEW BENDER

some comments about how outstanding you thought the Yakima County Bar was. I think I speak not only for myself but for many members of our bar in expressing our displeasure at the manner in which this has proceeded. Apparently we have no alternative but to give our input directly to the Supreme Court. I will be discussing that with our bar at our next meeting.

RONALD F. WHITAKER,
President
Yakima County Bar Association
Yakima

Hugh Who?

Editor:

Let me pass along a word of appreciation for both the tenor and subject of President Dave Welts' article "The Unsung Heroes (or 'Hugh Who?')." Of all the lawyers who fit into the category, I can't think of one who is more deserving than Hugh McGough.

It is indeed lawyers like Hugh that help to make the practice of law a worthwhile and fulfilling career.

HOWARD P. PRUZAN
Seattle

Nuclear Freeze Resolution

Editor:

The discussion in the *WSBN* April editorial of the non-response to the Nuclear Freeze resolution presented to the Board of Governors concluded with the statement that "the threat of a world wide nuclear holocaust... has nothing to do with the practice of law..." This may be true at the moment, but only in the bread and butter sense and in the very short run. This same apparent lack of interest was also noticeable a short while later when the King County Executive consigned the King County planning for participation in the Federal Emergency Management Program (FEMA) to the dust bin with scarcely a murmur of either dissent or approval. FEMA if ever implemented would of course have a massive impact on the day to day practice of law.

However, the mere preparation for use of nuclear weapons in warfare raises some extremely critical and important legal issues which it should be the business of the bar to confront. Some recently published legal studies such as the Princeton University Occasional paper #10, "Nuclear Weapons and International Law" question whether preparation for nuclear war is in and of itself legally supportable and under existing treaty obligations and the United States Constitution.

I am informed that there is current planning by bar organizations for a CLE to present some of the legal issues involved and hopefully to raise the level of our understanding as to the responsibilities of lawyers in this area of major public concern. Let us hope that with increased understanding future discussion of the issues may have a less placid and more concerned consideration than occurred on presentation of the Freeze Resolution to the Board.

JOHN CAUGHLAN
Seattle

"Counsel, I said the exhibit could be withdrawn, not destroyed."

Military Injustice

by **Michael B. Goldenkranz**

In 1803 our very first United States Supreme Court stated "the very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury" *Marbury v. Madison*, 1 Cranch 137, 163.

Although an argument can be made that government should not be the target for lawsuits each and every time a soldier is injured or killed during risks or hazards endemic to safeguarding our nation, recent reports of brutality directed at soldiers evidences "conduct that shocks the conscious". *Rochin v. California*, 342 U.S. 165 (1952). Albeit in *Rochin*, the United States Supreme Court was concerned with overturning a conviction obtained by a forced stomach pump by which morphine was found within Mr. Rochin's vomit, the court nevertheless stated that "this course of proceeding by agents of government to obtain evidence is bound to offend even hardened sensibilities. They are methods too close to the rack and the screw to permit . . .".

Military officers and enlisted men are also agents of our government. If the abuse and neglect inflicted upon soldiers even arguably fall within the realm of disciplining a soldier," the proceedings by which this [discipline] was obtained do more than offend some fastidious squeamishness or private sentimentalism . . .". *Rochin v. California*.

In *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1977), the United States Supreme Court judicially created a damage remedy which was not previously provided for by either our Constitution or Congress. I believe *Bivens* concerned a warrantless search of a house, other than that intended, and the resultant arrest of the wrong person. The method by which the home was entered was not unlike those which cause us to sit on the edge of our seats in a movie theater. Needless to say, the Bivens suffered great humiliation, embarrassment and mental suffering as a result of the federal agents' unlawful conduct. The lower courts in that case had previously ruled that the agents of the federal bureau of narcotics were immune from liability by virtue of their official position. The United States Supreme Court, however, provided a means by which Bivens was able to obtain money damages to redress the invasion of his rights.

The court stated, "That damages may be obtained for injuries consequent upon a violation of the Fourth Amendment by federal officials should hardly seem a surprising proposition. Historically, damages have been regarded as the ordinary remedy for the invasion of personal interests in liberty. . ." *Bivens*.

"The Feres doctrine," under which the government cannot be sued for a serviceman's injury or death while he is in the military no longer serves an effective purpose. It renders the military virtually unaccountable. To sanction brutal conduct which purportedly leads to the deaths of servicemen would be to clothe brutality in law.

The Washington Supreme Court, in reviewing prior decisions of the United States Supreme Court, reiterated that "convicted and incarcerated persons are not wholly stripped of constitutional protections when they are imprisoned for crime. There is no iron curtain drawn between the Constitution and the prisons of this country". *State v. Hartzog*, 96 Wn.2d. 383 (1981). A serviceman (or his family) who cannot sue the military for an eggregious breach of his civil liberties is, in essence, provided even less constitutional protection than those imprisoned for crimes.

In order to curtail future injuries and deaths resulting from severe manhandling by its armed forces, Congress should enact a statute by which the United States government would no longer be immune for illegal acts of its officers or enlisted men performed in the course of assigned duties. A provision for sufficient monetary damages should be included by which either the serviceman injured or his survivors would be amply compensated. Perhaps then an effective deterrant would be enacted to thoroughly discourage the forms of military abuse which presently occur. □

Michael B. Goldenkranz of Renton is an associate with the firm of Anderson & Jackson.

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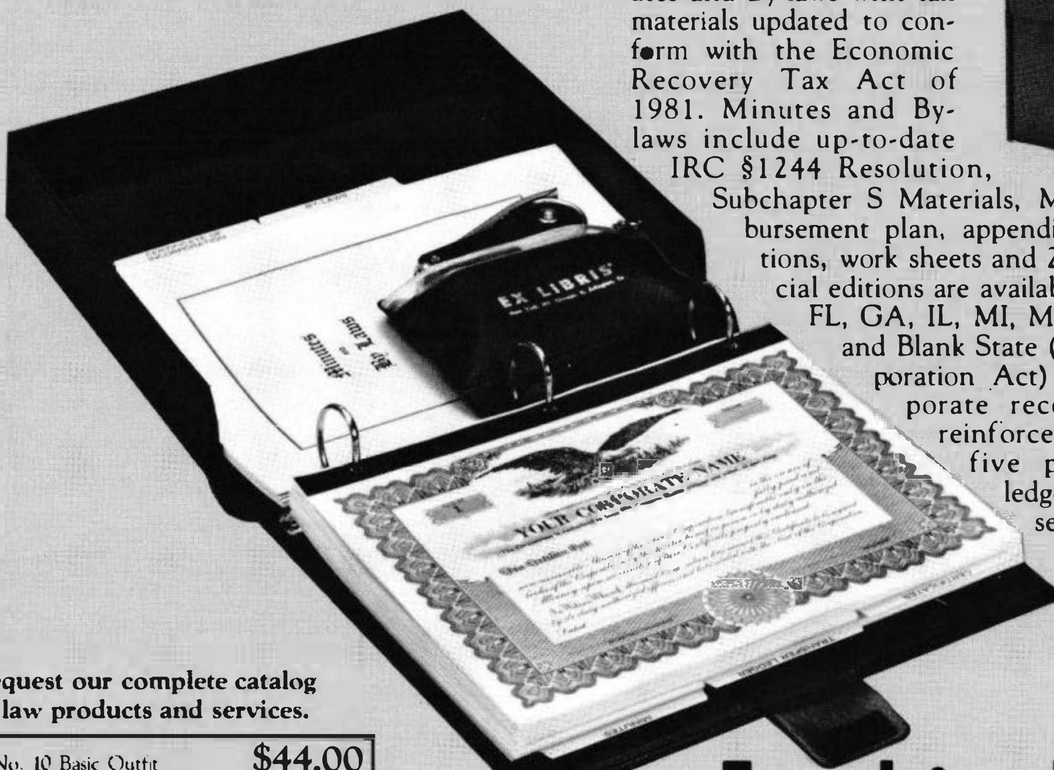

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An Investment Primer for Lawyers

Originally, I had planned to stake out the Presiding Judge's department of the county courthouse and interview all the lawyers there about how they spend their disposable income. Unfortunately, many of the lawyers I sought to interview could shed no light whatsoever on that subject. That was because they had no disposable income. In fact, some had no income at all. Several young attorneys told me that they were paper millionaires, considering their accounts receivable; in light of accounts actually received, however, they were candidates for bankruptcy.

There is a generation of lawyers who became lawyers not to line their pockets with silver, but to fight evil and injustice. Their numbers have been greatly reduced by starvation, among other things, and as the ranks of lawyers grow, so too grows the percentage of lawyers who realize that it is not a sin to fight evil and injustice and still make a living doing so. I suspect that the impecunious lot I encountered at the courthouse during my initial interviews fell into that category of attorneys who had recently undergone the metamorphosis from starry-eyed, hungry idealist to lucre-seeking, hungry pragmatist. They knew that they wanted to be financial successes, but they had no idea how to invest their money should they actually succeed.

The four major principles of money management are: 1) invest in your future, 2) invest in your law office, 3) invest in yourself, and 4) invest in real estate.

If you have *a fair amount of money* to invest, for example, you should consider setting aside something for retirement, say at the reasonable age of fifty. You might consider an IRA or open a savings account.

As for your law office investment, purchase a micro computer system, which will speed up your work flow and hence increase profits.

Invest a little in yourself—you deserve it, after all. Buy yourself a four door, six cylinder Oldsmobile. Your clients will be impressed with your good sense and practicality.

Invest in some underpriced real estate: a cottage in the woods or a small condominium on Spirit Lake.

Suppose you have a LOT of money to invest. You might still want to set aside something like an IRA for retirement. On the other hand, if you really have a lot of money, you just might want to retire right now and open up a numbered Swiss bank account instead.

As for your law office investment, purchase a mainframe computer system which will replace every living organism in your present firm and which will churn out ten times the work for only one-tenth the cost. Retain one human staff member to make coffee, however.

If you have a lot of money to spend, spend a little on yourself. Buy a leather upholstered Ferrari or Rolls Royce Silver Shadow. If you have that kind of money you do not even have to deserve it. Potential clients, however, will probably think you did something to deserve it, thus they will imagine you have great legal prowess (good for business and more Rolls Royces).

With a lot of money you could purchase some real estate: all of downtown Spokane, for example, or perhaps Grand Coulee Dam.

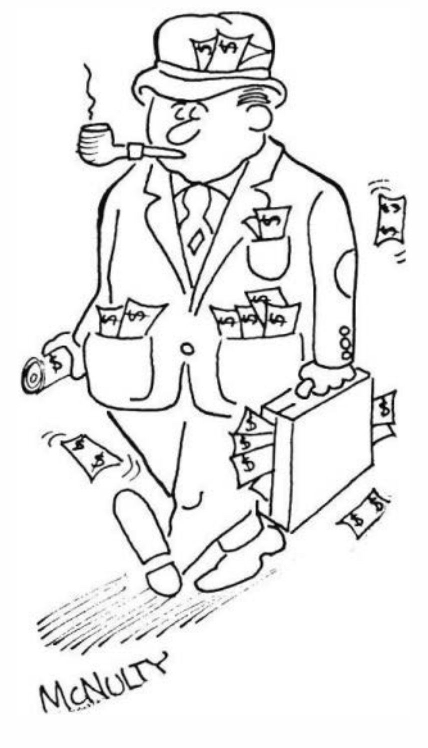
What if you have little or no money to invest? First, trade-in your '62 Volkswagen for a used bicycle and a Metro bus pass. Hitch rides whenever possible. Your thrift will impress your clients (should you have any).

Invest in real estate: pay your rent before the landlord has you evicted.

Spend some money on law office technology: purchase a pocket calculator so that you can calculate how much money you will have to make to buy a micro computer.

Think about your future. Open a piggy-bank account; do not bother opening an IRA—you will probably have to work until the day you die, so forget about retiring.

So you still have no idea how to invest the money you earned practicing law? Then don't waste any more time reading this column. Turn the page and start reading the advice of the pros.



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Productive Participation Possibilities—Part II

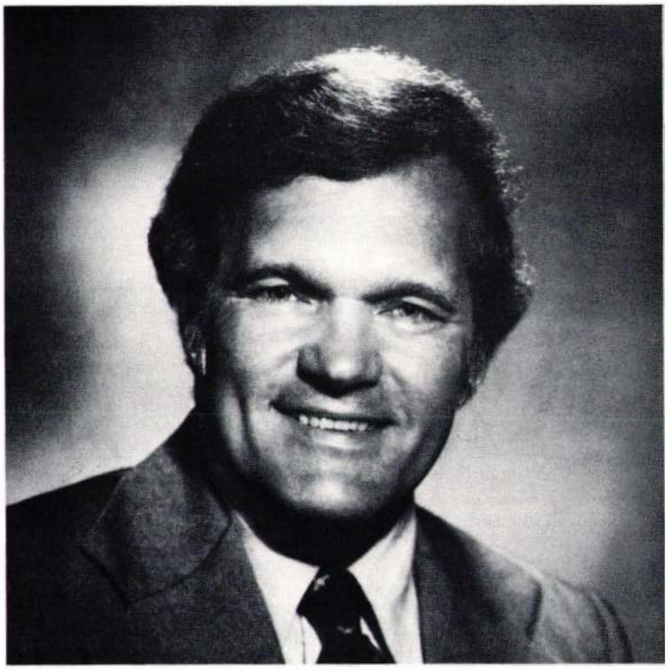
The WSBA Board of Governors determines and implements the policies and programs of the State Bar, based on input from individual Bar members and other resources relevant to the topics at hand. As such, the State Bar is involved in an enormous range of activities directed toward the improvement of our legal system. Most of these activities involve and have the potential to affect the practice of law directly, with the benefits accruing ultimately to the public at large.

Although the Board establishes policies and programs, there are far too many of them for the Board to maintain continuing involvement in the actions required to implement them. Accordingly, the Board has created a means for individual members of the Bar to participate in the conduct of the Bar's business: The Board created Standing Committees (and other Boards), and that was good.

The Board places a high reliance on these various bodies to analyze, write, speak, recommend, act, and otherwise to take a vital role in the affairs of the State Bar. We have literally scores of Committees and Boards involved with every facet of Bar work, and each contributes invaluable input to the Board to enable the prompt, orderly, and informed conduct of the Bar's business. To give you an idea of the wide variety of activities—and the inherent opportunities for mental stimulation and service—provided by these organizations, the following is a current list of Standing Committees and Boards: Committee on Alcoholism, Arbitration Law, Attorneys Professional Insurance, Bench-Bar-Press, Board of Bar Examiners, Civil Rights, Clients Security Fund, Code of Professional Responsibility, Continuing Legal Education, Corrections, Court Rules and Procedures, Disciplinary Board, Editorial Advisory Board, Fee Arbitration Board, Group and Prepaid Legal Services, International Law, Internship, Interprofessional, Judicial Recommendation Committee, Committee on Law Related Education, Law School Liaison, Lawyer Referral, Legal Aid, Legal Assistants, Legal Services to the Armed Forces, Legislative, Local Administrative Committee-Discipline, Office Practice, Public Relations, Resolutions, Specialization Board, Travel and Unauthorized Practice of Law.

The above titles were obviously based on the chartered purpose of each group. Would you like to have your opinions, special knowledge and advice taken seriously by the Board on any of those matters? Do you feel that you want a say in the way the State Bar is run and in the potential results that may affect you personally?

If the answer is yes to any of these questions, I invite



you to join the Committee or Board of your choice. I can assure you that we, like Uncle Sam, want *you*.

As a matter of fact, at this moment, the Board is recommending new members for the make-up of State Bar Committees for the Fiscal 1982-83 term, beginning October 1. The selection process is sort of like a professional sports draft round. Each Board member recommends interested persons from his/her own (Congressional) district for Committee vacancies, and the Board as a whole agrees by consensus on the choices. For most Committees, the term of membership is one year, and several vacancies open up each year.

Some Committees have been historically active; others have not. Some are quite conservative by the nature of their assignments; others have memberships rife with revolutionaries, determined to change the world—or at least the Bar Association.

My challenge to you is to pick up the torch of your choosing. The State Bar is *your* organization, and its progress/service/effectiveness depends on you. Contact your personal representative on the Board and declare your interest. Take the offensive in guiding your Bar's destiny. To paraphrase a well-known brokerage firm, "When Committee members speak, the Board of Governors listens."

We'd like to listen to *you*.

David A. Welts

False Starts, Wrong Turns and Blind Luck: Financial Success in Law

by **Terry P. Abeyta**

"*Why me?*" was the question I shot back to the inquiring editor. I was taken back by the editor's over-eagerness in soliciting someone such as myself so obviously lacking in credentials.

Then, it slowly came to me, I was the author elect chosen precisely because of my naivete, total lack of credentials, and obvious lack of qualifications. I was being chosen precisely for what I lacked—business experience. It occurred to me, much to my horror after I accepted the assignment, that the article would be subtitled: "learn from my mistakes." Such was my fate.

The editor had asked me, a trial lawyer totally devoid of business background, to display my shortcomings to the civilized world, or at least such small part of it that regularly reads the *Bar News*.

This article addresses the topic of what one can do to help insure financial success in the practice of law, *and how to keep that success from slipping between one's fingers once it has been achieved.* Inevitably my thoughts must be preceded by a disclaimer. I have not ever been, nor do I have ambitions of becoming, a business lawyer. I admit that I copped out by taking "baby tax" in law school, barely squeaked through commercial transactions, and always seemed to more easily identify with the debtor than the creditor in my bankruptcy course. I am a trial lawyer, who emphasizes personal injury in my practice, but who has also had, by necessity, to learn something about managing one's own business. After being totally sheltered from the business side of law, in February 1981 I found myself thrust into the role of small businessman. I was in solo practice.

What follows is a catharsis, of sorts, representing twelve months worth of false starts, wrong turns, and, ultimately, a fair measure of blind luck. For a learned treatise on law office management, check with the State Bar office. For a first person account of the weaning of a trial lawyer, read on.

The most valuable thing I have learned from my first

No dollar is better spent than the one plowed back into a growing law practice.

year of solo practice was the value of investments close to home—in one's own business. No dollar is better spent than the one plowed back into a growing law practice. Most lawyers I have known (and I include myself in this over generalization) are poor businessmen. We may do a crackerjack job of turning a sprained neck into instant cash, but we fail miserably as a rule in investing and managing our hardearned profits.

I suggest that reinvesting your profits into your practice takes advantage of your strongest suit because it

Terry P. Abeyta is a principal in the Yakima law firm of Terry P. Abeyta, Inc., P.S. specializing in personal injury cases. He is a graduate of Whitman College and earned his J.D. at the University of Washington. He serves on the Board of Governors of WSTLA.

constitutes an investment in the business you know best. For example, rather than plunking your hard earned profit into a speculative land transaction, why not upgrade your word processing capabilities or raise the caliber of your staff assistance. The land venture *may* become a winner; your own business *is* a winner.

It is, of course, important to use a measure of discretion in chosing areas to upgrade within your practice which can be expected to produce a net return—the bottom line of any investment. Upgraded word processing can produce larger profits by improving work flow and turnaround time. It may be folly, on the other hand, to plow your hard earned profits into top of the line office furniture or law books which look impressive in your library but are expensive to maintain and are available in the county law library.

So, the key in investing in your own business is to focus on those areas which can reasonably be expected to produce a net return. Avoid the non-productive, window-dressing areas which may be attractive but which are of little benefit. For me, the best investments my first year were moving from straight typing to word processing, adding a second full-time legal assistant, and acquiring high quality dictating equipment. Each of these investments allowed me to increase production, cut turnaround time and, in the process, expand and satisfy my growing clientele.

As you begin your metamorphosis into business owner, it is crucial that you develop a few key relationships. The first of these key contacts will be a young, aggressive banker. I purposely use the term banker, not bank. Anyone in business can and usually does have a banker. Those who wish to succeed in business will have a personal banker. Cultivating such a relationship will help smooth out the rough spots you will encounter in being in business for yourself. My best advice is to choose a banker that is hungry and aggressively building his own clientele just as you are engaged in building yours.

Such a banker can be expected to be competitive in serving the small businessman. I chose a small, locally owned bank and banker who had recently come to Yakima and both of whom wanted badly to beat the competition for professional accounts.

Starting a solo practice or new law firm invariably involves a loan for acquisition of capital assets and for tiding you over until the cash begins to flow. Also, occasions will arise, and who is more acutely aware of this than a personal injury lawyer dependent on contingent fees, when dollars out exceed dollars in. A line of credit for the neophyte business may rise or fall on a personal banking relationship. As a new business, there will be months when potential exceeds performance.

A second key contact must be made early on. Develop a strong relationship with an ambitious, knowledgable CPA. Choose one with a tax emphasis. Do not mistake a bookkeeper for a tax CPA. You will need more than a bookkeeper (your secretary can keep the books). You and your business will benefit from the tax advice and business planning counsel from a tax CPA. Incidentally, you may find, as I did, that CPAs, especially those active in business planning, are a fertile source of referrals. So, cultivate that relationship and make it work for you.

Your CPA will be able to assist you in computing the "real cost" of acquiring new equipment once you account for such foreign-sounding concepts as investment tax credit and accelerated depreciation. Investment tax credit (ITC) gives you a direct credit against taxes for up to 10 percent of the purchase price of some capital assets. The combined effect of ITC and depreciation (a paper loss which occurs as the cost of a capital asset is written off over a designated period of time) can result in acquisition cost being much lower than sticker price.

A good CPA can also advise you on when to incorporate your professional practice. Although almost any lawyer would jump at the chance to be president of his own corporation, the prestige of corporate trappings is the last reason to incorporate. The first reason to incorporate is for tax savings. I went into solo practice in February 1981 and incorporated seven months later.

Incorporating my practice allowed me to gain some tax flexibility and the ability to defer income. The basis for income deferral is the superimposition of a tax year for the corporation different than that of the calendar tax year for the individual. For example, assume that in December of 1982 you generate some unusually high income on a personal injury verdict. The sole proprietor or unincorporated partnership has no choice; it must take the fee as income for that year and pay taxes on it in April 1983. The smart lawyer who has incorporated will, on the other hand, have the option of holding that income in the corporation and not pay it out until 1983. The income thus received is income to the lawyer for 1983 and taxes need not be paid until April 1984. Incorporation provides the means for deferring income from one year to the next with the resultant tax savings (particularly if the Reagan tax cut remains intact).

Incorporation also allows the adoption of an accrual basis for accounting as an alternative to cash basis. An accrual basis allows income, and expenses, to be reported as the right to receive, or obligation to pay, is incurred. Properly handled, adoption of an accrual basis allows the deduction of expenses before they are actually paid. Of course, the opposite is also true as to accrual of income, but a good CPA will help show you how to maximize accrual of expenses and minimize accrual of income (all within generally accepted accounting practices, of course).

There are other advantages of doing business as a corporation. Adopting a corporate form allowed me to purchase a vehicle through the company with before tax rather than after-tax dollars. The cost of purchase payments including all interest, gasoline, taxes, license, and maintenance can all be legitimately deducted as business expense. The net effect is to allow the businessman to afford a better quality car at a lower price than if one had to purchase and maintain it with after-tax dollars reduced by a 50 percent tax bite.

A group medical plan can also be purchased through your corporation and the premiums deducted as costs of doing business. A large percentage of the cost of a disability insurance policy, which is critical to the small businessman, can similarly be written off. A disability insurance policy, which provides for income continuation payments to you in the event that you are too sick or injured to work, can be purchased through the corporation. A disability policy is a particularly wise investment for the sole practitioner or member of a small firm who cannot rely on other partners to carry his salary in the event of disabling injury or illness. An individual can deduct only the first $150 of insurance premiums with the balance to be applied toward meeting the requirement of expenses in excess of three percent of adjusted gross income before a deduction is allowed. A corporation can

even reimburse its officers for all medical or dental expenses not covered under a group plan so long as all employees of the corporation are treated equally.

One of the best investments the lawyer who is experiencing some financial success can make is to establish a Keogh or a pension or profit sharing plan.

More latitude is also afforded to the corporate employee in the deduction of expenses for such items as seminars, travel and entertainment. A corporation need not substantiate daily expenses unless they exceed $50. An individual has the burden of substantiation when per diem expenditures exceed $8.

All of the fringe benefits described above, all of which are good investments in your new business, are more easily justified to the IRS by a corporation. Many lawyers who are not incorporated deduct many of these expenses, but can anticipate difficulties in the event of an audit (or so my accountant advises).

One of the best investments the lawyer who is experiencing some financial success can make is to establish a Keogh or a pension or profit sharing plan. The basic concept behind a plan is to defer, and thus shelter, income. Contributions to a Keogh or qualified corporate plan are invested. These contributions are deductible to the business and are not taxed to the individual for whom they are invested. Contributions are left in the plan until retirement age, usually between 59½ and 70½ years of age, and are taxed only upon withdrawal.

These plans offer an immediate tax savings and establish a fund which, properly invested and regularly added to, can provide a sizeable fund for retirement. Under certain circumstances, loans can be made to participants and the investments can be managed by the lawyer who establishes the plan.

Both a Keogh and a qualified plan have advantages over an IRA. Contributions to IRAs are limited to $2,000 annually. Contributions to a Keogh may go as high as 15% of income or $15,000, whichever is more, and contributions through a qualified plan may be even higher. The types of investments which can be made are virtually unlimited. In short, contributions to such plans offer an excellent method of shielding excess income and providing a nestegg for one's retirement.

Because the funds are taxed only upon withdrawal, the tax bite may be less severe because withdrawals may occur when the taxpayer is in a lower tax bracket. The cost of setting up a Keogh plan is minimal and even establishment of a qualified plan should not exceed approximately $1,000. Of course, it is important that contributions to any retirement plan are made with funds which are not needed in the normal business, because early withdrawal results in a substantial penalty.

One other advantage of a pension or profitsharing plan, which is only available to the corporation, should not be overlooked. Such a plan provides an incentive to attract and keep experienced, career-oriented staff. Usually the plan is set up so that vesting occurs over a substantial period of time, often with 10 years for full vesting. Contributions must be made into the plan at the same percentage of income for all participants. However, by integrating the plan with Social Security, the greatest benefit will go to those with the most substantial incomes.

For the lean months—and there is no way to avoid having some—it is important that the lawyer-businessman create a financial cushion. My suggestion is that you develop a savings plan for putting aside a certain amount each good month for a "rainy day". Budgeting an amount to be set aside each month is critical to survival as a small businessman. Even the best of times can suddenly turn financially tight through a sudden drop in cash flow, usually when it is least expected. I have also learned there is no way to predict a lean month. A ready reserve account will help pull you through the tight months and provide a sense of financial security in the good times.

Budgeting an amount to be set aside each month is critical to survival as a small businessman.

Although it is difficult to generalize, a cushion sufficient to pay three months basic business overhead and a modest draw to you should be sufficient. Most business overhead insurance policies, which I also recommend, kick in at three months so a reserve sufficient to last 90 days makes economic sense.

Your banker (and mine if he reads this) will not like the next suggestion. I suggest that you not use your firm checking account to accumulate and hold your financial cushion. Instead move your accumulations periodically from your checking account into a money market account. These accounts are available through all of the major brokerage houses. The advantage is that they draw interest at a current rate of about 14%. The funds are completely liquid and may be withdrawn within a few days time. Checks can also be written on the account with your investment earning interest while your checks clear. These accounts are no substitute for a business checking account but do nicely compliment a regular checking account and represent a good investment and hedge against inflation.

Also worth your consideration, in years when profits are high, is leaving funds in the corporation. Earnings left in the corporation will be taxed at year end at the corporate rate of only 17% on the first $25,000 and 20% on the next $25,000. The advantage is clear to anyone in an individual tax bracket of 40 to 50%.

Certain precautions must be taken to avoid a determination that the corporation is the personal holding company of the primary stockholder, but some investments may be made through the corporation and the profits held there and taxed at a much lower rate than if paid as salary or bonuses to the stockholder. Consult with and follow the advice of your tax accountant in this sensitive area.

The more I have learned about business the firmer I hold the opinion that what Mark Twain said about good bourbon whiskey also applies to deductions: "Even too much is not nearly enough."

Inevitably, as night follows the day, so will financial success visit itself upon the wise lawyer who follows the simple advice of this article (I will assume the skeptics have long since stopped reading). The next issue which must be faced is how to keep the income production ball rolling. An important ingredient of success is maintaining it after it begins to evidence itself. Your attention must be focused on whether to invest by hiring an associate. Growth of your business through addition or more lawyers is difficult to discuss. My view is that every successful solo practitioner must eventually grapple with the question of growth, which is one of the most important issues requiring resolution during the first few years of solo practice.

I have been an associate in a mid-sized firm, both an associate and a partner in a small firm, a solo practitioner, and now the employer of an associate. The decision on whether, when, and finally which associate to hire was soul-rendering. My experience and observation told me that many more problems are created than solved by growth of numbers. Upon further reflection, I decided that it was not growth, but growth at the wrong times and for the wrong reasons, that was the root of the problem. A decision to add a new lawyer should not be made, from a business standpoint, simply because one finds himself too busy. Further attention must be given to the questions of whether the upsurge in volume is temporary or more likely to be of longer duration, whether the work being handled is profitable, and whether you are willing to take on the substantial commitment in expense and time required to supervise and train another lawyer.

The addition of another lawyer means substantial additional expense for salary, office space, secretarial help, furniture and equipment, as well as the "invisible costs" of malpractice insurance, fringe benefits and time to supervise. The additional expenses, and draw on your time in delegation and supervision, may make the investment a negative one in terms of cash flow for the first few months at least depending on the experience and ambition of the new lawyer.

A wise step before taking on the expense of another lawyer, particularly until any temporary aberration in work volume is accounted for, is to first consider adding a paralegal or more selective screening of new cases. The message is simply that hiring another lawyer may be a wise investment, or it may present a great financial risk. It is far easier to hire than to fire. Before making a decision to grow, weigh whether the growth will make you more productive. Productivity is, after all, the bottom line in evaluating the financial health of your business.

I must confess that two months ago I carefully weighed all these factors and still decided to hire.

Growth means the question of how to divide the profits of your practice must soon be faced. There are as many methods for dividing partnership profits as there are partnerships. I have found that these methods present two basic models. The first can be identified as the "communistic" model. In this system the profits are divided relatively equally between the partners (perhaps with some different classes of partners). The second basic prototype is the "capitalistic" model where, in the purest example, division of profits is based solely upon productivity. The trend in recent years appears to be away from the communistic model to the free-market, capitalistic model. My own experience has led to the conclusion that any formula which does not have income production as the most heavily weighted factor in dividing profits is doomed to breakdown and eventual failure.

The reason for this seems to be that objective data such as income production leaves little room for interpretation and argument. Subjective factors, on the other hand, are susceptible to wide variance in interpretation. A division of the profits of your business based on such intangibles as seniority, generation of business, community service, and referral credits, invariably lead to strong differences of opinion as to which factors to weigh and the relative weights to be given.

The better practice, in my experience, is to chose a formula which relies heavily upon income production. Such a system allows each principal in the firm to decide how much he wishes to earn and enables him to meet his personal objective. Of course, overhead must be equitably apportioned and some provision made for new partners to buy into the equipment, work-in-progress and receivables of the firm. Certain modifications can be made to the capitalistic model suggested here, but the more intangible factors incorporated the more the potential for disagreement grows.

One of the most frequent criticisms of the communistic model is that it stiffles production and breeds a feeling in the younger, harder-working partners that they are carrying senior members of the firm. Criticism of the model which relies solely upon income production is that it undercuts firm cohesiveness and fosters a possessiveness toward individual clients. Firm cohesiveness is an important concept in any business venture. To that end it may be advantageous to work toward a capitalistic model tempered with some "socialism". Income production would remain the dominant feature with some weighing for intangibles described above which members of the firm believe are important parts of their firm practice. This hybrid system would recognize that there are advantages to partnership practice other than financial, and that a well-run firm is, or should be, more than an assemblage of solo practitioners. For those that prefer the latter, consideration should be given to an office sharing arrangement where certain items of overhead are divided but each lawyer runs his own business as a separate and distinct financial entity.

The important thing is to select a model for fee division which fits the needs and expectations of the lawyers who practice together in your firm. Growth demands careful study and comparison of the alternative methods for arriving at the bottom line of the practice of law as a craft, a business. The issues presented in this area represent, perhaps, the ultimate challenge to the accomplished lawyer who would also be the successful manager of his business. Your time invested in studying this important issue will represent a good investment in your business.

Take it from me, a trial lawyer (and also businessman). □

P.D.Q. — A Professional Person's Guideline for Investing

by **Patrick W. Sullivan**

Doctor, Lawyer, Architect or whatever. . . professional people share a common problem in investing hard-earned funds: how to obtain results without being distracted from their work. Adherence to the discipline of *P.D.Q.*, as do professional investment managers, will eliminate most wasted motion. Moreover, it will keep you on the track you have set for yourself.

P.D.Q. carries both its historical connotation and an investment guideline: *Purpose*, *Diversification*, and *Quality*. It is designed to quickly sort and sift, accept and reject, on a continuing basis. It requires periodic (perhaps yearly) thoughtful personal review.

Purpose

Each investor must reach an honest decision about the purpose of his or her investing. Too often is heard the simplistic "make money", or, "get rich, I guess". Your Purpose will be clarified by evaluating your needs, e.g., "provide your entire retirement income", or, "supplement other retirement benefits", or, "provide a present 'second-income' *and* future retirement benefits".

Now that you have achieved personal financial perspective, the next step requires an act of humility.

The key to "purpose" is honest objective evaluation of your personal finances and future income needs. Far too many high-income professionals arrive at age 60 with no plan and a mixed-bag of speculations. If each recommendation over the years had been viewed under the harsh, clear light of "purpose", they would own a portfolio which matched their needs.

Having arrived at a clear understanding of *your* purpose, communicate this to those who reach you with advice and suggestions: stockbrokers, accountant, real estate salespeople, etc. Most important, make it extremely clear that you do not wish to waste time (and temptation) on ideas which do not match your long term needs.

Diversification

Now that you have achieved personal financial perspective, the next step requires an act of humility. Investment is for the future, and yet we see that future "as through a glass, darkly". Consider the recent stumbles of the auto manufacturers, or the prognostications on oil prices as examples of our common human failing. Predictions of the future should be reserved for cocktail party chatter.

There is an effective answer to this lack of clear vision, and it is *controlled intelligent diversification*. There are a limited number of ways to employ money. You can loan it (savings, bonds, mortgages), purchase non-income producing assets (gold, art, land), or buy into a business (office/apartment building, farm, private business or stocks). An elderly (and wealthy) professor of finance once remarked to me that there were several categories of income on the annual tax return, and he wanted an entry in each.

In planning diversification, always review the assets you may expect to inherit. Is there property which will participate in inflated land values? Is the major portion of a future estate invested in a portfolio of common stocks? Do not duplicate, but instead create an intelligent balance. The 1960's was the decade of the common stock; the 70's saw inflation hedges soar. The diversified inves-

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tor was always a participant.

Today's investment structure allows diversification for even the beginning or intermediate professional. Not only are pools and partnerships available, but land and building development corporations are traded on the stock exchanges. Today the investor who is not diversified is speculating on personal foresight.

Quality

The relative need for *quality* is directly derived from *purpose*. Speculation may *or may not* make investors rich, but quality definitely *keeps* them rich. For money which "must not be lost", quality is key.

Here are some simple tests for quality. Ask yourself whether this investment is likely to survive a depression, or a runaway inflation? If it is a business, is it likely to not only survive, but to absorb its underfinanced/overborrowed competition? Is it producing a necessity? If a commercial building, does it have inflation adjustable long-term leases with national credit tenants?

Establish your own minimum quality level, and again inform your advisors, stressing that you do not wish to be shown any "merchandise" below that standard.

Quality offers one more advantage to the professional. It simply does not require as much attention. Waterfront, downtown high-rise and high quality growth stocks do quite nicely without your daily attention, while you concentrate on your work.

P.D.Q.

Finally, merge Purpose, Diversification and Quality with the original meaning of P.D.Q. A primary investment problem is time-consumption, and application of the P.D.Q. discipline will eliminate consideration of

At least once a year you must sit alone or with spouse, carefully reappraising Purpose, Diversification and Quality. Then stick to those standards, and you will look back and say "I don't have to worry. I invested intelligently."

95% of potential investment suggestions. Those which pass the *Quality* filter will next encounter your current *Diversification* plan. The few which pass on both counts will be judged on their appropriateness to your *Purpose*.

You now have shifted investment consideration time from office to home. At least once a year you must sit alone or with spouse, carefully reappraising Purpose, Diversification and Quality. Then stick to those standards, and you will look back and say "I don't have to worry. I invested intelligently." □

SEP-IRA: The Hybrid Retirement Plan Alternative

by **Dennis G. West**

Since early in December of last year the saturation of our media with articles and advertisements describing the benefits of opening an Individual Retirement Account (IRA) has been extensive, almost to the point of redundancy. For all intents and purposes, the IRA rules regarding who is eligible and how much the allowable contributions are have been thrown out the window. Now, virtually every working American is affected favorably by these changes in IRA, which were spelled out in the Economic Recovery Tax Act of 1981. Further details and information are easily obtained from your local broker, banker, or insurance representative.

However, not so easily obtained or well-publicized is information regarding the Revenue Act of 1978 and the favorable impact it made on *employer sponsored IRA accounts*. This legislation provides business owners an alternative retirement program which circumvents the complex and onerous ERISA rules affecting corporate retirement plans. This alternative program has been viewed by many sole proprietorships and partnerships in a more favorable light than KEOGH plans. The alternative is appropriately labeled Simplified Employee Pension Plan, or SEP-IRA.

Background

On orders to determine whether a SEP-IRA program has any application to a law practice, or any other business, it may be helpful to review the retirement plan environment leading up to the creation of SEP-IRA by Congress.

In 1974, the Employee Retirement Income Security Act (ERISA) was created with the seemingly good intent of eliminating discrimination and other bad practices afflicting retirement programs. Most employers had no quarrels with the intent of ERISA, but many complaints arose when they attempted to comply with its provisions.

Under ERISA, the business owner must report financial and administrative information annually to the retirement plan participants and to the federal government while adhering to strict fiduciary standards. The requirements have been especially burdensome to small businesses. The inordinate amount of complexity and red tape caused many plans to terminate.

Those employers who terminated the company retirement plan simply told their employees to go fend for themselves by creating an Individual Retirement Account (IRA), which ERISA conveniently brought into being January 1, 1975.

Some employers sought to provide for retirement benefits of the key staff members by establishing group individual retirement accounts, in which contributions to an IRA were made on behalf of the valued employee. The contributions were limited to $1,500 or 15% of earned income, whichever was less, per individual employee. This form of retirment plan (employer IRA) led to allegations of discrimination.

A SEP program is a hybrid of a KEOGH plan, a corporate pension plan and an IRA plan.

The business owner was quick to surmise that ERISA contained two disincentives for continuing the company's retirement plan. First and foremost, was the paperwork and fiduciary liability. Secondly, the owner could legally discriminate by selectively paying retirement benefits into an "employer IRA" for chosen key individuals of the firm.

Given this backdrop of confusion, discrimination and excessive employer involvement, it is fairly easy to at least accord the SEP-IRA concept an open minded evaluation.

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The Simplified Employee Pension Plan Concept

A SEP program is a hybrid of a KEOGH plan, a corporate pension plan and an IRA plan. For example, participation is a cross between a corporate pension plan and a KEOGH plan; contribution limits are similar to a KEOGH plan; and vesting and other aspects are similar to an IRA plan. The SEP plan merely merges the strong points of existing retirement plans.

Congress intended that the SEP program reduce reporting and disclosure requirements, which in turn, would result in smaller administration costs for an employer compared to a regular qualified plan. The appeal of SEP-IRA is expected to be stronger to the small corporate employers who have been discouraged by ERISA.

Whether employers take the bait of SEP's promised flexibility, simplicity and reduced cost remains to be seen. Although the concept of SEP may indeed be simple, the evaluation process to determine its appropriateness for a firm or business is not necessarily easy. To arrive at an informed decision requires a thorough understanding of both the Simplified Pension Plan as well as other available types of tax-qualified retirement plans.

Simplified Employee Pension Plans Defined

A SEP-IRA is an Individual Retirement Account (IRA) which an employee establishes and maintains on their own. However, the employer makes the tax deductible contributions to the employee's IRA. Normally, one IRA account is established by each eligible employee at either a bank, brokerage firm, insurance company or other qualified financial institution. A participant could establish more than one IRA, concurrently or consecutively, though.

Two important distinctions deserving mention are: (1) When an IRA is a part of the SEP plan, the employer contribution may exceed the $2,000 limit. The employer may contribute an amount of 15% of an employee's pay or $15,000, whichever is less. (2) If the employer puts in less than the amount which the employee could put in under a personal IRA (i.e. $2,000), the employee may put in the difference and deduct it.

Who Must Be Covered

Employees must be included who have reached 25 years of age and who have performed services for the employer during the current calendar year and at least three of the immediately preceeding five years. This means that contributions would have to be made on behalf of part-time or seasonal employees who have been with the firm for at least three years.

Under a corporate retirement plan or KEOGH plan, part-time employees having less than 1,000 hours of service per year can be excluded. However, on the contrary, corporate and KEOGH plans would have to cover employees under 25 years of age if they meet the 1,000 hours requirement.

If a SEP-IRA plan is established, the unionized employees can be excluded, provided they have at least discussed a retirement in their union bargaining. Also, certain non-resident aliens may be excluded from participation in SEP-IRA.

Consult the accompanying Qualified Retirement Plans Comparison Chart in order to better assess the subtle differences between SEP, KEOGH and corporate retirement plans.

How Employee Contributions Are Determined

To avoid discrimination, generally the same percentage of compensation up to 15% must be applied to each employee on the first $200,000 of compensation or earned income. For example, if the plan calls for 5% of pay, the employee making $20,000 will have a contribution for the year of $1,000. If the boss receives $250,000 a year salary, the 5% would apply to $200,000 for a contribution of $10,000.

Recognizing that most owners want as large a benefit as possible for themselves and as little as possible for other employees, SEP-IRA rules permit some "discrimination". To accomplish that objective, the plan would have to be "integrated" with Social Security, which would reduce the amount of the employer's contribution to the employee's IRA by the amount of the FICA taxes paid by the employer on behalf of the employee.

Whether you choose to integrate with Social Security or not, all employer contributions must be made according to a definite written allocation formula which specifies both the requirement which an employee must satisfy to share in an allocation and the manner in which the allocation is computed. This requirement is satisfied by completing either an IRS approved SEP-IRA Prototype Plan form, or IRS form 5305-SEP and providing a copy to the employee.

Unlike many other tax-qualified retirement plans, SEP-IRA does not require the employer to make a definite predetermined contribution on behalf of employees each year.

Unlike many other tax-qualified retirement plans, SEP-IRA does not require the employer to make definite predetermined contribution on behalf of employees each year. The employer can vary the contribution each year or decline to make a contribution in a particular year. This type of flexibility is similar to that provided by qualified profit-sharing plans.

Employer Deductions

If establishing a plan for the first time or making contributions, it is possible to take deductions for the calendar year even though the contribution may not have been made until April 15th. Also, the deductions taken by the business may not exceed 15% of total pay for the calendar year. However, any excess can be carried forward to the next tax year.

Employee Deductions

When the employer makes a contribution on behalf of an employee, the amount is included in the employee's taxable income. The employee, in turn, deducts that amount from his or her taxes. The amount of the employer's SEP contribution will be shown in the "Employer's use" box on form W-2. It is possible that your employer may make a contribution that is not reflected on the employee's original W-2. In that case, the employer must provide the employee with an additional W-2 which reflects that contribution.

Employer Administrative Requirements

Assuming that an employer chooses not to have his SEP plan contributions integrated with Social Security and he does not maintain another qualified plan, then he would establish the plan by completing IRS Form 5305-SEP.

The next step would be to inform the employees in a brief letter that a retirement plan has been established by the firm and that they are now required to open an IRA account with an IRS approved IRA Custodian. The employer must keep a record of where the employee's account(s) has been established so that he can send the employee's contribution directly to the Custodian.

To satisfy the disclosure requirements the employer must supply each employee with a copy of Form 5305-SEP, which includes relevant questions and answers on the reverse side for the employee.

Finally, the employer must report to employees what was put in for them each year.

Conclusion

The IRA-SEP concept is an alternative approach for providing moderate pension benefits on a simplified basis. It is primarily for the small employer who wants to do something for employees, but who doesn't want to be bothered with red tape and administrative expense. In light of the current high degree of awareness by employees toward IRAs and retirement planning, in general, it is reasonable for an employer to expect willing acceptance of a SEP-IRA plan by the employees. □

QUALIFIED RETIREMENT PLANS COMPARISON CHART

	Corporate Profit Sharing Plan	HR-10 Self-Employed Retirement Plan (Keogh)	Simplified Employee Pension ($15,000-SEP-IRA)	Regular Employer Contributed IRA
Who must be covered	All employees age 25 and over who have performed one year of service	All employees who have performed 3 years of service	All employees age 25 and over who have performed services for 3 of last 5 years	Employer can select employees he wishes to cover
How much can be contributed	15% of compensation up to $45,475	15% of compensation up to $15,000	15% of compensation up to $15,000	100% of earned income, but not more than $2,000
What if employee terminates employment before retirement	Plan generally has a vesting schedule. The employee who leaves before he is fully vested will receive a portion of his account, or nothing. The amount forfeited can be allocated to remaining participants	100% vested; a terminating employee is entitled to all the assets in his account	100% vested; a terminating employee is entitled to all the assets in his account	100% vested; a terminating employee is entitled to all the assets in his account
Can contributions be made on behalf of employees over 70½	Yes	Yes	Yes	No
Must contributions be made every year	No. The board of directors can determine how much to contribute each year out of profits	Contributions must be made according to a formula	No requirement for yearly contributions	No requirement for yearly contributions
Can voluntary contributions be made (not deductible but accumulate tax free)	Permitted up to 10% of compensation	Permitted up to 10% of compensation. Owner-employees must have employees covered by Plan and are limited to $2,500	No	No
When can money be withdrawn without penalty	At termination of employment	Employees; termination of employment. Owner-employees; age 59½	Age 59½	Age 59½
How are lump sum distributions taxed	Special 10 year averaging formula, can be rolled over to an IRA	Special 10 year averaging formula, can be rolled over to an IRA	Ordinary income; can take advantage of normal 5 year income averaging	Ordinary income; can take advantage of normal 5 year income averaging
Reporting and other responsibilities	Subject to Labor and IRS reporting requirements	If plan covers only owner-employees, no special reports. If the plan covers employees, Labor and IRS reporting requirements	No reports	Ordinarily none
When should plans be established	By end of fiscal year	By end of fiscal year; generally 12/31	By April 15	By April 15
When are contributions to be made	By time tax return is filed	By time tax return is filed; generally 4/15 or later, is extended	By April 15	By April 15

Tax Shelters —
An Investment Banker's Viewpoint

by **Jeffrey S. Kuhn, Timothy J. Tucker and Mark A. McClure**

If there is one area of consumer financial services that has experienced explosive growth over the past ten years, it is tax shelters, usually in the limited partnership format. Robert Stanger, who publishes a monthly tax shelter newsletter called the Stanger Report, estimates 1981 tax shelter sales of S.E.C.-registered programs to have been $4.9 billion. Sales of private placements are unknown, but are reliably estimated to be at least that of public programs. Wall Street firms, not surprisingly, have been significant beneficiaries of this growth; 1981 commission revenue, assuming the usual 8% sales charge, was in the range of $400 million in publicly registered programs alone. 1982, however, is turning out to be a much different year for the tax shelter market. Sales of tax shelters are down for the first time in almost ten years, and significantly so in some areas. A variety of reasons for this have been offered, such as the advent of the Economic Recovery Tax Act of 1981, a poor economy, slowing of inflation, the world oil surplus, and high interest rates. In our opinion, all contribute to the soft market. This sudden change in the tax shelter market has prompted the appearance of a number of articles in the national financial press lamenting the quality of most tax shelters and predicting the demise of the species. We agree with the former, but vigorously contest the latter.

Simply, a tax shelter is any investment that has a higher rate of return after taxes than before taxes.

In recent times, many articles have been written for both the lay and professional reader about what comprises a quality tax shelter and how to buy them. High quality information sources, such as the Stanger Report, have been very helpful in educating the buying public. What we would like to set forth in this article are our impressions and biases of the tax shelter market, and the requirements and quality standards we have as someone from the other side of the table: the investment banker.

Philosophy & Practice

The obvious fundamental approach is to define what is a tax shelter. Simply, a tax shelter is any investment that has a higher rate of return after taxes than before taxes. This is the reverse of all other investments, and usually results from tax losses in the initial years of the shelter. However, it is important to define shelters not in terms of losses, but in after-tax rates of return. The only reason one ought to buy a tax shelter is to increase one's net worth. In fact, if the tax shelter is a successful venture, then the limited partner is going to pay more taxes having bought the tax shelter than not. Even before the enactment of the "at-risk" provisions in the Internal Revenue Code we have taken the position that all tax shelters should be judged on their common-sense investment merits alone. With the advent of ERTA, this philosophy is the only approach. The biggest mistake clients make in buying tax shelters is going for the "big score". Clients should seek out quality tax shelters only because they can offer high risk-adjusted rates of return; on rare occasions in the past shelters have provided quantum leaps in one's net worth (double it, for example).

Before we begin chastising clients, Wall Street has some of its own sins to atone for. The syndication of tax shelters ought to be viewed as a process analogous to the financing services we provide to corporations. Granted, the problem is complicated by the fact that we are dealing with thousands of individuals, and this requires intelligent and conscientious marketing. But marketing concerns must remain subordinate to structuring the transaction in the best way possible. Too often syndicators capitalize on the fact that investors rarely know or want what is best for them. The syndicator then becomes merely a financial middle-man, and doesn't lend enough expertise to the enterprise to achieve any meaningful synergy. Limited partners are, in fact, providing venture capital to a new business. Accordingly, they should be prepared to accept the risks attendant to venture capital, and justifiably should expect the appropriate rate of return. Much has been made of the fees charged in many tax shelters, and rightly so. However, most limited partners have almost no capacity to perform anything other than superficial due diligence. The broker should act as the limited partners' advocate, and his due diligence efforts should be compensated. We believe a reasonable fee, totalling in the area of 10-12%, should provide sufficient incentive for the broker/syndicator to do the transaction without significantly weakening the rate of return to the limited partner. Many brokerage firms have created voracious tax shelter departments, and it would be appropriate if many participants in the market directed some thought to their selection and due diligence processes.

The common perception that deals are cooked up in smoke-filled rooms and the rejects become public deals is nonsense.

The public deal vs. private deal debate rages on as well. It is a myth that S.E.C. registration-exempt tax shelters are axiomatically better than registered offerings. The economics of an apartment complex or oil well have nothing to do with whether the partnership is registered or not. The public believes otherwise, and syndicators play on that weakness very well. The common perception that deals are cooked up in smoke-filled rooms and the rejects become public deals is nonsense. Frequently, it's a marketing rather than an economic reason that a tax shelter offering isn't registered. The

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syndicator knows that the words "private placement" lend credibility to the deal. Also, some offerings must be either public or private depending on the structure of the transaction itself. For example, if a partnership will provide equity financing over a period of 2-4 years (such as a leveraged sale-leaseback of a major piece of real estate), the offering will have to be a private one because registered offerings require all equity to be contributed up front. In fact, this ability to stagger the capital contributions over a period of years is the only meaningful advantage a private placement offers. Tax losses generally are larger because the client is further leveraging his investment, and rates of return could be much higher. The quid pro quo, of course, is that the partnership is usually investing in a specific project rather than several, and therefore has a greater risk. Perversely, many tax shelters are private placements because they won't survive the due diligence process a responsible investment banker will subject them to, and/or do not want to meet the disclosure requirements the S.E.C. imposes for registered offerings. Of all the offerings we review, it is the private placements that most often have turned out to be the real poor performers, not the public deals. Whether public or private, the offering appeal ought to revolve

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around a sound, commonsense enterprise. It is now common to hear justification for a particular offering center on the argument that the venture has been analyzed without regard to tax benefits, and that the tax benefits make it just that much better. That is also nonsense, because we do not live in the fantasy world of zero taxation. There are numerous everyday activities we engage in because we live in a taxable world, and they are perfectly logical. Tax shelters are the same. What must be evaluated is the reasonableness, and the logic of the proposal. Ignoring the tax benefits (and consequences) makes just as much sense as paying attention only to them. Structuring sound tax shelters is not science, luck or witchcraft. It is hard work and requires common sense.

The Client

The most common mistake clients make is expecting too much from tax shelters. Blue sky regulators like to see suitability levels at at least a 50% tax bracket, before buying the tax shelter. We prefer to have the client remain in a high bracket after taking into effect the tax shelter, so that he maximizes the tax benefits. Another common mistake is to try to shelter long term capital gains. This is an impossibility due to the alternative minimum tax. If your client has ordinary income of at least $150,000, and if his net long term capital gain is at least $150,000, then the maximum tax shelter (including personal deductions and Schedules E and C losses) is simply $15,000 less than the ordinary income, *regardless* of how large the capital gain is. If the client shelters beyond this point, he will find himself subject to the alternative minimum tax, and will be sheltering 20¢ dollars instead of 50¢ dollars. The exact mechanics of this transaction are beyond the scope of this article. In sheltering large long term gains, remember to buy no more than you should, and pay the tax on the rest.

Clients are also frequent victims of the letter of credit trap. Letters of credit have helped sell more bad tax shelters than almost anything else, and this is so despite the fact that L.C.s are a real bother to get. Banks do not generally like issuing them, require substantial collateralization (if not 100%), and get paid good fees for doing so. Furthermore, L.C.s are typically issued by the bank's international department, not its branch network. If a client wants to buy a tax shelter where his capital contribution will be borrowed, is secured by a letter of credit, and will be amortized by the cash flow from the tax shelter. . .*beware!* Very few tax shelters will generate a sufficient rate of return to amortize the debt at today's current interest levels. This is actually negative leverage, because few shelters will have a rate of return exceeding the true blended cost of the debt financing. Also, if all or most of a shelter's cash flow (most of which is taxable in one form or another) is used to service the debt (much of which is not deductible because you are making principal payments), the client runs a substantial risk of phantom income. Phantom income occurs when one incurs tax liability from a shelter greater than the cash flow it generates. This kind of financing is just crazy, particularly so because the client typically finances 60-90% of his capital contribution. When you also consider the fact

With the current I.R.S. interest charges and penalties, anything except completely legitimate and sensible shelters makes no sense.

that the shelter itself probably has debt, the overall leverage is insanely high. Clients do this in the endless and mindless pursuit of write-offs, and, incredibly enough, at the substantial expense of their rate of return. With the current I.R.S. interest charges and penalties, anything except completely legitimate and sensible shelters makes no sense.

There are legitimate uses of letters of credit. For example, if a client stages his equity contribution over 3-5 years, the lender of the debt to the partnership may want to be guaranteed that the equity will be there and that the limited partner will not default on his equity obligation. In that case, a L.C. will provide that assurance. The key difference is that the limited partner will make the capital contributions himself, and will not rely on the investment to make them for him. Not only does this force the client to view the shelter as more of an investment, it adds more economic substance to the transaction in the event of an audit, and tends to limit participation to individuals who can genuinely afford it.

Oil & Gas

The economics of oil & gas remain very good, the world oil surplus notwithstanding. While product prices have come down, so have costs, and margins remain high. When buying an oil & gas partnership, remember to follow these guidelines:

1) The company must be in the oil & gas business. This is obvious, but one of the country's largest oil & gas syndicators, headquartered on the west coast, was not until just recently. Prior to that, they were just moneyraisers. You want a minimum of 10 years of operating oil & gas experience.
2) Never buy small deals. Several million dollars at the minimum is required for diversification.
3) The company must originate a substantial portion of its drilling prospects.
4) Never participate in offerings with turnkey drilling contracts, subleased acreage, or minimum annual royalties.
5) Never allow the general partner to drill for his own account.
6) Be very careful of letter of credit oil deals.
7) Never let the front-end load get beyond 12-13%.
8) Never let the selling agent participate in production revenues.
9) Never, *never* participate in a deal that's only sold through the general partner's sales force. There is no third party due diligence and arm's length negotiation.
10) The only track record is proved reserves. Not probables or possibles.
11) Beware of pricing escalation. Our engineering consultants use $31 a barrel flat for 2 years, then escalated at 8% for 8 years. Costs are escalated at 8% per year for 10 years. Gas prices are escalated according to law (N.G.P.A.) until 1985, when they are escalated on a b.t.u.-equivalent basis with oil. All future revenues are discounted back to present value at 15% per year.

Unfortunately, there are many more pointers than we can list. Remember to deal with someone reputable and accountable.

Real Estate

Large, well capitalized general partners are a must in these economic times. The investment merits remain very attractive, and the tax shelter has substantially improved due to ERTA. National syndicators tend to offer the best value for the risk involved. Never buy deals where the syndicator either sells and/or finances the property to the limited partners. Apartment buildings, office buildings and selected shopping centers still offer very good value. Historic properties have generated lots of interest, but be careful: frequently the properties do not come with acceptable financing and are often in high risk locations. Watch out for the deal with never-ending rent escalations.

Equipment

Not all equipment shelters involve leasing. Sometimes it is more desirable to buy equipment and enter into the business the equipment is designed for rather than lease the equipment to someone already in the business. The former is a business decision, and the latter a credit decision. Entering into a business obviously entails more risk, but naturally provides substantial opportunity. Leasing equipment incurs much less risk, and therefore the returns are expected to be much lower and more predictable. We prefer not to get involved in equipment where the risk of obsolescence is meaningful. Familiarity with the intricacies of a particular industry is essential to a successful equipment shelter. Common sense is easy to apply here: beware of high leverage, floating rate debt, and price mark-ups in the equipment before the equipment is acquired by the partnership. If you do not love the industry the equipment is designed to be used in, don't buy the deal whetherthe equipment is leased or not. A final word: If the equipment is leased, the client should realize that all the shelter is likely to accomplish is tax deferral. Any real return will only come if the client has the discipline to re-invest the tax savings he receives from the shelter. As a result, most clients should not buy equipment leasing transactions.

Research & Development

These are the darling deals of Wall Street. Many of them to date, however, appear to have been poor. The characteristics you want to look for are:

1) Small size—$2-10 million.
2) Front-end load under 15%.
3) Substantial investment as a limited partner by the general partner (5-10%).
4) No management fees or disproportionate allocations between the limited and general partners.
5) The investors should receive 2-4 times their investment back before the royalty rate decreases, and 4-7 times before the royalties stop.
6) Evolutionary rather than revolutionary product development.
7) Technology applicable to high growth rate markets.
8) Existing, profitable companies as the R & D contractor/general partner, and preferrably publicly held.
9) The manufacturing company must be vertically integrated: design, manufacturing and sales.
10) No start-up companies. If you must invest in one via an R & D limited partnership, demand equity in the company as well.

When these partnerships work, the rates of return can be very high, and, therefore, obviously worth the risk. These are the highest risk tax shelters, however, and need to be structured by somebody with substantial financial and technological knowledge.

Conclusion

Unfortunately, space limits our discussion to the most popular varieties of tax shelters, and even then only briefly. Our last piece of advice is to find someone you can trust who knows the methods of proper due diligence, and stick with them. Tax shelters are an investment vehicle rife with imperfect information and are slow to mature. Because of their quirks, tax shelters can also provide unusual estate planning opportunities, and have proved particularly valuable for some investors. They can be structured and sold in a responsible and professional manner, and provide meaningful rates of return to the appropriate individual as well. □

Trust Beneficiaries — What Is a Right without Ownership?

by **Kenneth V. Hoffman**

Trusts have long been a recognized form of ownership with a well-established set of legal rights and obligations. They can be traced back to early English uses. We even find analogies in Germanic, Roman and Islamic countries. The personal reasons for trusts in one's estate or financial plan are numerous and no attempt will be made here to begin to enumerate them. Their use preceded the estate and gift tax and will no doubt survive even a repeal of these transfer taxes. Nevertheless, while there is a tax structure imposed on the creation, termination and beneficial use of these trusts, it behooves a practitioner to be familiar with some of the basic nuances of trust ownership. The purpose of this article is to answer a fairly specific question often heard (although not always in precisely these words) from clients who have just been advised of the tax-saving potential of trusts, to wit: "What rights do the beneficiaries have in my trust without it being treated as theirs for tax purposes?"

The informed reader will note that the above question already precludes a discussion of Sections 2035, 2036, 2037 and 2038, all dealing with the includability of property in the estate of a transferor. Such discussion is dealt with at length in law school Estate and Gift Taxation, and the 1976 Tax Reform Act has, in any event, limited the tax-saving potential in the estate of grantors of transfers in trust or otherwise. The Economic Recovery Tax Act of 1981 made additional changes in the area of transfer and income taxes. The ERTA raised the unified credit, gift tax exclusion and marital deduction of transfers, plus reduced the marginal tax rates. These changes are significant to be sure, resulting in tax liability, by some estimates, in less than 0.3% of all estates. However, with one exception, none of these changes make a trust includable in computing the tax that was not otherwise includable prior to ERTA.

The one exception referred to above is the Qualified Terminable Interest Trust, or Q-TIP. This is a trust (if that is indeed the form of terminable interest property) for the benefit of a surviving spouse whose interest will terminate at death, but which will be taxable in his or her estate if the executor in the first spouse's estate elected to take a marital deduction on the trust property. This is a departure from prior law. Formerly, if a trust is set up for a spouse without a general power of appointment and his or her interest may terminate, the trust is not includable in the estate of that spouse. The other side of the coin is that the original grantor would not have been able to utilize the marital deduction on that trust property. The Q-TIP provisions of ERTA now extend the marital deduction to cover these trusts. This type of trust appears tailor-made for a married individual with children by a prior marriage. The first spouse to die can leave a trust to provide for the surviving spouse, use the marital deduction, and the first spouse can be certain that at the death of the surviving spouse the children by the prior marriage will ultimately receive the trust property. Furthermore, because Q-TIP treatment is elective, postmortem tax planning is available.

While it adds new flexibility to estate planning, neither Q-TIP nor the ERTA has altered the basic tax-saving feature of the trust itself. The ultimate tax benefits of

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trusts inure to the benefit of remaindermen after life estates in income beneficiaries, as long as the trust is not taxable in the estate of the income beneficiary. As an example of the potential saving, consider H and W with a community net worth of $1,000,000.00. H dies first and leaves everything to W. No tax will be due because of the 100% marital deduction. But at W's death (after 1986), the tax in her estate will be about $153,000.00. If, instead, H leaves his community half in trust with a life estate in W, again there will be no tax at his death (1986 or later) because of the unified credit. At her death, there will also be no tax because of her unified credit, provided the trust is not included in her estate. The heirs of H and W will pay no tax and save $153,000.00.

At this point in the discussion, the wife of the client is thinking "Trust? What is in it for me?" Or, in other words, back to our original question. The maximum interest the law allows a beneficiary in a trust without the trust being considered his are the following five basic rights:

1) The right to net income for life;
2) The right to principal subject to an ascertainable standard;
3) The right to the greater of $5,000.00 or 5% of the trust corpus, exercisable annually;
4) The right to management and control of trust assets;
5) The right to a limited power of appointment.

Expanding upon these, the right to net income, so long as the income recipient is not a transferor, it is not enough by itself to include the trust in the estate of the income recipient. The receipt of the income will, of course, result in income tax liability but not estate tax. The right to the income, however, must terminate at death.

The right to principal subject to an ascertainable standard has long been a point of litigation involving trusts. An acceptable standard could be "support, health and maintenance in the manner to which he (she) has grown accustomed during our married life together." Extreme caution should be exercised, however, when the beneficiary is also the trustee.

Principal can be depleted by a beneficiary with the "5 and 5" power. He may be given in the instrument the right to demand in any calendar year the greater of $5,000,000. or 5% of the trust principal. Should these limits be exceeded, the trust will be includable under Section 2041(b) as a general power of appointment, even if such power is not exercised. Here, as in most sections dealing with inclusions of property, it is the power, even if in fact never exercised nor capable of exercise, that is determinative.

The income beneficiary can be trustee. As such he can make all of the investment decisions within his fiduciary capacity and terms of the trust agreement. As previously mentioned, however, a conflict of interest may arise when the trustee can make discretionary payments of principal to himself. As a planning tool around this problem, it is suggested that either the trustee resign when confronted with a need for principal, or that the beneficiary not be trustee but rather "trust advisor" with power to approve or disapprove all investments proposed by the trustee. In this regard, it is also possible for a beneficiary, whether trustee or not, to vote shares of stock held in trust, including those of a controlled corporation.

Finally, limited powers of appointment exercisable either during life or at death are not includable in the estate of the holder of the power. However, if exercised during life, the transfer of the income interest associated with the property will be a taxable gift. Limited means limited to anyone in the universe except the beneficiary himself, his creditors, his estate, or the creditors of his estate. Thus, a beneficiary could be permitted to make a gift in any amount to virtually anyone from the trust principal and not be subject to estate tax, but beware the scepter of Subtitle B, Chapter 13.

Subtitle B, Chapter 13 is the tax on generations skipping transfers. It lies in wait for those grantors, beneficiaries, and practitioners who attempt to use the ideas expressed herein through too many layers of family estate planning. □

Group Term Life Insurance as a Benefit for Law Office Personnel

by **Robert E. Ward**

Section 79 of the Internal Revenue Code allows an employer to provide up to fifty thousand dollars of life insurance to employees at no additional tax cost to the employees. Paid for by the employer with pre-tax dollars, the cost is less than if the individual employees obtained similar coverage on their own. Additional coverage can be provided with only marginal increases in employees' taxable compensation relative to the actual cost of premium payments. This article examines the income tax deduction available to a law firm providing group term life insurance for its employees and the income, estate, and gift tax consequences to the employees for whom coverage is provided.

Requirements for Favorable Application of §79

The Regulations under section 79 specify four general requirements, which a group term master contract must meet to qualify for favorable tax treatment. First, benefits must be provided under a policy carried directly or indirectly by an employer. This requirement is satisfied if an employer pays any part of the cost of coverage. Regs. §1.79.0(a). Moreover, a single master policy may cover the employees of more than one employer. Regs. §1.79.0(b).

Second, the policy must provide a general death benefit that is excludable from gross income under subsection 101(a) of the Internal Revenue Code. That subsection provides that life insurance proceeds payable by reason of the death of the insured will not be included in the gross income of the beneficiary. However, if the life insurance contract was purchased from the original holder of the policy or his subsequent assignee, the exclusion from gross income applies only to the amount of proceeds equaling the purchase price plus the amount of premiums actually paid by the purchaser. The exclusion of life insurance proceeds from gross income applies whether they are paid directly or in trust and whether they are payable to the estate of the insured or a designated beneficiary.

Third, where the coverage provided to employees is not uniform, the amount of protection must be computed under a formula which precludes individual selection. However, an employer can provide differing amounts of life insurance protection, if those amounts are based on factors such as age, years of service, compensation, or position in the company. Thus, while a law firm is not allowed to discriminate among individual employees, it may discriminate among groups of employees if the appropriate criteria are met.

Finally, life insurance must be provided to a group of employees. This requirement will be satisfied if group term life insurance is provided to at least ten full-time employees. However, even if the master policy covers less than ten employees, the contract will still qualify for favorable treatment under section 79 if the following three provisions of Regulations §1.79-1(c)(2) are met: (1) the insurance is provided to all full-time employees or, if evidence of insurability affects eligibility, to all full-time employees who provide evidence of insurability satisfactory to the insurer; (2) the amount of insurance is computed either as a uniform percentage of compensation or on the basis of coverage brackets established by the insurer; and (3) evidence of insurability affecting an employee's eligibility for coverage or the amount of coverage is limited to a medical questionnaire completed

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by the employee that does not require a physical examination.

The liberal requirements for qualifying for favorable treatment under section 79 allow counsel to structure a plan under a master policy which provides maximum life insurance protection for shareholders, while including associates and clericals at a significantly reduced cost. This can be done by keying the amount of coverage to the level of compensation or by using coverage brackets which group employees by age, years of service, position or a formula reflecting any combination of these factors. As long as the coverage provided in any given bracket does not exceed two and one-half times the coverage of the next lower bracket, and the lowest bracket provides coverage that is at least ten percent of that provided by the highest, the plan will qualify.

An understanding of these qualification requirements is critical inasmuch as the Service has announced it will not issue advance rulings or determination letters whether or not "a group insurance plan for more than 10 employees qualifies as group term insurance if the amount of insurance is not computed under a formula that would meet the requirements of Reg. §1.79-1(c)(2)(ii) if the group consisted of fewer than 10 employees." Rev. Proc. 80-22, 1980-1 C.B. 654, Sec. 3.0(b)(1); P.L.R. 8014003; *see also*, R.R. 80-220, 1980-33 I.R.B. 6.

To provide a simple example: Farnswell, Barnswell, and Darnswell, employs eight full-time employees, including three shareholder-employees, who are ages fifty-five, forty-seven, and forty-one. The ages of the other employees are as follows: two clericals are twenty-two; two clericals twenty-seven; and one associate attorney is thirty-three. A plan with coverage in these amounts based on five-year age brackets should qualify under section 79, because coverage in any given bracket does not exceed two and one-half times that of the next lower bracket, and the coverage of the lowest bracket is at least ten percent of that of the highest:

Age	Amount of Insurance
20-24	50,000
25-29	75,000
30-34	100,000
35-39	150,000
40-44	200,000
45-65	500,000

If more than ten full-time employees were covered by the plan, certain minimum service requirements could limit the number of employees for which the company was providing life insurance. If the shareholder-employees or partners of the law firm are younger, the amounts of coverage could be keyed to factors such as compensation or position in the firm. It is not difficult to see that, within the requirements of section 79, imagination soon becomes the primary limit on the coverage which can be tailored for key personnel under a group term master policy.

Income Tax Consequences to the Employee

As stated above the general rule of section 79 is that employer-provided group term life insurance up to fifty thousand dollars will not generate any additional income to the insured employee. For coverage in excess of fifty thousand dollars, the following table set forth in Regulations §1.79-3(d)(2) determines the amount which must be included in the employee's gross income:

Table I.—Uniform premiums for $1000 of group-term life insurance protection

5-year Age Bracket	Cost per $1000 of protection for 1-month period
Under 30	$ .08
30 to 34	.10
35 to 39	.14
40 to 44	.23
45 to 49	.40
50 to 54	.68
55 to 59	1.10
60 to 64	1.63

Note that the rates utilized for imputing income to the employee are much below the actual cost of additional coverage. At retirement, section 79 imputed income ceases entirely, despite continued coverage by means of a retired lives reserve discussed below. To the extent that the employee contributes all or a portion of the cost of coverage, these contributions will reduce on a dollar for dollar basis that amount which the employee must include in his gross income.

Assume in the above example that the master policy provides that an employee may elect additional life insurance coverage in twenty-five thousand dollar amounts by contributing $ .10 per month per $1000 of coverage. Employees A, B, and C, who are 27, 33, and 41 respectively, desire to increase their coverage by one hundred thousand dollars. Therefore, each month Farnswell, Barnswell, and Darnswell withholds an additional ten dollars from their paychecks to cover the cost of the additional life insurance protection. Because the contributions of A and B each equal or exceed the imputed cost of the additional coverage, no additional amount would be required to be included in their income because of their election for additional coverage. However, because the amount of life insurance provided A, B, and C even without the election exceeds fifty thousand dollars, the amount which each of them must include in their gross income for the year is computed as follows:

A who is 27 receives $75,000 life insurance coverage plus an additional $100,000 in elected protection.

Total life insurance coverage	$175,000
Less $50,000 tax free coverage	(50,000)
Excess coverage	$125,000
Annual cost of insurance protection per $1000 for individual age 27:	
(12 × $ .08 × 125)	$ 120
Less annual contributions:	
(12 × $10.00)	(120)
Imputed Income	$ 0

R who is 33 receives $100,000 life insurance coverage plus an additional $100,000 in elected protection.

Total life insurance coverage	$200,000
Less $50,000 tax-free coverage	(50,000)
Excess coverage	$150,000
Annual cost of insurance protection per $1000 for individual age 33:	
(12 × $ .10 × 150)	$ 180
Less annual contributions:	
(12 × $10.00)	(120)
Imputed Income	$ 60

C who is 41 receives $200,000 in life insurance coverage plus an additional $100,000 in elected protection.

Total life insurance coverage	$300,000
Less $50,000 tax-free coverage	(50,000)
Excess coverage	$250,000
Annual cost of insurance protection per $1000 for individual age 41:	
(12 × $ .23 × 250)	$ 690
Less annual contributions:	
(12 × $10.00)	(120)
Imputed Income	570

If a group term life insurance policy fails to meet the requirements of section 79, the amount to be included in the employee's gross income will be the actual cost of premium payments made by the employer, reduced by employee contributions; not the imputed cost based on the above table.

Whether or not the group term policy meets the requirements of section 79, the general rule of income inclusion will not apply if any of the following circumstances exist: (1) the group term policy is provided for the employee after he terminates employment and has either reached normal retirement age with respect to the employer or is disabled; (2) the beneficiary of the group term policy is, for the entire taxable year for which the employee receives insurance coverage, either the employer or a charitable institution; or (3) the group term life insurance is provided as part of certain qualifying pension, profit sharing, or annuity plans.

Income Tax Consequences to the Employer

Qualification as a Deduction

The cost of providing insurance coverage under a group term master policy is deductible as an ordinary business expense. Even after the employee retires, the employer may still deduct all amounts paid in premiums for that employee. *Adolph G. Rosengarten*, 1 TCM 872 (1946). The employer is entitled to a deduction even though it can be demonstrated that the company benefits from its employees' increased productivity because of the insurance it provides. Regs. §1.264-1(b). Because term insurance is "pure" insurance in that the premiums build up no cash value in the policy, the amount of the deduction is the entire amount of annual premiums paid by the employer under the policy.

In order to qualify the amount of premiums paid as a deduction the employer must not be a beneficiary under the contract, the benefit must be essentially compensatory in nature, and the total of all compensation paid to the employee must be reasonable. Adoption of an appropriate resolution to be entered in the minutes at the professional services corporation or partnership should help establish the compensatory nature of the group term

plan. The relatively low cost of group term insurance should preclude challenge by the Internal Revenue Service on unreasonable compensation grounds.

Retired Lives Feature

The use of a retired lives fund will enable the law firm to currently deduct amounts which will be used to pay premiums after the employee retires. The retired lives fund serves as a pool from which premium payments for retired employees are made and is created by employer contributions made during the working lives of the employees.

Revenue Ruling 69-282, 1969-1 C.B. 155, modified by Revenue Ruling 73-599, 1973-2 C.B. 40 and Revenue Ruling 77-92, 1977-1 C.B. 41, sets forth three requirements for current deductibility of annual contributions by an employer to a retired lives fund. First, the amounts accumulated in the fund should be solely for insurance protection after employees reach sixty-five. Second, fair actuarial calculations must determine the amount of yearly contributions to the fund. Third, provision must be made that there can be no recapture by the employer while any active or retired employees are living.

Presumably there will be no income tax consequences to an employee for amounts contributed to the retired lives fund, because the employee has no identifiable right to the contributions: he may not live to be sixty-five; he may terminate his employment. But what about at age sixty-five when premiums are paid from the fund: is there an identifiable individual benefit at this point? Perhaps not, if some stated contingency will result in a forfeiture of insurance coverage; for example, if the retired employee were ever to compete with the employer.

Reporting and Disclosure Requirements

Subsection 6052 (a) of the Internal Revenue Code requires an employer to file an information return setting forth the imputed cost of group term insurance coverage in excess of fifty thousand dollars as derived from the Table in the Regulations under section 79, along with the names and addresses of the employees to whom such coverage is provided. Subsection 6052 (b) requires that the employer furnish each of these employees with a statement of the imputed cost of the insurance coverage as shown on the information return. Timing requirements are generally the same as those for Forms W-2 and W-3. *See* Regs. §31.6011(a)-4 and -5; §1.6052-1(b). The withholding provisions of section 3402 do not apply to imputed income in the form of group term insurance. §3401(a)(14).

Group term plans are "employee welfare benefit plans" subject to the reporting, disclosure, fiduciary responsibility and enforcement provisions of ERISA. ERISA §§3(1) & (3); 104(b)(1); & 402(a) & (b). Summary plan descriptions, summary annual reports, and statements of rights must be provided to and updated for participants. However, the employee need not inform one class of participants as to the amounts of coverage provided to another class. A plan description (EBS-1), a summary plan description, annual reports (5500 series) and terminal and supplementary reports must be filed with the Department of Labor unless the plan meets one of the ERISA exemptions, for example, fewer than one hundred participants with premiums paid by the employer directly to the insurance company. If the plan meets this exemption, only a summary plan description need be provided to participants. 29 CFR §2520.140-20. A fiduciary to operate and administer the plan must be specifically identified in the context of a written document. ERISA §402(a)(1).

Estate Tax Consequences to the Employee

Because the employee has incidents of ownership in the policy, the proceeds payable on his death will be included in his gross estate under section 2042. The regulations under that section define "incidents of ownership" to include the power to change beneficiaries or to surrender, cancel, assign, or revoke an assignment of the policy. Where the group term master policy provides that coverage will cease upon termination of employment, but also provides a conversion privilege, the conversion privilege will be considered to be an incident of ownership. R.R. 69-54, 1969-1 C.B. 221. However, a recent Tax Court opinion has held that the right to convert a group policy to an individual policy is not an incident of ownership within the meaning of §2042(2) so as to require inclusion of the proceeds of the policy in the insured's estate. *See Smead Estate v. Com'r*, 78 TC #3 (1-13-82) (1982).

An employee can avoid inclusion of the proceeds of the policy in his estate if he makes an effective assignment more than three years before death of all his rights, title, and interest in the policy, including the conversion privilege. If the employee is married, the spouse should also execute an assignment of all her interest in the policy by virtue of the community property laws. The assignment must be absolute and irrevocable, and it must be permissible under the terms of the master contract and local law. Where the assignment is not foreclosed by the terms of the policy, dictum in *Occidental Life Insurance Co. v. Gannon*, 57 Wash. 2d 868, 360 f.350 recognizes right of the insured to assign a policy. Moreover, both the group term policy and local law should give the employee the right to convert his interest in the master policy to individual insurance upon termination of employment, otherwise coverage will evaporate upon retirement. Revised Code of WA §48.24.180 allows conversion provided application for an individual policy is made within thirty-one days after termination of employment. The power of the transferor-employee to cancel his coverage under a group term master policy by terminating his employment will not be considered an incident of ownership. R.R. 72-307, 1972-1 C.B. 307.

If the employee dies within three years of the transfer, the proceeds of the policy will be included in his gross estate under subsections 2035(a) and 2042 (2) of the Code. What if an employer changes insurance companies: will a reassignment of an employee's interest in the master policy cause the proceeds to be included in his gross estate, if the reassignment occurs within three years of death? The Internal Revenue Service has recently revoked a prior ruling to the contrary to hold that the policy proceeds will not be included if the original transfer occurred more than three years before death, and if the terms of the new policy are "identical in all relevant aspects to the previous arrangement. . . ." B.R. 80-289, I.R.P. 1980-43, 16, *revoking* B.R. 79-231, 1979-2 C.B. 323; P.L.R. 80-34017.

Gift Tax Consequences to the Employee

Irrevocable assignment by an employee of all his rights, title, and interest under a group term master policy is a transfer under section 2511 and is subject to the gift tax imposed by section 2501. However, the value of the gift is minimal: it is limited to the pro rata portion of the premium applicable to the period after completion of the gift. Replacement cost and interpolated terminal reserve valuation methods are inapplicable, because group term insurance has no cash value, unless the term is for more than one year. (This assumes the transfer is made before retirement.)

The value of the pro rata portion of the premium should fall well within the ten-thousand-dollar annual exclusion. Note that transfers between spouses are tax-free. Generally, if a gift of a life insurance policy is to an irrevocable trust, the regulations under section 2503 provide that "the transfer in trust represents a gift of a future interest in property against which no exclusion is allowable." Regs. §25.2503-3(c) eg. 2. However, in this situation where the transfer in trust is of an employee's interest in a group term master policy, the Service has held that no gift will result because the policy has no ascertainable value because the employer could stop paying premiums. R.R. 76-490, 1976-2 C.B. 300.

Each premium payment constitutes an indirect transfer by the employee to the assignee of the policy under section 2511 and is subject to the gift tax imposed by section 2501. To the extent that premium payments fall within the annual exclusion, no gift tax will result and they will not come into the gross estate if made within three years of death. Revenue Ruling 76-490 held that even when the policy has been transferred in trust, the payment of premiums will be a gift of a present interest qualifying for the annual exclusion where the trust terms provide for mandatory distribution of the proceeds to the beneficiaries and termination of the trust upon the death of the insured. Note that in the gift situation, the cost of coverage in excess of fifty thousand dollars still represents income to the employee. R.R. 73-174, 1973-1 C.B. 43.

Gift and Estate Tax Implications of the Retired Lives Feature

When an employee makes an irrevocable assignment of all his rights, title, and interest in a group term master policy, should he (and his spouse, if married) also assign his interest in the retired lives fund? The question again raises the issue of whether the employee has an identifiable interest which can in fact be transferred. If there is a transfer, how can the value of the gift be measured? Because the employer could stop making contributions to the fund, the logic of Revenue Ruling 76-490 suggests that no gift results. If a gift does not occur until the insured-employee retires and the fund is actually used to provide continued coverage, the amounts accumulated in the fund may be so substantial as to exceed the ten-thousand-dollar annual exclusion. Perhaps only premiums paid from the fund will constitute a gift to the assignee of the policy. Perhaps where the group term plan covers only one or a limited number of employees, a property interest in the retired lives fund is identifiable at the time the employee assigns his interest in the policy.

It is probably best to attempt a transfer of the employee's interest in the retired lives fund concurrently with assignment of the policy. Report later contributions by the employer to the fund as gifts, hopefully subject to the annual exclusion. Contributions within three years of death will not be included in the gross estate if the annual exclusion applies. If contributions are not gifts of a present interest, then they will come into the calculation of the gross estate if made within three years of death. Beware that the area remains one of uncertainty.

Summary

The favorable treatment offered by section 79 and the regulations thereunder, make group term insurance an ideal benefit for key personnel in both small and large law firms. While impetus exists to adopt non-discriminatory provisions similar to those for qualified pension plans, the liberal requirements presently existing under section 79 can easily be satisfied. Irrevocable assignment of all rights, title, and interest under the group term master policy will permit employees to exclude from their gross estate the proceeds the benefit will generate on their death. When paid out the proceeds will be excluded from the gross income of the designated beneficiaries. □

The Board's Work

by Steven A. Reisler

LAW SCHOOL PROFS REQUEST ADMISSION TO BAR

SPOKANE, May 14-15 -- The Law School Liaison Committee has recommended that the division between "town and gown" be eliminated by providing for Bar membership for certain law school professors. The committee's proposed rule, as explained by Seattle lawyer and chairperson Michael Green, would qualify for admission to practice law in Washington a full-time law professor at one of the three approved law schools in the state. The rule would be applicable to only those tenured professors who had been residents for at least five years and who had been admitted to practice in at least one other state. Membership under the rule would entail payment of annual dues as paid by other practicing attorneys. Up to 25 law professors in Washington could be eligible for Bar membership in the first year under the proposed rule.

Green noted that at least seven states have similar reciprocity rules, including Oregon, Hawaii and Nevada. New Mexico has a rule which permits bar membership for full-time professors, however that status terminates when the professor ceases to teach full time. The rule proposed by the committee would confer Bar membership which would not terminate upon cessation of teaching.

U.W. Law School Dean George Schatzki told the Board that professors, even when admitted to the Bar, would probably continue to do what they have been doing all along. Dean Theodore Clements of Gonzaga Law School agreed that professors admitted to the Bar would probably continue to serve in an institutional capacity rather than as legal practitioners. Dean Schatzki said that whereas there has been some problem with non-tenured professors leaving academia for private practice, he expected no great exodus of tenured professors out of the law schools and into the courts.

The signal feature of the committee's rule is that tenured professors could become admitted to practice without taking the Bar examination.

Dean Schatzki told the Board that taking the Washington Bar Examination is often a burdensome, potentially humiliating experience for tenured professors. Studying to take the exam, he explained, can take several months out of a professors regular schedule of service with task forces and CLE seminars as well as take time away from scholarly endeavors. Dean Schatzki added that the psychological, albeit irrational fear of not passing the Bar examination can be insurmountable for some professors.

Nixon Handy, Governmental Lawyers representative, inquired of the committee what interest other specialized lawyer groups -- lobbyists, corporate counsel, etc. -- might have in a reciprocity admission to practice rule. Although the committee had not considered what other groups might be interested in such a rule, Dean Schatzki told the Board that law professors are in a separate category because of the special service they render to the Bar in training new lawyers and in winnowing the good lawyers from the bad.

The Board listened to the committee's presentation in silence. President Welts finally advised the committee members that the Board would consider the proposed rule.

<u>ATTORNEY'S FEES TO PREVAILING PARTY</u>

Spokane attorney and past Bar President Mike Hemovich reported to the Governors about the conclusions of the Special Task Force on Attorney's Fees To Prevailing Parties.

The proposal submitted by the Task Force would permit an award of reasonable attorney's fees where a cause of action is brought without reasonable cause or where one or more defenses are raised without reasonable cause. In either event, the District or Superior Court would make written findings upon final judgment.

The proposed rule, which provides for no lid on the potential award of fees, is contemplated to be used sparingly. Although attorney's fees have traditionally not been awarded to the prevailing party in the American legal system, the Task Force believes that the state legislature is prepared to enact such legislation with or without Bar support. The Board adopted the proposed rule unanimously.

WELTS EXPLAINS LIMITED PRACTICE RULE TO SPOKANE LAWYERS

In March the Board of Governors traveled east of the mountains to Yakima to consider a limited practice rule for real estate closings--Mt. Saint Helens erupted. In May the Board again traveled east, this time to Spokane, to explain why it had adopted the limited practice rule. The volcano erupted again.

President David Welts told the luncheon meeting of the Spokane County Bar Association that the real issue presented to the Bar Association by the Kassler decision and subsequent events was to what extent would the practice of law be handled by non-lawyers. If the Board had not acted quickly to formulate and propose a limited practice rule, Welts explained, we could have experienced an "uncontrolled termination" of the practice of law as we know it. Welts cautioned his audience not to take lightly the possibility of a constitutional amendment which could make the practice of law a political, rather than professional determination.

Welts said that although the Board's action was not cheered in all quarters, he believed that time will show that the enactment of the limited practice rule was in the best long-range interests of the Bar and public.

The Spokane lawyers listened quietly and politely to Welts' speech. However when Welts joked that the WSBA was now known in some quarters as an acronym for the "West Side Bar Association", nary a Spokane lawyer laughed.

OTHER BOARD ACTIONS:

- JUDICIAL QUALIFICATIONS COMMISSION -- The Board voted to replace out-going Board member Lee Campbell with Governor Tom Loftus. The change of guard will take effect in September 1982.

- ABA DELEGATES -- By unanimous vote the Board reappointed Llew Pritchard, Neil Hoff and Mike Hemovich to the ABA House of Delegates. Yakima attorney and Young Lawyers Chairperson Paul Larson was selected to replace Tom Dreiling as the Young Lawyers representative to the House of Delegates.

- LAWYER EVALUATION SURVEY -- William Bailey, Stew Cogan and Paul Larson presented a proposed lawyer evaluation survey prepared by the Young Lawyers Section. The survey, which would cost approximately $4,000 - $5,000, would be professionally evaluated and would cover a variety of subjects of interest to the Bar.

THE NEXT MEETING OF THE BOARD OF GOVERNORS WILL BE IN VICTORIA, B.C., ON JUNE 18TH AND 19TH. THE JULY BOARD MEETING WILL BE IN LaCONNER, JULY 16TH AND 17TH.

Ethics from the Inside

Lawyer-Client Business Transactions

Robert T. Farrell

WSBA General Counsel

My client Fred is a widower now, and thinking of giving up his fine house in Magnolia and moving to Arizona. I have known Fred for about 15 years, since I first represented his late wife in various matters relating to her business. I probated her estate five years ago, with Fred as executor, and still see Fred on a social basis every now and then. I have always liked Fred's house, and am thinking about offering to buy it from him. Any problem?

My client Darlene is just about to receive a $100,000 personal injury settlement. If we put together the $50,000 she will have left after paying bills with my $33,000, there will be enough for both of us to make a killing in a business that just needs a little capital before it takes off. Can I suggest it to her?

Having just prepared John and Margaret's wills, I know that this elderly couple has over $75,000 just sitting in a regular passbook savings account. I could certainly put the money to better use, and give them a much better rate of interest, with collateral too (my antique beerstein collection). Should I send a copy of my proposal to my malpractice carrier?

All of these situations pose problems involving lawyer-client business transactions. A lawyer who does not sense that he or she must tread very carefully when contemplating such transactions is either dishonest or foolish. And given the severity with which such transactions are viewed in this state, even the foolish can find themselves facing suspension or even disbarment if the business transaction does not have a happy ending (as often is the case).

DR 5-104(A) of the Code of Professional Responsibility in fact appears to permit business transactions between lawyers and clients, if the client "has consented after full disclosure." A lawyer who relies on an office conference to make this full disclosure and to obtain the client's consent, however, is resting a license to practice law on a slender reed.

The severity with which a lawyer's financial transactions with a client have been viewed in this state is suggested by the case of *In re Beakley*, 6 Wn.2d 410, 107 P.2d 1097 (1940). In that case a lawyer was disbarred on several different charges. The one discussed at greatest length in the opinion resulted from the lawyer's financial transactions with an elderly friend and client involving a power of attorney and related investment agreement which the lawyer had drafted and the client had signed. The court did not look kindly on the lawyer's gains under the agreement, and at page 423 of its opinion quoted the following passage from C.J.S. to state its feelings:

> "The relation of attorney and client has always been regarded as one of special trust and confidence. The law therefore requires that all dealings between an attorney and his client shall be characterized by the utmost fairness and good faith, and it scrutinizes with great closeness all transactions had between them. So strict is the rule on this subject that dealings between an attorney and his client are held, as against the attorney, to be prima facie fraudulent, and to sustain a transaction of advantage to himself with his client the attorney has the burden of showing not only that he used no undue influence but that he gave his client all the information and advice which it would have been his duty to give if he himself had not been interested, and that the transaction was as beneficial to the client as it would have been had the client dealt with a stranger." 7 C.J.S., Attorney and Client, § 127.

The above test is almost impossible to meet. When a lawyer's dealings with a client are the subject of a complaint and are then necessarily viewed in hindsight, there are few cases where another lawyer cannot think of possibly significant things which the client was not told. There are many cases under the Code of Professional Responsibility where a lawyer can protect himself or herself from later charges of misconduct by a simple letter to a client, or to opposing counsel. This is not one of them.

This does not mean that I cannot buy Fred's house (my friend and client), or go into a joint venture in electronic widgets with Darlene, or perhaps even borrow money from John and Margaret, without risking my license as a lawyer. All I need to do is make sure that all of these people get their own lawyer to review the transactions, so that my role as a private party in a business deal is separated *clearly and distinctly* from my former role as lawyer in a lawyer-client relationship. I have heard the excuse given that a lawyer's client refused to go to another lawyer, although he was advised to, insisting that the lawyer was the only lawyer he could trust. If that in fact occurred, the lawyer should have told his client about his distaste for lawyer discipline proceedings, and declined to proceed with the transaction unless the client humored him and contacted another lawyer of the client's own selection.

There remains only one financial dealing between a lawyer and a client which appears exempt from the requirement that a client be independently represented, and that is the agreement regarding fees. In that one area the client clearly knows that the lawyer is representing his or her own interests, with the client on the other side of the transaction. In other situations the multiplicity of roles which a lawyer plays in representing a client, from personal counselor to financial advisor, may make it impossible to put a potential business transaction on an arms-length basis even with the best of intentions to be scrupulously fair. The only reasonable solution is to make certain that the client gets independent legal counsel. □

Adoption Data Sheet and Schedule

by **Harry E. Hennessey**

People expect a rather modest charge for adoption proceedings and we can only make them profitable if our files are well organized. For the small practitioner or the small law firm, adoptions only come along occasionally. The following adoption data sheet and adoption schedule have proven invaluable in streamlining our practice.

ADOPTION SCHEDULE

COPIES		XEROX FORM
1	Review Adoption Practice Guide	1
1	Fill out Adoption Information Sheet (State Form)	2
2	Petition for Order Authorizing Relinquishment of Minor Child for Adoption	4
2	Order Appointing Guardian Ad Litem	5
2	Report of Guardian Ad Litem	6
3	Order Authorizing Relinquishment and Granting Temporary Custody of Child	7
2	Consent to Adoption	8, 8A
3	Petition for Adoption	9, 11, 12
3	Order Appointing Next of Friend	13, 14
3	Decree of Adoption	10 or 16
2	Adoption Information Sheet	28
2	Adoption Data Card	26
3	Letter for Birth Certificate	25
3	Application for Certified Copy of Birth Certificate	31

ADOPTION DATA SHEET

ADOPTIVE FATHER:

Residence ____
Date of Birth ____ Color or Race ____
Birthplace ____
Usual Occupation ____
Industry or Business ____
Relationship to Child ____

ADOPTIVE MOTHER:

Residence at time of this birth ____
Date of Birth ____ Color or Race ____
Birthplace ____
Usual Occupation ____
Industry or Business ____
Relationship to Child ____

CHILD:

Place of Birth ____
Hospital ____ Doctor ____
Date of Birth ____ Sex ____
Legal Status ____ Race or Color ____
Placed by ____ Date of Placement ____
New Name ____

NATURAL MOTHER:

Maiden Name ____
Color or Race ____ Year of Birth ____

NATURAL FATHER:

Color or Race ____ Year of Birth ____

We have set up a form file with xerox masters which is described in the December, 1969 issue of the *Washington State Bar News*, under Office Practice Tips, pages 24 and 25. It is obtainable from the Bar Office for $3.00.

Prepared by the Office Practice Committee, Harry E. Hennessey, Articles Coordinator, P.O. Box 5396, Spokane, WA 99205.

This column is a clearing house for better ways to run a law office. Contributions are solicited from all members of the Bar.

C
L
JUNE

by **John M. Redenbaugh**

Assistant Director of Continuing Legal Education

June 18-20, 1982 is the date set for the first *Family Law Section Mid-Year Meeting & Seminars—The Practical Family Law Lawyer*. To be held in Richland, this program will cover important and practical current concerns of family law lawyers. Designed to instruct you on matters of common interest—such as how to select and use various automated systems to improve the delivery of your legal services and, consequently, improve the earning power of your practice—the seminars offered will include concurrent sessions on Saturday and Sunday providing a demonstration of the direct and cross examination of an expert witness (child psychologist) in a child custody dispute and a series of workshops during which solutions will be posed to various problems. This intensive series of family law seminars is intended to meet needs of both new and experienced attorneys. With 15.5 credits available, it will be possible for attendees to fulfill their entire 1982 CLE requirement by attending the seminars scheduled for this meeting.

Forestland Management & Operations will cover the legal and business problems of the forest products industry and will be presented at three sites: Seattle (June 9, 1982); Spokane (June 18, 1982); and Olympia (June 25, 1982). The program is designed to be useful to lawyers and non-lawyers involved with this field of industry. Economic distress, environmental concerns, rising interest in alternative uses of forestlands, and the increasing physical proximity of logging activities and other land uses have combined to significantly affect forestland operations and management. Those affected by these dynamic forces must understand the litigation, regulation, and business planning techniques that have arisen and will continue to evolve. The panel for this program is comprised of attorneys, economists and forestry consultants who have considerable and varied experience with business and legal forestland problems. An added highlight of the program will be the appearance of the Honorable Brian J. Boyle, Public Lands Commissioner, as the luncheon speaker for each seminar presentation. Make your plans now to attend this timely seminar.

June 11-13, 1982 is the date set for an Intensive Skills Training Course covering *Creditor-Debtor Practice*. The course will utilize a combination of instructional methods, including lectures, discussion groups, hypothetical problem solving and demonstrations. Enrollment is limited to the first 110 persons registering for this CLE course approved for 16.25 hours of CLE credit. The program will be presented at the Battelle Institute (Seattle Campus).

ADVANCE WARNING! Be watching for information in an upcoming CLE Clearinghouse Column regarding a CLE seminar on Landlord and Tenant Law in Washington which will be presented during the month of August, 1982.

Approved Continuing Legal Education Activities

COURSES APPROVED

	Credits
WASHINGTON STATE BAR ASSOCIATION	
Criminal Law: Procedural and Ethical Considerations	
June 3, 1982: Seattle	7.25
Advanced Taxation Seminar	
June 9-12, 1982: Sun Valley, Idaho	11.50
Skills Training: Creditor-Debtor Practice	
June 11-13, 1982: Seattle	16.25
Forestland Management & Operations	
June 9, 1982: Seattle	7.50
June 18, 1982: Spokane	7.50
June 25, 1982: Olympia	7.50
Family Law Section Mid Year Meeting	
June 18-20, 1982: Richland	15.50
RAINIER BANK	
Business Valuation	
June 11, 1982: Seattle	8.00
June 18, 1982: Yakima	8.00
June 25, 1982: Seattle	8.00
WASHINGTON LEGAL ASSISTANTS ASSOCIATION	
Bankruptcy Practice	
June 4, 1982: Spokane	3.25

RESOLUTIONS COMMITTEE

Filing Deadline for Resolutions to Be Presented at Annual Business Meeting

Anyone desiring to have a resolution presented at the Annual Business Meeting should file it with James P. Curran, Chairperson of the Resolutions Committee, 505 Madison, Seattle, Washington, 98104.

Resolutions must be presented to the Resolutions Committee at least 20 days before the Annual Business Meeting, that is, on or before August 28, 1982.

All resolutions must be accompanied by a written report (the resolution and report not to exceed a combined total of 1,000 words) explaining the resolution.

Preliminary Notice of Special Public Hearing on Resolutions and of Publication Deadline

The Resolutions Committee of the Bar will, as usual, hold a public hearing at the Bar Convention to consider the views of the proponents and opponents of resolutions to be presented to the membership of the Bar at the annual meeting. The hearing will be held on Wednesday evening, September 15, 1982, so as not to conflict with continuing legal education seminars. The time and location of the hearing will be announced in the next *Bar News*. In addition, in an effort to allow more time to those presenting views and in an effort to give the members of the Committee more time to consider the resolutions and to request any additional information which might be helpful to the Committee, an advance session of the public hearing will be held prior to the Convention in Seattle on September 8, 1982 at the offices of the Bar Association, 505 Madison, Seattle, Washington at 10:00 A.M. Proponents and opponents of resolutions are urged to attend the September 8, 1982 session if at all possible, and, if not, to present their views in concise written form for consideration by the Committee at that session. Presence at or absence from the September 8th session will not affect any right under the by-laws to present views at the September 15th hearing. At that hearing, preference in presenting views will be given to those with viewpoints which were not expressed at the earlier session.

If a resolution is to be published in the *Bar News* before the annual meeting, the by-laws provide that it must be received by the Resolutions Committee at least 60 days prior to the annual meeting, or on or before July 19, 1982. The July issue of the *Bar News* will contain further details regarding the purpose, function, and personnel of the Committee and the time and location of the September 15th hearing.

Resolutions Committee Members

JAMES PATRICK CURRAN, CHAIRPERSON
JOHN AABY
BRIAN L. COMSTOCK
WILLIAM E. CULLEN, JR.
JOSEPH PAUL DELAY
CHARLES E. GALLUP
BRADFORD GIERKE
SUZANNE M. KOESTNER
JOHN F. KRUGER
RICHARD J. SCHROEDER
ALLEN L. SCHWENKER II
H. DOLORES SIBONGA
RUSH E. STOUFFER, JR.
PHILLIP L. THOM
ROLAND C. WIGHTMAN

ADMINISTRATIVE LAW

CLE—Section Meeting

The Administrative Law Section will offer a 2-hour CLE in four cities in June in conjunction with meetings of Section members. Jack Davis, chairman, said that the meeting/CLE sessions were scheduled to provide members with an update on the most important recent developments in administrative law.

Topics on the program include New Developments in State Administrative Law; the new state Office of Administrative Hearings; the Task Force on Administrative Law and the revised Model Administrative Procedures Act which it is examining; and New Developments in Benefit/Entitlement Proceedings.

The CLE presentations will last 2 hours in each of the cities; application has been made for accreditation from the State Bar. Section members who preregister will be admitted free to the program. Admission at the door will be $10. Persons may join the section and preregister by sending $5 to the Bar Office and requesting same. Here is the schedule of presentations:

OLYMPIA: June 18, 1:30 p.m., Office Building No. 2, Auditorium, 12th & Jefferson.
SEATTLE: June 19, 9:30 a.m., College Club, 505 Madison St.
YAKIMA: June 25, 1:30 p.m., Auditorium, 3d floor, Pacific Power & Light Building; 7 North Third St.
SPOKANE: June 26, 9:30 a.m., Room C-1, Gonzaga Law School.

Registration will begin a half hour before the program starts, and a Section meeting will follow the CLE.

More information is available from Pat McIntyre, Seattle, (206) 382-0000; Larry Weiser, Spokane, (509) 484-6091; or Bob Wallis, Olympia, (206) 753-6404.

Around the State

LEWIS COUNTY
by KENNETH G. JOHNSON

The Lewis County Bar welcomes three new members. **Steven Buzzard** has added **Wendy Tripp** as an associate, **Ray Lutes** is now associated with **Stephen Carmick** and **Paul Kirk** has joined the Prosecutor's office handling Juvenile and/or District Courts.

The bar lost one of its senior members when **Ed Leonard,** a longtime Winlock attorney, passed away. He had practiced law since 1933.

The bar association's basketball team changed its name to Petra Bail Bonds as well as its level of performance by winning the City League Division II Championship. The team's ironman, **Paul Cane,** was lost to Seattle via Free Agency during mid-season but returned to play frequently as a carpetbagger to complete the season on a winning note.

SOUTH KING REPORT
by JUDITH R. EILER

Jim Zorn and Steve Largent are not South King County Bar Association members. However, they did appear at the South King April meeting in the "Highlights of the 1981 Seahawk Season" film that was shown.

New firm news: **James A. Lanza** and **Philip W. Wagner** have moved from the Seattle firm of Lee, Smart, Cook & Martin to Federal Way. Lanza & Wagner are located at 33720 9th Avenue South, Suite #3. The old Auburn firm of Schneider, Smythe, Van Siclen & Reynolds has re-formed into the seperate P.S.s of Lyle Schneider P.S., Smythe & Van Siclen P.S. and Michael Renolds P.S.

Next month your new reporter will be **Carlos Sosa** of Smythe & Van Siclen P.S. Carlos promises to provide English translations for those of you who are not fluent in Spanish.

PIERCE COUNTY
by GEORGE KELLEY

J. Kelly Arnold has been appointed to the Superior Court position created by the ascension of **Stanley Worswick** to the Court of Appeals. The appointment is the last of recent personnel changes in the Superior Court, at least until the coming election.

Michael Smith, Assistant City Attorney for Tacoma, has organized a public law section of the local bar. Its first meeting was well attended by full-time and part-time public attorneys, and mutual ignorance was shared by all.

David Johnson, Alan Weaver, Keith Black and **George Kelley** completed a marathon in Seaside, Oregon. Times are being withheld to protect these fellows' reputations as runners.

Someone has posted numerous signs around the courthouse that **Bob Felker** is 40. Whether the signs are a new form of advertisement or a solicitation of birthday gifts is unknown at this time.

Ted Bottiger was scheduled to speak at the monthly bar meeting on the non-happenings in the current legislative session. Unfortunately the session ran so long that **Seth Armstrong** was brought in as a pinch-speaker. We hope to have Ted home from Olympia sometime this summer.

Marilyn Mauer Wahlberg has announced that she is located at the Broadway Terrace Building in the general practice of law.

WWL's Celebrity Dinner June 14

Chief Justice Rose Elizabeth Bird of the California State Supreme Court will speak before the Washington Women Lawyers' Celebrity Dinner on June 14, 1982 (Monday) to be held at the Imperial Palace, 609 South Weller, International District, Seattle. Cocktails will be at 5:30; dinner at 7:00 P.M. Tickets and information are available from Ellen Grant, (206) 623-4382, Suite 204, 216 First Avenue South, Seattle, Washington 98104. The price for dinner will be $20.

State Supreme Court Clerk Resigns

John J. Champagne, Clerk of the Supreme Court of the State of Washington, has announced his resignation from that position effective July 1, 1982. Persons interested in filling that position or learning more about the duties involved should send their inquiries to Hon. Robert F. Brachtenbach, Chief Justice, Supreme Court of the State of Washington, Temple of Justice, Olympia, Washington 98504.

New WSBA Office Procedure Manual Announced

The WSBA Office Practice Committee has announced the completion of an Office Procedure Manual to guide Washington State lawyers in the management of law practice.

The new manual contains detailed processes and instructions for orienting new employees, managing the reception of clients, work processing, filing, mail dispatch, library management, supplies control, deadline control, conflict avoidance, filing, billing, accounting, form development, fringe benefits, minimizing costs, and other subjects.

Manuals may be obtained from the Bar Office at a cost of $10.00 each. Send your request to: Kathy Vincent, Washington State Bar Association, 505 Madison St., Seattle, WA 98104.

Women's Rights Handbook To Be Published in July

Women and the Law in Washington State, first published in 1977, has been revised by the Northwest Women's Law Center, and will be published by Madrona Press in July. Designed to make women aware of their rights and responsibilities under federal and state law, it gives practical information on employment, marriage and dissolution, community property, criminal law including rape and assault, housing, and credit. New chapters on "Domestic Violence", "Laws Regarding Minors", and "Meritricious Relationships" have been added. It is an excellent resource for attorneys to keep on hand for clients. The handbook will sell for $5.95 a copy, with bulk rates available for orders of 50 or more. *Women and the Law in Washington State* can be ordered from the Northwest Women's Law Center, 701 NE Northlake Way, Seattle 98105 or Madrona Press, 2116 Western Avenue, Seattle 98121.

ECC Summer Quarter Legal Assistant Courses

The Legal Assistant Program at Edmonds Community College will offer the following courses summer quarter beginning June 28, 1982: Legal 200—Introduction to Law and Legal Processes (our introductory course which is a prerequisite for most other courses), Legal 210—Legal Research and Writing, Legal 270—Compensation Law, and Legal 255—Environmental Law.

All courses will be offered in the evening at the Edmonds Community College campus. For information about advising and the dates and times of classes call (206) 771-1685.

Calling/Visitation Hours Announced for King County North Rehab Facility

Attorneys are urged to call the North Rehabilitation Facility Administration, Monday thru Friday, 7:00 a.m. to 3:00 p.m. to arrange for a visit with their client. Visits are normally conducted during the hours of 7:00 a.m. to 4:00 p.m. because of security reasons. Visiting attorneys will be required to identify themselves by producing their Bar I.D. Card and completing an attorney visiting slip.

First Annual Convention Upcoming for WALJA

The Washington Administrative Law Judges Association (WALJA) will conduct its first annual convention August 20 and 21, 1982 at the Polynesian Condominium Motel at Ocean Shores. A CLE program on New Developments in Administrative Law is planned for Friday, August 20. Honored guest at the banquet on Friday evening will be State Supreme Court Justice James M. Dolliver.

WALJA welcomes all members of the Bar to participate in its activities. For further information call Convention Chairman Bill Harrison (206) 459-6327 or write to WALJA P.O. Box 7249, Olympia, WA 98507.

3rd Conference for Lawyers of the Americas Scheduled for July

The Third Conference for Lawyers of the Americas, co-sponsored by the University of Miami Law Center and the Cuban-American Bar Association, will be held July 18-21, 1982 at the Omni International Hotel, Miami, Florida. The main topic for discussion will be "Legal Aspects of Foreign Investment and International Banking in the United States."

For further information, your readers should address their inquiries to: University of Miami Law Center, P.O. Box 248087, Coral Gables, Florida 33124.

Greater Seattle Legal Secretaries Association Officers

Greater Seattle Legal Secretaries Association at its 27th annual meeting held April 13, 1982 elected officers for its 1982-83 year. Joan Watson, PLS, President of Washington Association of Legal Secretaries, was the installing officer. The new officers of GSLSA are: President—Claudia Welch, PLS, Vice President—Rogene Hiatt, Recording Secretary—Virginia DeLay, Corresponding Secretary—Esther Brown, Treasurer —Georgia Hinton, PLS, Assistant Treasurer—Marilyn A. Tiano, and State Governor—Judith Everett, PLS.

Counseling Service in Tacoma

A client's legal problems are only part of a big picture which often includes marriage, family, emotional and other, related difficulties. The attorney in regular contact with people in trouble can find it helpful to be familiar with established professionals in other human service specialties.

The Christian Counseling Service in Tacoma accepts clients referred by lawyers regardless of race, creed, ethnic origin, religion or economic status. Fees are arranged on the basis of income and family size. No one is denied service due to inability to pay. Call (206) 272-2279 (Tacoma) for more information and referral literature.

Discipline

Joel A.C. Rindal Reprimanded

Joel A.C. Rindal of Bellevue received a Reprimand from the Board of Governors on April 16, 1982, pursuant to a Stipulation for Discipline. The basis for the Reprimand was Mr. Rindal's violation of DRA 2.6, requiring an attorney to cooperate with the investigation of a complaint made against him. During the period 1979-81, Mr. Rindal failed to respond to two complaints made against him, necessitating the taking of his deposition pursuant to subpoena, despite having received a Letter of Censure in 1977 for the same rule violation.

Jon W. Orton Suspended

Puyallup attorney Jon W. Orton has been suspended from the practice of law for a period of thirty days, beginning April 23, 1982, by order of the Washington Supreme Court.

Orton was suspended for three violations of the Code of Professional Responsibility. It was found that he had neglected a legal matter entrusted to him for fourteen months in violation of (CPR) DR 6-101(A)(3) and had intentionally failed to carry out a contract of employment in violation of (CPR) DR 7-101(A)(2). It was additionally found that Mr. Orton had misrepresented to his client that an action had been filed, in violation of (CPR) DR 1-102(A)(4).

John R. Crickman Suspended

Seattle and Friday Harbor attorney John R. Crickman has been suspended from the practice of law for a period of thirty days, beginning April 21, 1982, by order of the Washington Supreme Court.

Crickman was suspended pursuant to a stipulation entered into between himself and State Bar Counsel and approved by the Disciplinary Board and the State Supreme Court. The stipulation was based on Crickman's conviction for tampering with physical evidence, a gross misdemeanor. Crickman's conduct was found to be in violation of (CPR) DR 1-102 (A)(5), prohibiting conduct that is prejudicial to the administration of justice, and (CPR) DR 1-102(A)(6), prohibiting conduct that adversely reflects on an attorney's fitness to practice law.

This notice is published pursuant to DRA 11.7(c)(1).

Joseph T. Moynihan Disbarred

Joseph T. Moynihan of Greenacres, Spokane, and Othello, Washington, was disbarred by an order of the Washington State Supreme Court effective April 8, 1982. The opinion states that Mr. Moynihan was disbarred for misappropriation of trust funds, neglect of a legal matter, and failure to cooperate in violation of CPR DR 9-102, DR 6-101 (A)(3), and DRA 2.6.

This notice is published pursuant to DRA 6.7(e).

In Memoriam

Judge Paul B. Fournier, 76, of Montesano, died April 20. He was admitted to the Bar in 1949.

CLASSIFIED

For Sale: Pacific Reporter, Pacific First-Entire Set, P.2d-Volumes 1-456. Make offer. P.O. Box 806, Glasgow, MT 59230. Telephone: (406) 228-4385.

For Sale: Moore's Federal Practice, 2nd. Edition and/or Bender's Federal Practice Forms, both up-to-date and in excellent condition. Also, Internal Revenue Code, 1981, Federal Tax Regulation 1981 (3 vol.) and Internal Revenue Acts 1977-79. Call (206) 466-3163, ext. 218.

For Sale by law firm: IBM, SCOTCH & BASF Mag-cards for the mag card A & Mag II, currently retailing for $1.63 ea, *now $1.00 ea.* Call (206) 627-8131.

For Sale: Business Organizations (Matthew Bender), volumes 1 thru 11. Best offer. (206) 292-1000, Mrs. Reese.

For Sale: Corpus Juris Secundum $950.00, United States Code Annotated $700.00, both current and completed. (206) 622-8460.

For Sale: Complete, up-to-date set of CJS in mint condition. Will sell for $900.00. Call Chuck Langfitt (206) 383-4704.

Office space for rent. Newly remodeled downtown law firm offers reception, telephone service, library, conference room and kitchen. Word processing and billing services available. Possibility of trade for legal services toward rent depending on background and experience. (206) 682-7332. Available immediately.

Office Space Available. Smith Tower, 26th Floor, including receptionist, library, copier and telephone. Secretarial time, long distance and legal process costs extra. Terms are negotiable. Telephone Clarence Pierce, Leo Peden or Donald Elliott at (206) 682-6147 for information.

3-4 outstanding view offices, available now, downtown Seattle, 30th floor, Westin Building, with 6 person firm, library, receptionist, call Bob Conoley, (206) 622-3000.

Office Space Available: 6 offices in Westin Building, outstanding views, all services provided, rents $475-$600, call (206) 624-3216.

Excellent Office: Seattle-First Bank Building; private office with secretarial area; 4 other attorneys; library, telephone; conference room; copier; view. Call Ms. Lee at (206) 623-8388.

Corner office for 1-2 attorneys in south Snohomish bank building suite. Conference room, full library included. Reception, office equipment negotiable. (206) 771-7830; (206) 784-3600.

5200 square feet, downtown Seattle office space with city, water view, priced for immediate occupancy. Turnkey improvement for 3 to 5 year lease of any/all of space. Call (206) 223-1313.

Classic Hood Canal beach house near Seabeck. Olympic view. ¼ mile plus of private bountiful beach backed by 200 virgin acres, with all amenities. Skiff and canoe included. Sleeps 8. Available 4/5/82, $400 week. (206)479-5813.

Seattle Financial District. Space for one or two attorneys in new 1111 Third Avenue Building. Unobstructed view of Sound and Olympics. Rent includes receptionist, library, furnished secretarial area, telephone system and xerox. (206) 223-0303.

View Office Space: Office space for one or two attorneys on the 35th floor of the Sea-first Fifth Avenue Plaza Building. Includes use of reception area, receptionist, library, conference room, copier, new electronic key telephone system. Terms negotiable. Call Phil Burton at (206) 623-2468.

1 to 3 view offices available in Denny Building. Full services available. Sub-lease from law firm. Call Douglas Engel (206) 624-5858.

Wanted To Buy: Used I.B.M. Model 6240 typewriters—at least one, possibly two. Please reply to Mike Felton, P.O. Box 589, Buhl, ID 83316.

Will Sought: Any person having knowledge of a will or codicil for Clementine L. Campbell, deceased please call Edward D. Jones of Jones & Butler at (206) 629-3833 collect.

POSITIONS

Sports Salmon Angler? Wanted: attorneys for possible multi-million dollar sports class action suit against Washington State Fisheries—also attorney for public disclosure suit against same. Conrad Schloredt, 8536 Dibble N.W., Seattle, 98117. Phone (206) 782-8259.

Position Available: Attorney interested in associate position with partnership potential in general practice including litigation. Minimum 5 years local experience required. Send resume to Theodore M. Rosenblume & Assoc., 636 Logan Building, Seattle, WA 98101.

Position Available: Growth-oriented Seattle firm with emphasis on products liability and subrogation practice seeks attorney with 2 to 5 years of trial experience. Salary competitive. Inquiries confidential. Forward resume to Box 167, WSBA.

Established Columbia Basin firm seeks attorney for general practice. Interest in trial work and ability to assume client responsibility are necessary. Some experience preferred. Salary commensurate with experience. Reply to Box 171, WSBA.

Litigation Position: Medium-sized Seattle firm is seeking a lawyer with 3 to 5 years of concentrated trial experience in commercial and real estate matters, preferably in the King County Superior Court. Good academic qualifications are required. Please send resume to Box 169, WSBA.

Attorney with two years litigation experience wanted as defense oriented litigation associate by established downtown Seattle law firm. Reply to Box 172, WSBA.

Growing, 5-attorney Seattle firm seeks experienced business/corporate practice-oriented attorney(s) with four or more years experience in the Seattle area. Firm has large litigation practice and seeks to broaden and further diversify its client base with the addition of an established business attorney who can bring some business with him or her in addition to servicing similar needs of existing clients. Special or accelerated partnership arrangement anticipated. Reply to Box 173.

Small Tacoma Firm: Seeks associate with zero to two years experience, admitted to Washington State Bar, interested in general practice. Send resume and recent writing sample to Smith & Williams, 5314 100th Street S.W., Tacoma, Washington 98499.

Rapidly expanding Workers' Compensation and Personal Injury practice needs experienced, first rate attorney. Replies confidential. Reply to Box 175 or call L.A. Sawyer, (206) 841-3121.

Busy, young solo practitioner of business and political law in downtown Seattle seeks compatible practicing attorneys for association and possible partnership. Replies confidential. Box 168, WSBA.

Georgetown LL.M. in Taxation, two+ years legal experience, seeks tax position in law firm, CPA firm, or corporation. Member, Washington, California and District of Columbia bars. Reply Box 170, WSBA.

Attorney, 4 years experience 10 months prominent Seattle dissolution firm; 3 years trial prosecutor (civil and criminal) seeks long term career opportunity in general practice (particularly civil); South Snohomish County—Seattle area. Reply to Box 174, WSBA.

Trial Lawyer: Civil/criminal. Major p.i., aviation product liability, insurance. Ten years trial experience. Admitted to Washington, California, Federal courts. Seeking small to mid-size Seattle firm or legal dept. Reply to Box 166, WSBA.