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Bankruptcy: When the Dice Come Up 7-11

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FEATURES

IN THE NEWS

DEPARTMENTS

Our Cover

When you roll the dice in the game of life, sometimes they come up 7-11. . .or even 13! Inside, our authors discuss the current state of bankruptcy law and what general practitioners need to know. Photograph by ***Karin Foster-Garrison****; hands courtesy of Bar staff.*

Applying the Consumer Protection Act to Lawyers Would be Counterproductive

In early January, Washington State Bar Association members received a report which reviewed briefly the basic issues of the *Short & Cressman v. Demopolis* case and the claimed justification of the application of the Washington Consumer Protection Act (RCW 19.86) to the practice of law. I want to review this matter once again, in case you have not had occasion to read the report. The Board of Governors considers this matter to be of vital importance in view of its potential impact upon the practice of law.

In the *Short & Cressman v. Demopolis* case, a suit was filed by a Seattle law firm against a former client for nonpayment of fees. A counterclaim filed by the client alleged various violations of the Consumer Protection Act through misrepresentations, a bait-and-switch from partner to associate, excessive fees, deceptive billing practices, and a bringing of the suit itself. The counterclaim was dismissed on a CR 12(b) (6) motion in King County Superior Court on the basis that any attempted regulation of the legal profession through the Consumer Protection Act violated the constitutional separation of powers, and that the practice of law did not constitute the conduct of any trade or commerce within the meaning of the Consumer Protection Act. Subsequently, the client sought and obtained direct discretionary review in the State Supreme Court on the ruling on the Consumer Protection Act counterclaim. The Attorney General has filed an amicus curiae brief supporting the position of the petitioner-client [without any discussion of the Court's ruling in *Graham vs. State Bar Association*, 86 Wn.2d 624 (1976)].

The State Bar has a strong interest in the outcome of this case. Obviously, a ruling that the Consumer Protection Act does apply to the practice of law would affect each of us by not only adding another layer of regulation to law practice; it could also potentially open the door for the active involvment of the Legislature in setting the standards for law practice in this state—a constitutional function given clearly to the Supreme Court.

At the same time, application of the Consumer Protection Act to the practice of law could create a confusing and potentially conflicting state of affairs in that it would have to be applied alongside the Code of Professional Responsibility in setting standards of practice. This would be untenable in that the Code of Professional Responsibility, as it now stands under court rule, is fully adequate to govern the standards of practice and is, in many instances, more restrictive and much more specific about the penalties which could result if the provisions of the Code are violated. In other words, the Consumer Protection Act adds nothing to the duties already imposed on the profession by the Code of Professional Responsibility.

The Board of Governors filed an amicus curiae brief in the *Short & Cressman v. Demopolis* case on December 30, 1983. The intent was to address the long-range implications of any attempt to involve the Consumer Protection Act in the regulation of the practice of law, and not necessarily to address the specific issues unique to the *Short & Cressman v. Demopolis* case. It is our view that the constitutional separation of powers is the critical issue here. Should the Court rule that the Act does apply, the Board believes that the decision should include a number of considerations which are inherent in such a decision.

Accordingly, the brief filed by the Washington State Bar Association suggests that:

(1) The statute at issue is a regulatory statute of general application, and is not one directed particularly to the legal profession. Article IV, Section 1 of the Washington Constitution provides: "The judicial power of the state shall be vested in a Supreme Court." That provision vests in the Court the power to regulate the legal profession. A statute purporting to regulate the professional conduct of lawyers in particular would in all probability be invalid under the constitutional separation of powers.

(2) The statute's provisions add nothing to, and subtract nothing from, what lawyers are already required to do. Their conduct is governed by a Code of Professional Responsibility (CPR), promulgated and enforced by the Supreme Court, which is far more stringent than anything contained in the Consumer Protection Act. The

CPR is sweeping in its coverage and strict in its sanctions. For example, the statute at bar prohibits "deceptive acts or practices" such as false and deceptive advertising. RCW 19.86.020. The CPR condemns the same conduct and provides for sanctions extending to disbarment. See DR 2-101. A statute which purported to alter or expand the duties of lawyer to client, as defined by the Supreme Court, even if it appeared to be one of general application, would clearly contravene the separation of powers.

(3) *Short v. Demopolis* is a private suit between lawyer and client, not an enforcement proceeding by the Attorney General. The powers of the Attorney General, set out in RCW 19.86, are not involved in the present case and need not be addressed. A contention that either the Attorney General or any other official of the executive branch could proceed against the WSBA or any of its members under the Consumer Protection Act would raise serious constitutional questions. *See Graham v. State Bar Association,* 86 Wn.2d 624 (1976).

(4) Whether any specific instance of conduct alleged in the pleadings in this case would or would not violate the Consumer Protection Act should not, in any event, be decided in disposing of the present appeal and review. That issue was not the basis of the trial court's decision and it would be premature to attempt to resolve it in the absence of a full factual record and with the facts in some dispute.

(5) If the Supreme Court should determine that reversal is necessary, it should make clear that if any future application of the statute, or amendment thereto, were to conflict with the Court's exercise of its constitutional jurisdiction to regulate the practice of law, it would be struck down as unconstitutional.

The Board considered very carefully the filing of this brief. It was a topic of repeated discussion by the Board with retained counsel for some months prior to our taking action. We cannot predict, of course, where the Court will come down on this issue. It was the strong feeling of the Board, however, that the separation of powers principle should be at the forefront of any consideration, and that the rules of the Court, as presently constituted or as may be adopted hereafter, are fully adequate, and the most effective regulation of the practice of law and, as such, provide the citizens of the State of Washington with a responsible and responsive legal profession.

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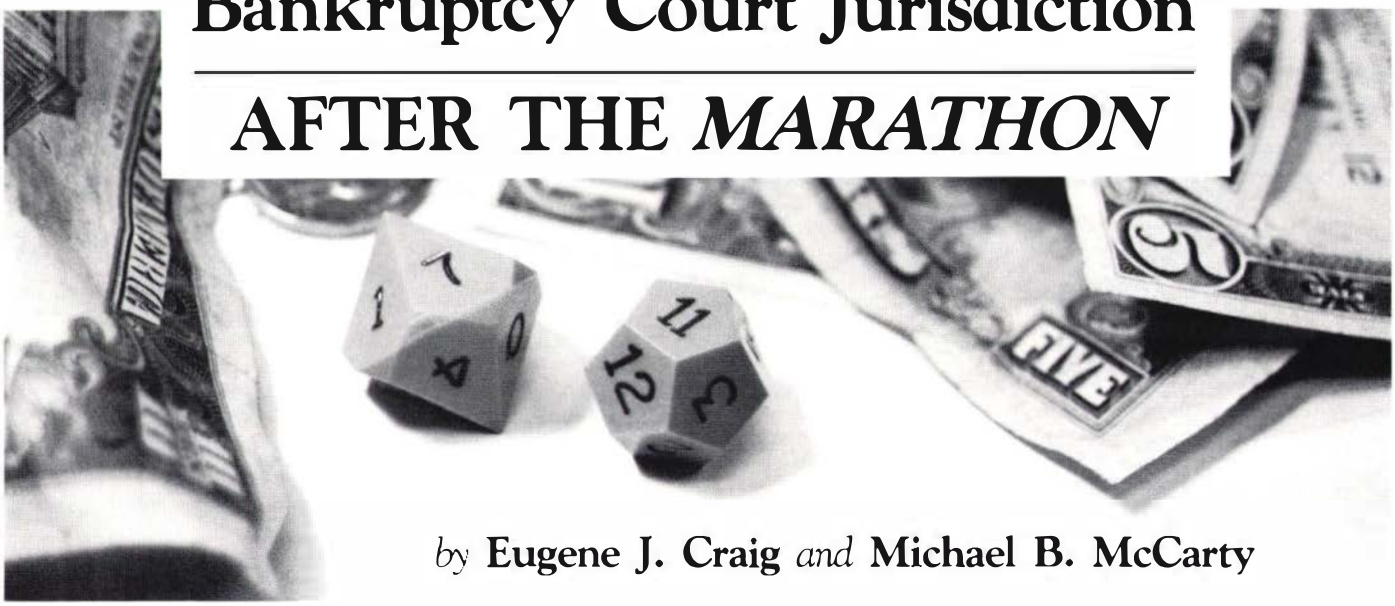

Bankruptcy Court Jurisdiction

AFTER THE *MARATHON*

by **Eugene J. Craig** *and* **Michael B. McCarty**

On June 28, 1982, in a plurality opinion, the United States Supreme Court struck down as unconstitutional the broad grant of jurisdiction to federal bankruptcy courts which was an integral part of the Bankruptcy Reform Act of 1978. *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 102 S. Ct. 2858 (1982). The judiciary filled the jurisdictional void with an Emergency Rule effective as a local rule on December 25, 1982, which has allowed the bankruptcy courts to continue to administer the nation's bankruptcy laws. A congressional cure, which the *Marathon* Court expected, has yet to materialize.

HISTORICAL PERSPECTIVE

Prior to the 1978 Code, the United States District Courts *were* the courts of bankruptcy. Section 2 of the 1898 Bankruptcy Act provided that bankruptcy matters would be referred to referees who were appointed by the district courts to serve six-year terms. District courts were given original and exclusive jurisdiction over "proceedings in bankruptcy." The referee was a judicial officer of the district court who was authorized by Congress to implement the provisions of the Bankruptcy Act.

This statute enabled referees to administer the federal bankruptcy laws and issue orders such as those adjudicating persons bankrupt, allowing or disallowing claims, or causing estates to be collected, reduced and distributed. The referees could determine the priority of claims and determine issues related to plans of reorganization. These were primarily administrative functions. They also had "summary jurisdiction," under Section 23(a) of the Act, over *"controversies"* arising in the bankruptcy case concerning property which was in the custody of the court. This was basically "in rem" jurisdiction.

Section 23 of the former Act limited the jurisdiction of courts of bankruptcy over "plenary suits" which were defined as independent suits between trustees or receivers and adverse claimants. The bankruptcy court had jurisdiction over plenary suits concerning title to property not in the possession of the trustee only where the adverse party consented to its exercise of summary jurisdiction. *Magnolia Petroleum Co. v. Thompson*, 106 F. 2d 217 (8th Cir. 1939), *rev'd on other grounds*, 309 U.S. 478 (1940).

BANKRUPTCY REFORM ACT OF 1978

Congress created the Commission on the Bankruptcy Laws of the United States in 1970. In its July 30, 1973, Report,

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the Commission recommended "[a] comprehensive grant of jurisdiction to the bankruptcy courts over all controversies arising out of any bankruptcy or rehabilitation case. . . ." Commission Report, House Document No. 93-137 at 91 (1973). The reason for increasing the bankruptcy court jurisdiction was to "greatly diminish the basis for litigation of jurisdictional issues which consumes so much time, money, and energy of the bankruptcy system. . . ." Commission Report, *supra,* at 91.

The Bill which eventually became law granted the new bankruptcy courts extensive jurisdiction, but, rather than to create a new Article III Court, created the bankruptcy courts as Article I courts which were adjuncts of the district courts. Jurisdiction was conferred on the district courts, but was to be exercised exclusively by the bankruptcy courts. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598.

The Bankruptcy Reform Act granted district courts original, but not exclusive, jurisdiction over all civil proceedings arising under Title 11, or arising in or related to cases under Title 11. 28 U.S.C. § 1471(b). Congress granted the new bankruptcy courts, which would not come into existence until April 1, 1984, power to exercise all of the jurisdiction conferred on the district courts. 28 U.S.C. § 1471(c). Section 404(a) of Public Law 95-598 provides that the courts of bankruptcy under the old Act shall continue to function during the transition period between October 1, 1979, and March 31, 1984. Subsections 405(a) and (b) of P.L. 95-598 provide that these holdover courts shall exercise the jurisdiction conferred on the new bankruptcy courts.

Under the 1978 Act, bankruptcy judges will be appointed by the President with the advice and consent of the Senate. 28 U.S.C. § 152. The judges will serve 14-year terms, and are subject to removal by the Judicial Council of the Circuit in which they serve, on grounds of incompetency, misconduct, neglect of duty, or physical or mental disability.

JURISDICTIONAL HIATUS

In *Northern Pipeline Construction Co. v. Marathon Pipeline Co.*, 102 S. Ct. (1982), the Supreme Court held that 28 U.S.C. § 1471 constituted an unconstitutional delegation of Article III powers to non-Article III courts.

Marathon involved a lawsuit commenced in bankruptcy court by Northern Pipeline, a Chapter 11 debtor, against Marathon for breach of contract and warranty, misrepresentation, coercion and duress. Under pre-Code law this was clearly a "plenary action" based solely on state law and unrelated to any property within the jurisdiction of the bankruptcy court. Marathon moved to dismiss. The bankruptcy court's denial of the motion was reversed on appeal by the district court, which held that the delegation of authority in 28 U.S.C. § 1471 to bankruptcy judges, to try cases otherwise relegated under the constitution to Article III judges, was unconstitutional. *Marathon Pipeline Co. v. Northern Pipeline Co.*, 12 B.R. 946, 956, 5 CBC 2d 114 (D.Minn. 1981).

Article III requires that "[t]he judicial power of the United States must be exercised by courts having the attributes prescribed in Art. III." *Northern Pipeline Constr. Co. v. Marathon Pipeline*, 102 S. Ct. 2858, 2865. These attributes are: (1) the judges shall hold their offices during good behavior and (2) the judges shall have an absolute guarantee against reduction of salary.

The Supreme Court, in a lengthy and complex plurality opinion, agreed with the district court, holding that

> § 241(a) of the Bankruptcy Act of 1978 [28 U.S.C. § 1471] has impermissibly removed most, if not all, of "the essential attributes of the judicial power" from the Art. III district court, and has vested those attributes in a non-Art. III adjunct. Such a grant of jurisdiction cannot be sustained as an exercise of Congress' power to create adjuncts to Art. III courts. (at 2879-80, 6 CBC 2d at 807)

In declaring the entire jurisdictional grant to the bankruptcy courts invalid, the Court noted it was clear that the non-Article III bankruptcy courts could not be vested with jurisdiction over a state law contract claim such as in *Marathon*. However, rather than to invalidate only that facet of the jurisdictional grant, the plurality struck down all of § 1471, stating that since Congress provided a "single statutory grant of jurisdiction" in the 1978 Bankruptcy Code, "it is for Congress to determine the proper manner of restructuring the Bankruptcy Act of 1978 to conform to the requirements of Art. III, in a way that will best effectuate the legislative purpose." *Id.* at 2880, fn. 40.

In his concurring opinion, Justice Rehnquist stated that although he would only "hold so much of the Bankruptcy Act of 1978 as enables a Bankruptcy Court to entertain and decide Northern's lawsuit over Marathon's objection to be violative of Art. III of the United States Constitution" he agreed that "this grant of authority is not readily severable from the remaining grant of authority to Bankruptcy Courts under § 241(a). . . ." *Id.* at 2882. Consequently, Rehnquist's opinion, together with the plurality opinion, invalidated the entire jurisdictional grant to the bankruptcy court.

The Supreme Court, cognizant of the major disruption the decision would cause, further held that *Marathon* did not apply retroactively, and stayed its judgment until October 4, 1982, to "afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication, without impairing the interim administration of the bankruptcy laws." *Id.* at 2880. When Congress failed to act, the court continued the stay until December 24, 1982. Even though Congress did not remedy the situation by December 24, the Court refused to further extend the stay.

THE EMERGENCY RULE

Faced with the imminent disruption of the bankruptcy court system, the Judicial Conference of the United States proposed an Emergency Rule as a basis for administering the nation's bankruptcy laws using the existing forum. The district courts in each district adopted the rule, which is effective until Congress remedies the situation, or until March 31, 1984, the last day of the transition period.

The Emergency Rule refers from the district courts to bankruptcy judges "all cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11." The reference may be withdrawn by the district court at any time on its own motion or on timely motion by a party. Once the reference is withdrawn, the district court "may return the matter, or refer part or all of it back to the bankruptcy judge."

If the district court refers the matter back to the bankruptcy court, the bankruptcy judge is authorized to "perform. . .all acts and duties necessary for the handling of those cases and proceedings," except that the bankruptcy judge may not enjoin a court, conduct certain types of criminal contempt proceedings, hear an appeal from a judgment, order, decree or decision of another bankruptcy judge, or hold a jury trial.

A bankruptcy judge may enter a dispositive order in all matters which, under the former Act, would have been considered administrative proceedings or disputes over which the bankruptcy court had summary jurisdiction. These core matters include, *inter alia*, "[c]ontested and uncontested matters concerning administration of the estate; allowance of and objection to claims against the estate; counterclaims by the estate in whatever amount against persons filing claims; orders authorizing the use of cash collateral;. . .orders approving the sale of property of the estate free and clear of liens;. . .and similar matters." E.R. § (d)(3)(A). Dispositive orders concerning core matters are final, subject to appeal to the district court only if a party files a timely notice of appeal.

A notice of appeal from an order entered by a bankruptcy judge must be filed with the clerk of the bankruptcy court within 10 days after entry of the order. B.R. 8002. The district court is the appellate tribunal.

The Rule refers to the bankruptcy court "related matters" which are defined as "those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or state court." E.R. § (d)(3)(A). The bankruptcy court may hear such matters and shall submit findings, conclusions and a proposed order or judgment to the district court for entry. The bankruptcy judge may enter a final order or judgment in a "related proceeding" if the parties consent. The district court shall review the proposed findings and order or judgment submitted by the bankruptcy judge, and the Rule provides that an aggrieved party may file a notice of appeal from a final order or judgment or *proposed order or judgment* of a bankruptcy judge within 10 days of the date of entry of the judgment or order or of the *lodgment of the proposed judgment or order.* E.R. §(e)(1).

The Emergency Rule also provides that the parties are entitled to *de novo* review, and the district court need not defer to the bankruptcy court's findings of fact. E.R. (e)(2)(B). This is a significant deviation from Bankruptcy Rule 8013, which became effective on August 1, 1983 (as well as from its predecessor, Bankruptcy Rule 810), which provides that the reviewing court shall not set aside the bankruptcy judge's findings of fact unless clearly erroneous.

VALIDITY OF EMERGENCY RULE

Before the Emergency Rule had even been adopted by the district courts, it was criticized and declared unworkable as well as unconstitutional by the National Bankruptcy conference, in a statement prepared by Harvard professor Vern Countryman. "Emergency Rule Compounds Emergency," 57 *Am. Bankr. L. J.* 1 (1983).

Much of Countryman's argument is based upon his construction of the jurisdictional provisions of the 1978 Code, as well as his interpretation of *Marathon*. As to any provisions of the rule which permit a bankruptcy court to exercise jurisdiction with the parties' consent, Countryman writes, "[w]e are aware of no authority for the proposition that private parties, by their consent or failure to object, can waive the separation of powers doctrine and vest Article III jurisdiction in other than Article III judges." *Id.* at 20-21. Subject matter jurisdiction simply cannot be conferred by consent or waiver.

Soon after the implementation of the Emergency Rule, several bankruptcy courts began to echo the concerns of Countryman. *See, e.g., In re Mahan and Rowsey, Inc.*, 8 CBC 2d 212 (B.Ct.W.D.Okla 1983); *In re Tip-Pa-Hans Enterprises, Inc.*, 8 CBC 2d 144 (B.Ct.W.D.Va. 1983); *In re Williamson*, 8 CBC 2d 396, (B.Ct.M.D. Ga. 1983).

Notwithstanding the concerns of the bankruptcy bench, necessity has triumphed. As one district court stated,

> The reality is that there is in place an entire system of bankruptcy courts, staffed with judges and supporting personnel who have specialized knowledge and experience in the handling of bankruptcy cases. That system was created by Congress, not by the courts, and for the purpose of performing the same functions the district courts have delegated to the bankruptcy courts under local Emergency or Interim Rules. So long as the district courts assign to the bankruptcy courts no functions beyond what Congresss was willing to assign to them, there is no ground for the argument that the courts have usurped an authority that belongs exclusively to Congress. *Moody v. Martin B.J.*, 8 CBC 2d 169, 179 (D.Ct.W.D.Wis.)

A four-judge panel of district court judges in Utah found that § 1471 created a "two-step grant of power under the provisions of the Bankruptcy Reform Act of 1978—one to the United States District Court and one to the Bankruptcy Court—and that *Marathon* invalidated only the grant to the Bankruptcy Court." *In re Color Craft Press, Ltd.* 8 CBC 2d 93, 95 (D. Utah 1983).

Several circuit courts have upheld the Emergency Rule. *In re Braniff Airways, Inc.*, 27 B.R. 231 (D.C.N.D.Tex. 1983), *aff'd*, 700 F.2d 214 (5th Cir., 1983), *cert. denied*, 51 U.S.L.W. 3837 (U.S. May 23, 1983) (No. 82-1623); *First Nat. Bank of Tekomah, Neb. v. Hansen*, 702 F. 2d 728 (8th Cir. 1983), *cert. denied*, 51 U.S.L.W. 3913 (U.S. June 27, 1983) (No. 82-1802).

The Sixth Circuit noted that the Rule basically re-establishes the "institutional pattern for handling bankruptcy matters as it was" under the bankruptcy laws prior to the 1978 Act. *White Motor Corp. v. Citibank, N.A*, 8 CBC 2d 274, 277 (6th Cir., 1983). The Court held "§§ 1471(a) and (b) which give the district courts original jurisdiction in all cases under Title 11 were not affected by the Supreme Court's decision in *Marathon*." The Court focused on the concurring opinion which "specifically refer[s] to the unconstitutional grant of jurisdiction only to the bankruptcy courts; the concurrence never even mentions the district courts." *Id.* at 282. The *White Motor* Court stated that 28 USC § 1334, which was not repealed, also gives original jurisdiction over bankruptcy matters to district courts. The United States Supreme Court has declined to review the White Motor case.

LEGISLATIVE PROPOSALS

As this article is being written, there are several bills before Congress designed to remedy the Bankruptcy Court jurisdictional problem. One bill would create an Article III bankruptcy court. This solution would eliminate the distinction between various types of proceedings, the procedure for referring cases from the district court to the bankruptcy court, and the partial reliance on consent jurisdiction.

Another proposal is much more complex. The Bankruptcy Court and Federal Judges Act of 1983, S. 1013, which the

Senate passed on April 27, 1983, would not create an Article III bankruptcy court. It preserves the current provisions of the 1978 Code with respect to the process for appointment (by the President with the advice and consent of the Senate), the term of office (fourteen years) and the process for removal (by the Judicial Council of the Circuit).

Senate Bill 1013 would create the bankruptcy courts as adjuncts to the district courts. The district courts would be given original and exclusive jurisdiction over all cases under Title 11, and original but not exclusive jurisdiction over all civil proceedings arising under Title 11 or arising in or related to cases under Title 11.

There are also provisions in the Senate legislation which provide for recall by the district court on its own motion or on the motion of a party or bankruptcy judge who files a petition with the Clerk of the district court. Whether to grant recall is within the discretion of the district court, except that where the proceeding involves a claim or cause of action which is not one arising under Title 11 or arising in a case under Title 11, the district court shall grant recall.

Once a case has been recalled, the district court would have the discretion to either decide the case, or designate a bankruptcy judge to serve as special master, or refer the case or proceeding to a United States Magistrate, or to a bankruptcy judge "who shall exercise all of the Jurisdiction and powers of a United States Magistrate under 28 USC § 636."

There is also a provision for consent jurisdiction in the proposed Senate Legislation. Any proposal which relies on consent jurisdiction should be considered in light of the recent Ninth Circuit decision in *Pacemaker Diagnostic Clinic of America, Inc. v. Instromedix, Inc.*, Nos. 82-3152, 82-3182 (9th Cir. August 1, 1983), which held that litigants may not by consent confer subject matter jurisdiction on a magistrate.

Congress faces the stalemate which existed when it enacted the 1978 Bankruptcy Reform Act. While Article III status for bankruptcy judges would resolve the jurisdictional problem, the political implications of a president appointing over 200 Article III judges are profound. On the other hand, the current Senate proposals contain provisions which could create even more confusion and litigation with respect to bankruptcy court jurisdiction.

CONCLUSION

The bankruptcy courts continue to administer the bankruptcy laws. The judiciary has provided a mechanism which enables bankruptcy judges to exercise, with certain limitations, the jurisdiction Congress attempted to confer on them. The procedures under the Emergency Rule entitle litigants in a proceeding related to a bankruptcy proceeding to have their disputes determined, in the final instance, by an Article III court.

While the Emergency Rule has prevented the disintegration of the bankruptcy system, it is not a final solution. Congress must respond and enact a constitutional law which clearly sets forth the extent of bankruptcy court jurisdiction.□

Chapter 11: Trends and Solutions

by **Judge Kenneth S. Treadwell**
and **Donald E. Hacker, Jr.**

Statistics reveal that disturbing results have been achieved in Chapter 11 cases filed in the Western District of Washington, at Seattle. From the inception of the Bankruptcy Code on October 1, 1979, through March 31, 1983, 656 cases were filed under Chapter 11, the business reorganization chapter of the Code.* Of these cases, 178 have been converted to another chapter; 95 have been dismissed; and only 23 have had plans confirmed.

A closer look at the 23 cases with confirmed plans reveals that five of the plans provided for liquidation; ten provided for sale of the debtor's assets or stock to another entity; and only eight provided for the debtor to rehabilitate itself without substantial change in asset or stock ownership. Interviews by telephone with the participants in the latter group reveal that only four of the debtors involved may be said to have complied fully with the terms of their confirmed plans.

Even more troubling, today there is estimated to be a dividend for unsecured creditors in less than 1% of the cases filed under the Code, as compared to 11-14% of the cases filed under the former Bankruptcy Act.

These results speak poorly of the ability of Chapter 11 to maintain the production of goods and services, employment and order in credit markets. They may be attributed in large part to two drastic changes which were made in bankruptcy law when the Bankruptcy Code went into effect in 1979.

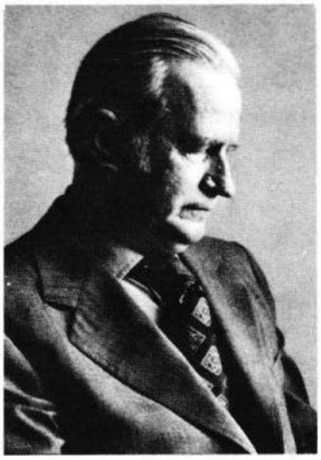
First, the requirements for compensation to attorneys for debtors changed markedly. Under the former Bankruptcy Act, attorneys representing debtors in Chapter XI arrangement proceedings could be compensated only where their services were held to be *beneficial* to creditors. Thus, if a debtor's Chapter XI case did not result in a confirmed plan, the debtor's attorneys generally would not be compensated. Now, under Code §330, lawyers in bankruptcy cases are to be paid fees "based on the time, the nature, the extent, and the value of such services, and the cost of comparable services." This liberalization of the requirements for compensation has had the unfortunate effect of encouraging attorneys to file cases in Chapter 11 which offer *no hope* of achieving confirmation of a plan.

Second, the Code has intentionally removed bankruptcy judges from the administration of bankruptcy cases. Formerly, bankruptcy judges were charged with the administration of Chapter XI cases from the time of filing to the time of confirmation. For example, the judges always met with debtors at the inception of cases; required debtors to employ certified public accountants to file regular financial statements with the Court; and closely supervised the business of debtors, to make certain that debtors were not incurring unpaid taxes or creditors while operating under Chapter XI. Now, the lack of supervision by bankruptcy judges over Chapter 11 cases has resulted in filed cases languishing in court while the debtors incur new sets of post-petition unsecured creditors.

The difficulties with these changes in bankruptcy law are compounded by unreasonable reliance in the Code on the willingness of creditors committees to act. As intended by the draftsmen of the Code, Chapter 11 was to be based on an adversary system with active participation by creditors in protecting their interests, counterbalancing the debtor's interests. Yet, in most cases, creditors are inactive. And, as of March 31, 1983, in only 43 of the Chapter 11 cases in Seattle with active creditors committees have the committees hired a lawyer or accountant.

Given the poor results achieved by Chapter 11 in Seattle, what can be done?

*During the 1969-1971 recession in Washington, there were less than 100 Chapter X and Chapter XI cases filed in Seattle, and that recession was much more severe in its local effects than was the recent recession. Between January, 1970, and December, 1971, Boeing reduced its work force by approximately 65,000 persons, or by almost two-thirds.



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DEBTOR'S RESPONSIBILITIES

Initially, debtors must be more aware of their responsibilities. All petitions filed under Chapter 11 must be filed in good faith. A petition filed in bad faith may manifest an intent to cause hardship of delay to creditors by resorting to Chapter 11 merely for the purpose of invoking the automatic stay, without an intent or ability to reorganize. *In re Thirtieth Place,* 30 B.R. 503 (9th Cir. Bkrtcy. App. 1983).

If debtors are to avail themselves of the protection of the automatic stay, it follows that they may be required to comply with certain filing requirements imposed to ensure that Chapter 11 cases do not languish in court, but accomplish their statutory purpose. In this regard, local Bankruptcy Rule 4005 requires debtors (or trustees) to file detailed financial summaries each month in all Chapter 11 cases in which business is continued. Such rule provides for dismissal or "other appropriate relief" where the debtor (or trustee) has "failed to substantially comply with this rule." Thus, where the debtor has made no effort to file a plan within the 120-day exclusive period provided, or where the debtor has failed to file monthly financial statements, the debtor's Chapter 11 case may be dismissed or converted to liquidation proceedings by the Court.

Courts have recognized an inherent power to protect themselves and the law from abuse by converting Chapter 11 cases *sua sponte. See, e.g., In re Nikron, Inc.,* 27 B.R. 773 (Bkrtcy. E.D. Mich. 1983). Moreover, the power to terminate the operation of a business in Chapter 11 is unconditionally conferred upon the Court. (*Id.* at 777; *Cf.*, Code §1108). In light of the statistics, it is incumbent upon the Court to take a more active role in exercising its inherent powers and to seek dismissals or conversions to Chapter 7 liquidations in appropriate Chapter 11 cases.

CREDITOR'S REMEDIES

No substantive changes in debtor-creditor roles under the Code are currently pending in Congress. For now, and in the near future, the burden remains with the creditors to monitor Chapter 11 cases and act to protect their interests.

However, as previously noted, unsecured creditors often fail to secure the services of an attorney or accountant. It is axiomatic that such services are necessary to counterbalance the debtor's role in Chapter 11 cases. The Code, therefore, provides a remedy. Pursuant to Code §328, unsecured creditors committees may apply to the Court for approval of the employment of a professional person upon "any reasonable terms and conditions. . . ." Thus, an unsecured creditors committee may request authorization to employ counsel with a retainer to be paid by the debtor.

The remedies which may be employed by creditors to protect their interests differ according to the nature of the debt and the debtor's prospects for reorganization. Creditors should identify those cases in which reorganization is not likely to occur — statistics show that the vast majority of cases belongs in this group — and take appropriate action. For example, Code § 1112(b) provides that creditors may move to convert a Chapter 11 case to a Chapter 7 liquidation or to dismiss the case for "cause" including (1) continued loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation; (2) inability to effectuate a plan; (3) unreasonable delay by the debtor that is prejudicial to creditors; and (4) failure to propose a plan within any time fixed by the Court.

Often, debtors file for relief under Chapter 11 focusing on short-term survival to avoid immediate foreclosure or forfeiture by a secured creditor. Although Code § 1121 provides the debtor an exclusive right to file a plan within the first 120 days after the order of relief in the case, debtors often fail to either file a plan within such period, or make a timely request for an extension of time to file a plan. Creditors in such circumstances may then move to have the case dismissed or converted to Chapter 7. Alternatively, creditors may file their own plan of reorganization or liquidation under Chapter 11. Even where the debtor has filed a plan within the 120-day exclusive period, if the debtor has been unable to obtain approval of the plan by each class of interests which are impaired under the plan, creditors may file their own plan.

Where reorganization appears contrary to the interests of creditors, they may wish to oppose requests by the debtor to borrow funds in order to continue the operation of the debtor's business. Most often, such a borrowing request will appear in the form of a request that the lender be given "superpriority" under Code §364 ahead of administrative expenses and unsecured creditors.

Where reorganization of the debtor appears to be in the best interests of creditors, they may oppose the sale of assets by the debtor on the ground that such assets are necessary to the rehabilitation of the debtor. In any event, creditors should vigilantly require the proper appraisal and sale of assets to maximize the return to the estate for their benefit.

HELP FROM THE NEW RULES

On August 1, 1983, a new set of bankruptcy rules promulgated by the Supreme Court went into effect. These rules contain certain new procedures which may aid creditors. In particular, relief from the automatic stay must now be requested by motion. *See,* Bankruptcy Rule 4001(a). Formerly, the most common avenue to relief from stay in the Western District of Washington was by summons and complaint (which required the payment of a sixty dollar filing fee). Now, the new rules permit the Court in most cases to decide relief from stay requests in a manner procedurally similar to summary judgment motions (*e.g.,* upon motion, affidavits and after consideration of memoranda and oral argument). As under the former bankruptcy rules, a preliminary hearing must be held within 30 days. Code §363(e).

In the event that the Court deems oral testimony appropriate, the Court may continue the stay for an additional thirty days pending final hearing. *Id.* The motion for relief from stay should be heard by the judge to whom the case has been assigned at the time of filing of the petition. Creditors may have their requests for relief heard sooner, for example, than was possible under the former summons and complaint procedure (which permitted debtors twenty days to answer). Where necessary, the Court may reduce the time for hearing. *See,* Bankruptcy Rule 9006(c).

The new rules also aid the partnership creditor. Bankruptcy Rule 1007(g) provides that in addition to the schedule of assets and liabilities, statement of financial affairs, and statement of executory contracts of the partnership which are required to be filed, the Court may order any general partner to file a statement of personal assets and liabilities with the Court. Thus, where it appears that partnership assets may be inadequate to satisfy partnership debts, creditors may request the Court to order the general partners to reveal their personal financial information.

CHAPTER 13 TO THE RESCUE?

Increased awareness by debtors of the responsibilities of filing under Chapter 11 and increased participation by creditors in using remedies now available to them may go a long way toward reversing the disturbing statistical trend in Chapter 11 cases. Another, simpler solution may be found in Chapter 13 of the Code.

Chapter 13 relief is currently available to individual debtors with regular income, whose unsecured debts do not exceed $100,000, and who owe less than $350,000 on secured liabilities. It is available to business debtors, and has been used to achieve more favorable results than in Chapter 11 cases.

As of April 15, 1983, in Seattle, some 209 business cases had been filed under Chapter 13 of the Code. Of this number, 113 were still active, while the remainder were completed, tranferred to Chapter 7, or dismissed. Of the active cases, 63 (61%) were current in all payments; 34 (33%) were one month delinquent; 5 (5%) were two payments behind; and one case was 3 payments behind — a remarkable record. This success rate can readily be traced to certain key procedural differences between Chapter 11 and 13, to-wit:

- The Debtor in c.13 must file a plan with the petition.
- The c.13 Trustee takes over the Debtor's business at the time of filing.
- The c.13 Trustee works with the Debtor and his attorney to develop a feasible plan.
- Acceptance by creditors of the plan is not required in c.13.
- If the Debtor's c.13 plan is found to have been filed in good faith, it is confirmed.
- The c.13 Trustee reviews the Debtor's monthly financial statements.
- The c.13 Trustee collects and distributes the payments under the Debtor's plan.

In addition, Chapter 13 cases are self-supporting, while other bankruptcy proceedings cost taxpayers nationally over $100 million each year.

Chapter 13 jurisdiction should, therefore, be expanded. If jurisdiction were expanded simply to be available to corporations and partnerships, 102 of the Chapter 11 cases filed in Seattle could be transferred to Chapter 13.

If the limitation on debts in Chapter 13 cases were increased to $500,000 unsecured and $1,000,000 secured, all but 76 of the Chapter 11 cases filed in Seattle could be transferred to Chapter 13. Such expansion of Chapter 13 would result in savings to taxpayers, increased dividends to unsecured creditors, and reduced delay and expense to secured creditors in realizing on their security.

CONCLUSION

Statistics reveal serious weaknesses in the operation of Chapter 11 cases in the Western District of Washington. Absent broad Congressional reform of the Code, increased participation by creditors is necessary, along with increased awareness by debtors of their responsibilities in filing under Chapter 11. ☐

PREFERENCES IN BANKRUPTCY

Advising the Business Client

by **Michael G. Wickstead**

In today's economic climate, bankruptcy filings by credit customers are common and costly to business clients. Not only may accounts receivable never be collected, but the bankruptcy court may order the client to return money or property received on account from a bankruptcy customer because a previous transfer is deemed to be a "preference." Insult is thus added to injury and the client's losses increase.

The purpose of this article is to set out general rules and guidelines to be used in advising business clients how to avoid or defend against a bankruptcy trustee's demand for return of money or property alleged to have been received in a voidable preferential transfer. The discussion will focus upon "preferences," as governed by Section 547 of the Bankruptcy Code. Preference claims arising under Washington State Law (RCW 23.72; governing transfers recoverable by state court appointed receivers) will not be addressed, but may apply in some cases.

DEFINITION

In bankruptcy, actions to avoid preferential transfers are governed by 11 USC Section 547. A "preference" is defined in Section 547 (b) as follows:

Any transfer of property of the debtor
(1) to or for the benefit of a creditor;
(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;
(3) made while the debtor was insolvent;
(4) made on or within 90 days of filing the bankruptcy petition, or within 1 year of filing the bankruptcy petition if transfer was to or for an "insider" who had reasonable cause to believe the debtor was insolvent at the time of the transfer;
(5) that enables such creditor to receive more than it would have received absent that transfer in a Chapter 7 liquidation of the debtor.

For purposes of Section 547, the debtor is presumed to be insolvent during the 90 days prior to filing the bankruptcy petition. "Insolvent" and "insider" are narrowly defined terms (11 USC Section 101 [25] and [26]) and should be reviewed. In general, a debtor is "insolvent" if its debts exceed the fair value of its assets. "Insider" includes relatives of partners or individuals, directors, officers, or persons in control of a corporation. "Transfer" is broadly defined, at 11 USC Section 101 (41), to include all voluntary and involuntary modes of disposing of an interest in property and includes liens and security interests suffered or granted by the debtor in any of its property.

"Preference," as used in the Bankruptcy Code, is not restricted to the commonly understood meaning of gaining some special advantage over other creditors (compare RCW 23.72). A debtor may have paid some pre-bankruptcy bills when due and may have ignored others, without creating a "preference." On the other hand, as discussed later, normal course payment of bills on 46-day terms or longer may be a "preference" even though the debtor has paid all pre-bankruptcy bills when due.

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EXCEPTIONS

Section 547(c) describes certain categories of transfers which are not preferences for purposes of Section 547:

— a transfer intended by the debtor and creditor to be a contemporaneous exchange for new value given to the debtor, and which is in fact a substantially contemporaneous exchange;

— payment of a debt incurred in the ordinary course of business or financial affairs of the debtor and the transferee, made not later than 45 days after the debt is incurred, made in the ordinary course of business or financial affairs of the debtor and transferee, and made according to normal business terms;

— transfer of a purchase money security interest which is perfected within 10 days of the transfer;

— transfer to a creditor that thereafter gives new value to or for the benefit of the debtor, not secured by an otherwise unavoidable security interest and on account of which the debtor did not make an otherwise unavoidable transfer to or for the benefit of such creditor (for instance, when the debtor pays an existing debt in return for the advancement of additional or new credit);

— the grant of certain security interests in inventory or receivables; and

— the fixing of a statutory lien that is not avoidable under 11 USC Section 545. (Section 545 permits the perfection of a statutory lien, except a lien for rent, which could have been enforced under applicable non-bankruptcy law against a bona fide purchaser for value, following that purchase; such as the filing of a mechanic's or materialman's lien).

Section 547 also contains specific, complex rules regarding when a transfer occurs, especially relating to transfers of real property, perfection of a security interest, and transfers to secure reimbursement of a surety furnishing a bond to dissolve a voidable judicial lien.

PRACTICE POINTS

In light of the preference rules of Section 547, the legal advisor for businesses selling goods and services on credit should consider the following guidelines for his or her clients:

1. Sales to financially troubled customers should be for cash or cash equivalent to be paid at the time of sale.

2. Sales on unsecured credit should require payment to be made in less than 45 days from the date of delivery of the goods.

3. Purchase money security interests are enforceable, but must be perfected within 10 days of attachment of the security interest.

4. Grants of security interests by financially troubled customers for existing debts are usually voidable preferences if the transfer occurs within 90 days of commencement of a bankruptcy case. However, inventory flooring arrangements and other secured credit transactions are generally not challengeable as "preferences" as long as the security interests were perfected more than 90 days prior to commencement of the customer's bankruptcy case (but "improvement" of the secured creditor's position during the 90 days prior to bankruptcy may be a preference).

5. Creditors who are closely involved in the management or control of the debtor may be considered "insiders," in which case a 1-year preference period will be applicable.

6. Once amounts in the debtor's account have become more than 45 days past due, apply payments received to balances less than 45 days old before applying payments to older balances (assuming application of payments is not otherwise restricted by contract, regulation, or custom).

PRACTICE TIP:

In February, 1983, the Washington State Supreme Court ruled that a judgment lien does not attach to the excess value of homestead property prior to compliance with the valuation provisions of RCW 6.12.140- .280 (*Mahalko v. Arctic Trading Co., Inc.,* 99 Wn.2d.30(1983)).

If the judgment debtor were to commence bankruptcy proceedings prior to 90 days following completion of the valuation proceedings of RCW 6.12.140-.280, the judgment lien could be voided by the Bankruptcy Court as a preference.

Defending the attempt by a bankruptcy trustee or debtor in possession to recover an alleged voidable preference.

The lawyer who does not frequently practice in matters relating to bankruptcy should know that numerous defenses are available to a creditor who has allegedly received a voidable preference. These defenses may include the following:

1. Rebutting the presumption that the debtor was insolvent at the time of transfer.
2. Asserting that the transfer was a contemporaneous exchange for new value.
3. Asserting that the transfer was made within ordinary business terms (of creditor and debtor) and no more than 45 days after debt was incurred.

> **PRACTICE TIP:**
>
> ACME sells goods to Banko Co. on 60 days terms, with $5,000/month average sales. Banko Co. files bankruptcy. The trustee demands return of $15,000 paid by Banko Co. to ACME during 90 days prior to bankruptcy. ACME refuses and demands payment of $10,000 account.
>
> **Who wins?**
>
> Bankruptcy Court rules that payments received by ACME during 90 days prior to Banko Co.'s bankruptcy are voidable preferences and orders ACME to pay $15,000 to the trustee.
>
> Now, ACME is out $25,000!

4. Asserting that payment received and applied to debts more than 45 days old caused the creditor to grant new credit (new value).
5. Asserting that the transfer received was no more than what the creditor would have received in a Chapter 7 liquidation.

Note also that preferential transfers governed by Section 547 are "voidable," not "void." The trustee or debtor in possession must bring a motion to set aside the transfer as a "preference" and to obtain an order requiring the transferee to turn over the property or interest received to the debtor's estate (Section 550).

SUMMARY

Principles set out in Section 547 of the Bankruptcy Code should be considered in formulating a business client's credit policies. "Preferences" can often be avoided if credit terms to financially troubled customers require payment in less than 45 days and if security arrangements are perfected prior to the extension of credit.

If a business client does receive a demand from a bankruptcy trustee for return of money or other property claimed to have been received in a preferential transfer from a customer now in bankruptcy proceedings, defenses are available and should be asserted to avoid greater losses for that client. □

WASHINGTON STATE BAR NEWSLINE

The Board's Work

by **Steven A. Reisler**

BOARD BROADENS ADMISSION TO PRACTICE RULES

OLYMPIA, January 13 -- Faced with a collection of outdated and sometimes contradictory admission to practice rules, the Board of Governors has established new guidelines for out-of-state lawyers who wish to sit for the Washington State Bar Examination.

The Board specifically considered whether non-resident practicing attorneys who graduated from non-ABA approved law schools may apply for membership in the WSBA. Noting that 34 states have some degree of professional reciprocity, King County Governor Bill Dwyer moved that the Board approve the following language for a "lawyer applicant" rule:

> A person who meets all the qualifications of a general applicant except graduation from an approved law school or completion of the law clerk program in this state will be eligible to take the bar examination as a "lawyer applicant" if:
>
> a) he or she has engaged in the active practice of law for at least three years; or
>
> b) he or she has held a full-time position as a teacher of law in a state or territory of the United States for at least three years; or
>
> c) he or she has held a full-time judicial position in a court of record of any state or territory of the United States for at least three years.

By a 5-4 vote, paragraph b) of the motion was amended so that teachers of law sitting for the bar examination must have taught at an approved law school. The motion, as amended, carried 8-2. Fourth District Governor Don Bond and Second District Governor Ted Zylstra opposed the motion because they viewed the three-year practice requirement as too short for bar applicants who have not graduated from approved law schools.

In a related matter, King County Governor Tom Loftus moved that the Board retain the controversial "law clerk" program by which persons may read for the bar without attending law school. Loftus championed the program because, he said, we could otherwise become an elitist profession in a country where everyone should have the opportunity to pull him or herself up by the bootstraps.

Sixth District Governor Pat Comfort did not disagree with Loftus, but he was concerned about slack in the program, specifically in the degree to which law clerk sponsors monitor their charges. Governor Zylstra commented that "this is a grand opportunity...to decide whether we are going to have the highest standards or whether we are going to compromise. We would not be labeled as 'elitist' because we state that to be a lawyer you have to go to law school. That is no less reasonable than to require doctors to attend medical school."

Eighth District Governor George Kargianis spoke for the group when he observed that the Bar's real concern was that whoever sits for the bar exam should have no less than the "equivalent" of a law school education.

The Board ultimately voted unanimously to retain the law clerk program and reserved for later discussion how the program should be restructured.

LEGISLATIVE POSITIONS

The Board of Governors took the following positions on legislation pending in or to be introduced before the 1984 Washington legislature:

1. Referred to the legislative committee proposed legislation which would make judgement liens attach from the date the judgement is recorded with the auditor of the county in which realty is located (10-0);

2. Endorsed an amendment to the law pertaining to deeds of trust such that notice of sale need not be given to senior encumbrancers (8-2);

3. Opposed the principle of expanding evidentiary "privileged communications" to any group until after conducting a thorough study of the subject generally. The Board also specifically referred to the Trial Practice Section's proposed legislation which would extend a communications privilege to registered nurses (10-0); and

4. Referred to the Court Rules and Procedures Committee proposed legislation which would eliminate the automatic filing of interrogatories and the necessity for reporters to indefinitely retain deposition transcripts (10-0).

OTHER WORK

MEETING WITH THURSTON/MASON BAR -- Addressing a combined meeting of the Thurston and Mason County Bar Associations, WSBA President Bob Redman told the assembled lawyers that the local and state bar associations must stay in touch with one another. Reiterating his administration's theme of communication and cooperation, Redman urged Washington's lawyers to work for their common objectives and to make their opinions heard on such topics as IOLTA and judicial salaries.

Weeks before, President Redman had circulated a letter to the Bar advising that the WSBA had filed an amicus brief in the controversial case of Short v. Demopolis currently pending before the State Supreme Court. The case concerns the applicability of the Consumer Protection Act to the legal profession. The WSBA's position, according to Redman, is that the Court must consider its own jurisdiction over the practice of law before deciding the issue.

ABA MID-WINTER MEETING -- By unanimous vote, the Board sent an uninstructed Washington delegation to the ABA's mid-winter meeting.

THE NEXT MEETINGS OF THE BOARD OF GOVERNORS WILL BE:

February 10 & 11 -- Executive Inn, Fife

March 16 & 17 -- Red Lion, Pasco

April 13 & 14 -- Laurel Point Inn, Victoria, B. C.

General Meetings of the Board of Governors are open to the Bar.

Can Bankruptcy Take a Byte Out of Your Practice?

by **Michael Garrison**
and **Michael Dunlop**

The answer to this question is emphatically "YES." Many a company has its financial lifeline attached to both its computer system and its cash flow.

Because of the recent deep recession, companies have seen cash reserves so severely depleted that any slight deviation can spell disaster. Banks have reduced the amounts that they will lend, and suppliers have shortened their payment requirements while customers are taking longer to pay invoices. Businesses examine their operating expenses to see how they might be reduced, hoping to improve cash flow. Office automation is frequently an option selected.

Companies are enticed by the prospect of a computer system which will allow them to reduce office staff. They are persuaded by overzealous salespeople that the computer will reduce inventories, rein-in errant accounts receivable, and otherwise improve cash flow. The flip side of the coin is often ignored.

A computer system is probably the single largest capital expenditure a small company can make. Nonetheless, businesspeople rely upon their own limited expertise in negotiating, contracting and implementing the new system. As a result, contingencies, disputes over costs not anticipated, and general performance assurances are seldom incorporated within the contract documents.

Recourse for non-performance is normally a dollar short and a day late. This problem can be exacerbated by using third-party financing, where the vendor is usually paid by the lending institution before delivery is made.

When the vendor has not yet been paid, one of the few methods by which performance can be insured is withholding payment (typically 70% of the total purchase price). If on the front end, the vendor recognizes that the quote given for the system is subject to the user's satisfaction with the installation before a substantial portion of the contract price will be paid, there is a decreased possibility that the user will experience "installation surprise."

If, however, the vendor has already been paid in full, he has no incentive to avoid underquoting the software costs at $10,000, and subsequently advising the user that an additional $40,000 will have to be expended for the system to work at the level the user originally envisioned. As the software changes, often disk space, memory, and the number of terminals must also be expanded. The system price may jump to double the original price with no greater capability achieved, and the company may be faced with either spending the additional capital to complete the installation, or seeking recourse against the vendor. The net result can be that the automation brought in to improve cash flow causes financial ruin.

Similarly, computer problems can tie up cash by scrambling a working acocunting system so badly that it is the death knell to an otherwise healthy company.

Imagine a dentist who has been using an outside service bureau for billing (not unlike some law firms). He is sold an in-house computer with the justification that he can avoid the volume-sensitive incremental charges levied by the bureau. To a growing business, this seems to make a lot of sense. What he does not anticipate is that the accounts receivable application will erroneously post payments received to accounts that have not actually been paid! The errant postings become so bad that the business cannot reconcile the disparity. The dentist experiences loss of reputation and a drastically reduced cash flow, and is ultimately forced to seek protection from creditors in bankruptcy.

During the course of bankruptcy in one such case, an adversary complaint was filed, and a judgement obtained against the sellers of the computer system. This can be small compensation, however, for the severe disruption caused by a computer system.

The automation lifeline to operations efficiency and reduced manpower requirements can become the "weight" that sinks the business. Counsel must advise his client that a thorough review and cost analysis be undertaken before any significant step is taken to improve cash flow.

If, after all possibilities are explored, the decision is made to automate, it is incumbent upon counsel to advise the client of the need for strong contract documents which put the client in at least an equal position with the vendor. Escrow accounts for payment upon satisfaction, written specifications, and time frames for installation should be obtained during the contract negotiation phase. Procedures for problem resolution and for contract modification (as when the software sold cannot be provided in the time frame agreed upon) should be sought. Provisions should be made for response time for service calls.

Finally, a method of dispute resolution should be incorporated which allows the client to continue to use the system while repairs are being made to the hardware. The client cannot afford to have his "lifeline" down for an appreciable period of time (one day or more). If this should occur, the

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***Michael Dunlop**, a business consultant with Dunlop & Oleson in Bellevue, has assisted in the contracting and implementation of some 100 computer systems, and has provided management and financial advice to distressed companies throughout the Pacific Northwest.*

vendor must be prepared to provide a replacement system while the original system is being worked on. It is better to have the vendor resolve the problem on his time rather than on the client's time.

While automation may have a radiant attraction, its sparkle fades if the panacea becomes, instead, an even larger problem. The risks of computer automation must be balanced against the possible benefits to be derived. A computer may be used effectively to manage cash flow; however, it is but *one* tool available, and given the risks, should be carefully considered. Failure to do so can result in a crash course in bankruptcy law.

A NEW, MAJOR PUBLICATION

Washington Partnership Law & Practice Handbook

by **John M. Redenbaugh**
Asst. Director of CLE

The WASHINGTON PARTNERSHIP LAW AND PRACTICE HANDBOOK will be released soon and made available for the first time at introductory CLE seminars planned for later this spring. This newest major publication from the Washington State Bar Association will become another valuable addition to library shelves across the state.

A separate brochure describing the *Handbook* introductory seminars, presentation dates, and registration information will be mailed soon to all Washington attorneys. At the conclusion of the final seminar presentation, the *Washington Partnership Law and Practice Handbook* will be available for sale to those unable to attend the introductory seminars.

A short excerpt from Chapter One of the *Handbook* explains its purpose:

> The major objective of the *Washington Partnership Law and Practice Handbook* (the *"Handbook"*) is to provide in a single volume a book on partnership law that will be useful to Washington attorneys with varying amounts of experience. It is, in some respects, similar to a hornbook on the Washington law of general and limited partnerships in that the substantive law of partnerships is treated in a comprehensive fashion with citations to controlling statutes and cases. But it contains more than a discussion of substantive law. The reader will find useful practice tips, commentary, sample agreements and discussion of tax issues. Also, as an aid to the reader, cross references have been inserted in various sections to guide the user to additional discussion.

The *Handbook* has been designed so that it is divided into nine major parts "Introduction" (Chapters 1 and 2); "Substantive Law of General Partnerships" (Chapters 3 through 10); "General Partnership Forms" (Chapters 11 through 13); "Substantive Law of Limited Partnerships" (Chapters 14 through 22); "Limited Partnership Forms" (Chapters 23 and 24); "Accounting Bankruptcy and Securities Laws Aspects" (Chapters 25 through 27); "Family Partnerships" (Chapter 28); "Taxation of Partnership Operations" (Chapter 29); and "Selected Bibliography of Partnership Law" (Chapter 30).

Helpful commentaries relating to certain tax matters have been placed in portions of the *Handbook* to highlight various significant tax issues. These are identified by the use of boldface headings which read "Tax Comment."

An enormous amount of time has been contributed to this project by many individuals. The authors and editors who were involved in the production of the *Handbook* include: **Greg F. Adams, Steven W. Andreasen, James S. Black, Jr., Jerry L. Clark, Laverne L. Dotson, Gary E. Fluhrer, Robert E. Giles, John W. Hanley, Jr., Dan P. Hungate, James M. Jerge, Robert D. Kaplan, James A. Krueger, Walter M. Maas III, Terrence P. Murphy, William G. Pusch, Bruce M. Pym, John M. Redenbaugh, Gerald A. Rein, M. Gail Ryder, Thomas A. Sterken, Roger M. Tolbert, William E. Van Valkenberg, Joseph P. Whitford,** and **Andrew H. Zuccotti.**

Be watching for your copy of the brochure describing the upcoming seminar introducing the *Washington Partnership Law and Practice Handbook*. A subsequent CLE Clearinghouse column will address further information about the introductory seminars.

Approved Continuing Legal Education Courses

WASHINGTON STATE BAR ASSOCIATION
Medical Malpractice
February 3, 1984: Spokane 4.00
February 10, 1984: Yakima 4.00
February 17, 1984: Seattle 4.00
Making a Living in Family Law
February 10, 1984: Seattle (Downtown) 7.00
February 17, 1984: Spokane 7.00
February 24, 1984: Seattle (Sea-Tac) 7.00
Workers' Compensation Update 1984
March 2, 1984: Spokane 4.25
March 9, 1984: Olympia 4.25
March 16, 1984: Seattle 4.25
Getting Ahead in Law Practice in the 80s
(Co-Sponsored with The Institute on Law Office Management)
March 2, 1984: Seattle 6.50
Was Orwell Right? Constitutional Perspectives on Criminal Procedure
March 23, 1984: Spokane 6.50
March 30, 1984: Seattle 6.50
Commercial Real Estate
April 6, 1984: Spokane 6.00
April 13, 1984: Seattle 6.00

ENVIRONMENTAL LAW
Oregon Land Use: Promoting Growth and Preservation in the Next Decade
February 17-18, 1984: Portland, Oregon 6.75

ESTATE PLANNING COUNCIL OF PORTLAND, INC. & NORTHWESTERN SCHOOL OF LAW, LEWIS & CLARK COLLEGE
13th Annual Estate Planning Seminar
February 4, 1984: Jantzen Beach, Oregon 7.00

Caselaw Capsules

Notes From the Academy

Edited by **Professor William B. Stoebuck**
University of Washington School of Law

CREDITOR—DEBTOR. In connection with execution sale on judgment lien, held, inter alia: (a) Posting of notice of sale on door of premises gave constitutionally sufficient notice when judgment debtor admitted reading it. (b) By statute, order of confirmation cures all non-jurisdictional irregularities. Equity will not set aside sale, even though sale price was less than two per cent of market value, when purchaser at sale has conveyed to bona fide purchaser. *Miebach v. Colasurdo,* 35 Wash. App. 803, 670 P.2d 276 (1983).

— *M. D. Rombauer*

CRIMINAL LAW AND PROCEDURE. (1) Recent decision in *State v. McCullum,* 98 Wn.2d 484, 656 P.2d 1064 (1983), holding that state must prove absence of self-defense beyond reasonable doubt, is not retroactive. *State v. Takacs,* 35 Wn. App. 914, 671 P.2d 263 (1983). (2) Defendant is not entitled to examine medical records of a witness, inspected by trial court in camera pursuant to claim of physician-patient privilege, where court has determined that records are privileged and would not be helpful to defendant. *State v. Mines,* 35 Wn. App. 932, 671 P.2d 273 (1983). (3) Juvenile who pleaded guilty in reliance on erroneous statement of possible sentencing range is entitled to withdraw plea. However, absent plea bargain, he cannot require court to sentence him to term within range he was informed applied to his offense. *State v. Elmore,* 36 Wn. App. 38, 671 P.2d 292 (1983).

— *G. R. Nock*

FAMILY LAW. (1) Washington's recognition of another state's child custody decree, which asserted jurisdiction under "significant connection" provision of UCCJA, is required by RCW 26.27.130. Such recognition does not violate due process of absent parent who was notified but over whom the decreeing state had no *in personam* jurisdiction. *Hudson v. Hudson,* 35 Wn. App. 822, 670 P.2d 287 (1983). (2) Trial court finding of "significant connection," not assigned as error on appeal, established jurisdiction to determine child custody under RCW 26.27.030(1)(b), the "significant-connection" provision of UCCJA, even though mother and child had departed "home state" only a month earlier. *Marriage of Steadman,* 36 Wn. App. 77 (1983).

— *L. V. Rieke*

LOCAL GOVERNMENT. Assessment for local improvement district benefits is properly overturned when city fails to offer evidence to rebut expert testimony that there is no special benefit to assessed land or land proximate to it. City may not rely on presumption of benefit in this situation. *In re Indian Trail Trunk Sewer System,* 35 Wn. App. 840, 670 P.2d 675 (1983).

— *J. M. Vache*

REAL PROPERTY. (1) (a) Under authority of Wash. Const., Art. 8, § 8 (Amendment 45), it is public use for port district to condemn private land and convey it to another private owner for industrial development. (b) Public use is present if port district condemns land pursuant to ongoing plan for industrial district, even though district has no specific plans for the particular parcel. *Appeal of Chiyoda Chemical Eng. & Constr. Co.,* 35 Wn. App. 785, 670 P.2d 663 (1983). (2) Deed that calls meander line of Government survey as one boundary conveys to water unless there is clear evidence parties intended to convey only to meander line. *Thomas v. Nelson,* 35 Wn. App. 868, 670 P.2d 682 (1983).

— *W. B. Stoebuck*

LAW-RELATED EDUCATION COMMITTEE

A Huge and Important Task

by **David L. Broom**

There is a recent groundswell of support statewide for organized programs to encourage civil and criminal law-related education in our schools and for adults. Having lofty goals and an important mission, the State Bar's Law-Related Education Committee, chaired by Everett attorney R. Michael Kight, is working to increase the quality and quantity of law-related education (LRE) in Washington.

The committee recently surveyed county bar presidents to find out about local LRE activities and lawyers involved in LRE, and is now developing a standard of minimum curriculum content for effective citizenship competency in law-related matters, aimed at the high school level. Members will also participate in an LRE in-service training workshop for teachers to be held in Spokane in March.

The LRE Committee meets regularly with the Law-Related/Citizenship Education Coalition of Washington, chaired by Richard Janvier of the University of Washington Center for Law & Justice. This active force of educators, police officers, lawyers, judges and others is determined to effectively promote law-related education at all levels in Washington.

Through the support of the State Bar Association, the Coalition publishes a statewide newsletter, *LRE ACCESS,* which carries news of current events in law-related education and teaching resources that are available. The newsletter is edited by Bar Public Affairs staffer Karin Foster-Garrison, who is also managing editor for the *Bar News.*

In Spokane, a Law-Related Education Committee has been formed, chaired by Superior Court Judge George T. Shields. The committee includes judges, the police chief, prosecutors, attorneys, school administrators, and professionals in related areas. Current projects of the Spokane Committee include:

David L. Broom *is an attorney with the Spokane firm of Paine, Hamblen, Coffin & Brooke.*

a three-day module with in-class instruction by attorneys and a courthouse visit; a library of videotape materials for use by school districts through district-wide television; courthouse tours; moot court presentations; and participation in a March in-service training workshop for teachers, joined by members of the State Bar LRE Committee, the LR/CE Coalition, and others.

The key to effective improvement in law-related education seems to be introducing LRE into current curricula. Although school administrators are bombarded by various special-interest groups with requests that curricula be expanded to encompass many different subjects, we are encouraged by the positive reception given law-related education by educators. It is readily apparent that LRE is not just another sortie upon existing curricula. Success will come as we assist those educators in filtering and then dovetailing into existing curricula the best of mountains of written and film materials produced over the years. Given resources and time, both the state and local groups pursuing LRE should have a high measure of success.

This is a huge and important task, and is certainly worthy of strong support from all attorneys, regardless of political persuasion or philosophical bent.

Today's Constitution and You

by **Ronald M. Gould**

"Today's Constitution and You" is a long-term project designed to increase the public's awareness of the United States Constitution as we approach its upcoming bicentennial in 1987. The project's objective is to teach high school students and adults more about the origin of the Constitution, how it has evolved, and how it applies to current issues.

At its July, 1983, meeting, the WSBA Board of Governors voted 8 to ● to ". . .express its support for and become a sponsor of the 'Today's Constitution and You' project, though not presently making a financial commitment thereto," referring the matter to the Law-Related Education Committee "for study as to appropriate means to implement Association participation in the project."

"Today's Constitution and You" is also sponsored by Metrocenter YMCA in Seattle, which administers the project, and by the Seattle-King County Bar Association, the SKCBA's Young Lawyers, Continuing Education at the University of Washington, the YMCA's Youth & Government program, and the Seattle Public Library. The project is also supported in part by grants from the Washington Commission for the Humanities and the National Endowment for the Humanities.

Last year's project activities included a spring debate series co-sponsored by the SKCBA Young Lawyers; an adult education retreat; and a draft curriculum (written by attorney Margaret Fisher) for educating high school students about constitutional issues.

Activities planned for 1984 include another spring debate series (coordinated by attorney Jim Lobsenz); an essay competition for students; a series of newspaper articles with analyses of current constitutional issues; a program to encourage high school voter registration; and implementation of the high school curriculum, and teacher training sessions in selected parts of the state.

Many Washington lawyers have donated time and energy to this project. A group of attorneys chaired by Dale Ramerman is planning a CLE program on constitutional issues for the State Bar's 1984 Annual Meeting. The State Bar Young Lawyers' Committee on Law-Related Education, chaired by Chuck Snyder, is helping to implement the project statewide. Attorney Jerry Hillis has aided the project by an effort to gain funding from Seattle law firms.

On behalf of those working on the project, in the WSBA and otherwise, I invite your participation. I encourage those of you who are interested to contact the attorneys mentioned, call me at (206)682-8770, or call the Director of the project, Robin Anderson of the Metrocenter YMCA, at (206)382-5013.

It is essential to implement this project statewide. Thank you for your support of this project.

***Ronald M. Gould** is an attorney with the Seattle firm of Perkins, Coie, Stone, Olsen & Williams.*

Around the State

Whatcom County

by MICK MOYNIHAN

Our new county bar association president is **Diane Emmons**, who succeeds herself inasmuch as she had to fill the unexpired term of **Kevin Downes**, who decided that practicing law in California is preferable to Bellingham. The new vice-president and president-elect is **Dean Brett**, with **Linda Mann** filling the positions of secretary and treasurer, she thinks.

Dan Warner, of Warner & Resick, has decided to retire from the practice of law and devote his talents to teaching at the University, while his partner, **Tom Resick**, recently entered the hospital for back surgery. And while we are on such a rosy subject, it should be noted that **Mike Walker** has also enjoyed a few days in the hospital for similar surgery.

Since our last report, Whatcom County has adopted a Public Defender system, with **Jon Ostlund** tagged as the new director. Also from the Courthouse, the Superior Court judges have gone to one full-time Commissioner, with formerly part-time Commissioner **Frank Morrow** filling the bill.

Jim Waters, our much-traveled attorney, on his recent visit to Bellingham, related some of the experiences of his travels in Russia. By now, Jim should have visited all of the major countries of the world, but I am sure that he will be able to relate some new journey next year at this time.

IN MEMORIAM

Seattle attorney **Ronald A. Murphy** died December 29 at age 53. A 1955 Stanford University Law School graduate, Mr. Murphy was admitted to practice in California and Washington. He was a partner in the Seattle law firm of Ogden, Ogden & Murphy, and a vice-president of the United States Brewers Association. Long active in business, government and community affairs, Mr. Murphy served on the Governor's Committee on the Right of Privacy, the board of directors of Allied Arts of Seattle, and the board of governors of the Washington Athletic Club, and was chairman of Industry for a Quality Environment.

Vancouver attorney **Walter H. Robinson** died November 17 at age 74. A graduate of Swarthmore College, Pennsylvania, and Harvard University Law School, he first practiced law in Philadelphia, then moved to Vancouver over 35 years ago to establish the firm of Robinson, Morse, Landerholm, Lansverk, Memovich, Whitesides, Marsh and Wilkinson. A lifelong sailing enthusiast, Mr. Robinson served as an officer in the Navy during World War II, and as a state delegate to several national Republican conventions. He was admitted to the Washington Bar in 1948.

Retired **Judge Bartlett Rummel**, who served for nearly 24 years on the Pierce County Superior Court from 1949 to 1972, died November 6 at age 82. While on the bench, Judge Rummel was instrumental in seeing that Division III of the State Court of Appeals was located in Tacoma, and also established a separate criminal law department in Pierce County Superior Court. An avid sportsman, he was past president of the National Rifle Association, and chairman of the 1968 U.S. Olympic Games Committee on Shooting. He received his J.D. from the University of Washington in 1924, and was a member of the Bar for nearly 60 years.

DISCIPLINE

Censured & Reprimanded

Seattle attorney **Robert G. Maslan** received a Formal Reprimand before the Board of Governors on December 16, 1983, pursuant to a stipulation for discipline.

As set forth in the stipulation, as attorney for an estate, Mr. Maslan received substantial estate funds, but delayed disbursements to the heirs for periods as long as 14 months. Mr. Maslan also did not deposit the funds in an interest-bearing trust account while holding them, causing the heirs to lose approximately $2,800 of interest. This conduct was agreed to be in violation of DR 6-101 (A) (3), DR 7-101(A) (2) and (A) (3), and DR 9-102(B) (3) and (B) (4).

In addition, Mr. Maslan was censured for failure to cooperate with the Bar investigation of this matter over a four-month period, in violation of RLD 1.1(j).

Reprimanded

Redmond attorney **Gordon L. Creighton** received a Formal Reprimand from the Board of Governors on December 17, 1983, pursuant to a stipulation for discipline.

As set forth in the stipulation, Mr. Creighton signed his client's name to a pleading, in handwriting intended to resemble hers, and then in his capacity as a notary falsely indicated he had witnessed the client's signature. He then filed this document with the court. This conduct was agreed to be in violation of DR 1-102(A) (4), DR 1-102(A) (5) and DR 1-102(A) (6).

Re: Tacoma Federal Court Jury Instructions

The following procedures are to be followed in the submission of jury instructions of cases assigned to Federal Judge Jack E. Tanner:

Requested jury instructions shall be on 8-1/2" x 11" numbered pleading paper bearing no firm name. Each party shall prepare three (3) packets, all to be filed *at the same time* with the Clerk of the Court. These instructions shall be as follows:

Package #1 — Proposed instructions shall be headed "Plaintiff's/Defendant's Instruction No. ______," and shall be numbered consecutively. Separate pages captioned "Citations to Authority" shall be included to inform the Court of the authority for each requested instruction.

Package #2 — A photocopy of Package #1.

Package #3 — This package of proposed instructions shall be headed "Instruction No. ______." It *shall not be numbered,* and shall make no reference to Plaintiff or Defendant. Four (4) copies of Package #3 shall be submitted for filing with the Clerk.

Neukom Elected Secretary of ABA

William H. Neukom, of the Seattle firm of Shidler, McBroom & Gates, was recently elected secretary of the American Bar Association at its annual meeting in Atlanta, Georgia. Neukom had served as assistant secretary for the ABA since 1979.

As secretary, Neukom's duties will include: interpreting the association's Constitution, Bylaws, policies, and procedures; serving as an advisor on parliamentary matters to the House of Delegates and the Board of Governors; serving as a voting member of the House, the Board and the Board's Executive Committee; and supervising official ABA communications and records.

A graduate of Dartmouth College and Stanford Law School, Neukom was admitted to practice in both Washington and California in 1968. He has since served on numerous committees and task forces of the state and local bar, among them the WSBA's Committee on the Organization and Government of the Bar, and the SKCBA's Organization and Planning Committee (as chairman), Indigent Defense Services Task Force, and Seattle-King County Legal Aid Bureau. For the ABA, he has also served as a Delegate to the House of Delegates, Chairman of the Young Lawyers Division, and member of the Commission on Correctional Facilities and Services and the Executive Council of the Section of Individual Rights and Responsibilities.

Active in civic affairs, Neukom is legal counsel for the Seattle Urban League and Neighborhood House, a Trustee of Planned Parenthood of Seattle-King County, and a member of the Community Affairs Committee of United Way of King County. He has also been legal counsel for the Coalition for an Independent Redistricting Commission and the Washington State Coalition for Open Government.

Seattle Federal Court Re-constitutes Panels

Attorneys interested in representing indigent defendants in federal court in Seattle may now apply for panels administered by the U.S. District Court.

There is a "felony panel" and a "misdemeanor panel," each consisting of thirty attorneys. Appointments and compensation are governed by the Criminal Justice Act, 18 U.S.C. §3006A, and by the District CJA Plan and Rules for Seattle Panels.

Under its rules, the court re-constitutes the panels every two years. Attorneys currently serving on the panels have also been asked if they wish to continue.

For a letter setting forth full details, and/or an application form, contact the office of U.S. Magistrate John L. Weinberg, (206)442-5774. Applications must be received not later than February 29, 1984.

PROFESSIONAL

CLASSIFIED

For Sale: One set of Am. Jur. Legal Forms ($500); Am. Jur. Pleadings and Practices ($600); Am. Jur. Proof of Facts 1st ($450); and Am. Jur. Proof of Facts 2d ($600). All good condition. Call Ron Williams at (208)383-2918.

Lanier dictation machines and transcribers for sale: four Edisettes, Model II; three Edisettes Model 1977. Good condition, regularly maintained. Asking $275 per machine. Call (206)383-3791, Peggy.

For Sale: Complete set USCA, missing only pocket parts for past 6 months, no reasonable offer refused. Abbott, Lant, Fleeson & Nichols, 215 Mason Bldg., Bellingham, (206)733-5810.

For Sale: West's Washington Reporter, Washington Digest and Bancroft-Whitney Washington Court Rules annotated, all current. Sanyo dictaphone/transcriber, Canon NP200 copier, 36" x 72" oak table, three 32" x 18" x 72" oak wall units. All items in perfect condition. Call Jim Hopkins evenings (206) 821-4584.

Wanted: Used Washington 1st, full set. Call Bob Beckerman at (206)682-2616.

ALR's 2nd, 3rd & 4th: Completely up to date and like new. Please call (206) 321-6977.

For Sale by the Legal Aid Society of San Mateo County, 298 Fuller Street, Redwood City, CA, (415)365-8522: *Current*—Cal. Practice with Forms, $500; California Digest, $400; California Digest, 2nd, $1,000; Moore's Manual, Federal Practice & Procedure, $65; Moore's Manual, Federal Forms, $100; Immigration Law and Procedure, $300; *Not Current*—California Forms of Pleading and Practice through Release No. 46 (1981), $600; California Legal Forms through May, 1981, $450.

Sound View Office, excellent downtown location, Pacific Building, one block from Courthouse. Secretarial space available and included. Call (206) 621-8500.

Pacific Building: Office available for fourth attorney. Secretary, receptionist and other amenities provided. Possible referrals. (206)682-7144.

Office Sharing arrangement available in Kobe Park Building. Handsomely restored brick building appearing in National Historic Register. Minutes from King County and U.S. Courthouses. Includes single spacious office, use of receptionist, secretary, word processing equipment, conference room, copier, and many other amenities. Ample parking. Call (206)587-0066.

Office Space: For one or two attorneys, Norton Building, telephones, library, secretaries, copy machine, word processing, etc. available. Price negotiable. (206)587-6224.

First class view office space available in 1111 Third Avenue Building. Conference room, library, receptionist, copy equipment and other amenities. Call (206)621-1818.

Office Sharing: Private office in two-person office. Reception area, secretarial space, library. (206)622-1340. 687 Dexter Horton Bldg., Seattle. $275 per month, plus telephone expense.

Sea-First Office: One spacious office in suite of 5 available, library, conference room, telephone, and copies included. Outstanding view from 38th floor. (206) 623-8388.

Share plush, luxurious offices with Bellevue CPA firm. Expenses shared: copier, postage meter, telephones, large reception area and extensive tax library. For more information, call (206)827-3355.

Attractive Office Space: Tukwila/Southcenter, ground floor, free parking, carpeted, library, receptionist/typist, answering service, photocopier, telephone, opposite golf course, 15 minutes Seattle, 2 blocks I-5, three-quarter mile 405. Contact Don Desonier, (206) 433-8808.

Expanding 18-lawyer Seattle firm with attractive space and strong support staff is interested in merger with three-to-five lawyer business law firm. Box 198, WSBA.

Anchorage, Alaska law firm, branch office of a large Pacific Northwest law firm, is seeking an attorney with 3-7 years experience in business/commercial/corporate practice. Emphasis on representation of small and medium-size businesses and commercial ventures. Please send inquiries to: P.O. Box 2760-366, Anchorage, Alaska 99510.

Ogden, Ogden & Murphy, a Seattle law firm with a large and active municipal practice, seeks an associate with a broad range of municipal experience. Three to five years experience preferred. Applicant must have strong academic credentials. Send resume and references to Larry C. Martin, Ogden, Ogden & Murphy, 2300 Westin Building, 2001 Sixth Avenue, Seattle, Washington 98121.

Bank Attorney: Excellent opportunity with prominent Seattle-area firm to represent expanding bank and other commercial interests. At least three years' experience in bank, tax and securities law is preferred. Reply to Box 212, WSBA.

Product liability defense attorneys needed by major Seattle law firm. Contract attorneys for specialized work to start as soon as possible. Good academic background desired and some experience preferred. Reply in confidence to Box 205, WSBA.

Seattle firm with a general practice specializing in litigation seeks experienced attorney with general business practice. Reply to Box 197, WSBA.

Attorney: Expanding regional business and commercial law firm with financial industry emphasis seeks attorney to join its Tacoma-based staff. Excellent potential for the right individual to develop within a dynamic financial institutions practice. Superior academic credentials and 2-5 years of securities and commercial experience required. Send replies to Box 211, WSBA.

Securities and Corporate attorney, presently senior securities and corporate attorney in 50-person firm, wishes to join growth-oriented Seattle firm or corporation. Thirteen years experience (SEC, in-house corporate and law firm). Member WSBA. Reply to Box 210, WSBA.

Lawyer's Overload: Word Processing/Transcribing. IBM displaywriter. Pick up and delivery. #209 Lyon Bldg., Seattle, WA 98104. (206)682-4854.

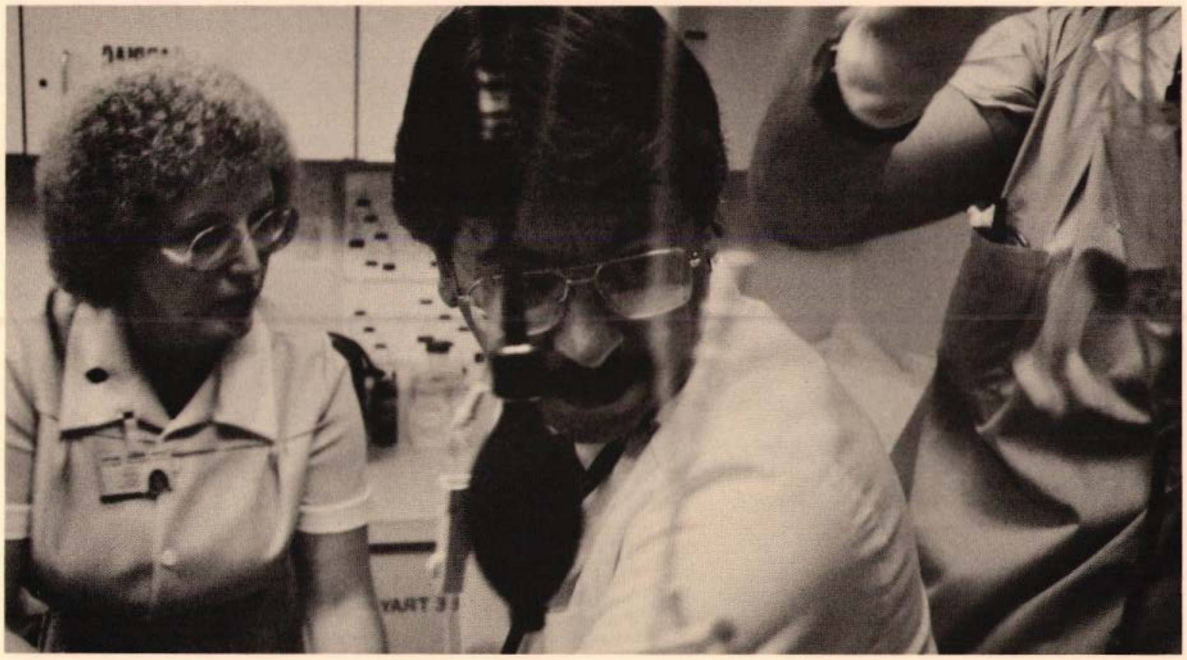
Strieck & Associates, specialized security services. The West's leading specialists in labor disputes. Claims investigations, accident reconstruction, limousine service, bodyguards (trained in weapons and martial arts), covert surveillance. Seattle, WA (206)282-1993.

Legal Research and Writing: David Mark, J.D., magna cum laude, Cornell Law School; editor, *Cornell Law Review*; bar admissions, Ohio (1978) and Washington (1983). (206)323-8586 (Seattle).

Health Care Consultants: Medical records: compilation; indexing; summary. Malpractice deposition summaries. J.L. Johnson, BSN, RN, Pacific Northwest Office, 3892 Rama Drive E., Port Orchard, WA 98366.

Underinsured Motorist arbitration? Select your arbitrator(s) through Washington Arbitration Services, an impartial dispute-settlement organization. Civil arbitration services available statewide. Very low fees. Sample arbitration clauses and arbitration contracts furnished upon request. For more information, contact the Washington Arbitration office nearest you: *State Headquarters; Seattle/Everett:* Michael S. Gillie, P.O. Box 70307, Seattle, 98107 (206)285-4885; *Spokane:* Robert F. Phillips, (509)326-3502; *Bellingham:* Daniel M. Warner, (206)671-9212; *Olympia:* John W. Hayden, Jr., (206)456-3810; *Tacoma:* Mary Jo Manzanares, (206)473-3090.

Anyone having knowledge of a will of Rodney Keith Henry, please contact Ralph C. Sipprell, Attorney at Law, 421 S.W. Sixth Avenue, Portland, OR 97204, Telephone (503)226-1162, or Daniel G. Marsh, Attorney at Law, 1220 Main Street, Suite 475, P.O. Box 54, Vancouver, WA 98666, Telephone (206)695-7909.



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