

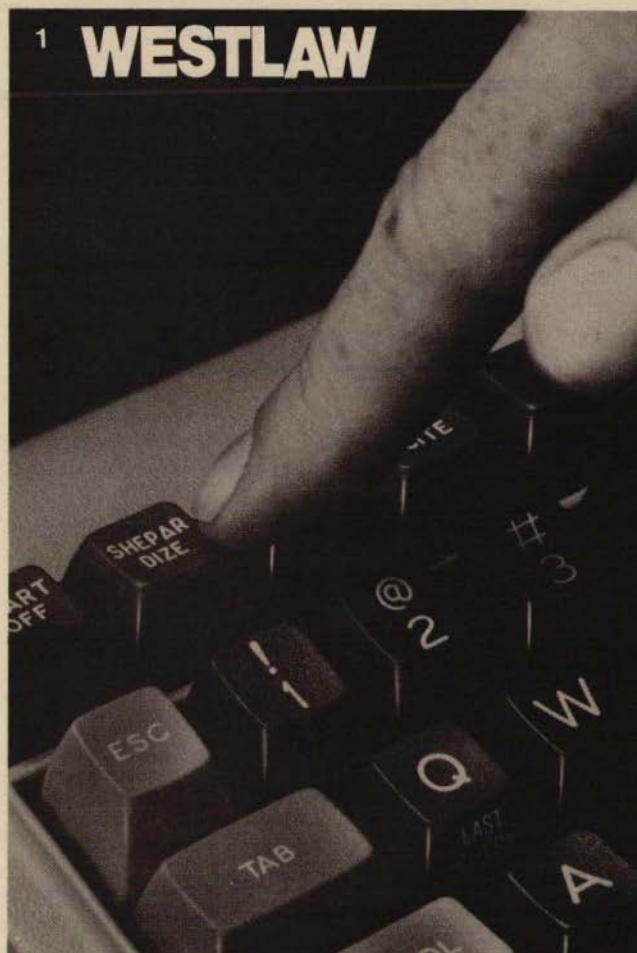
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Volume 38, No. 9, September 1984



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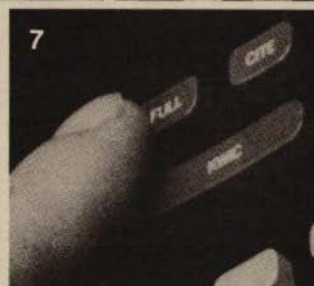
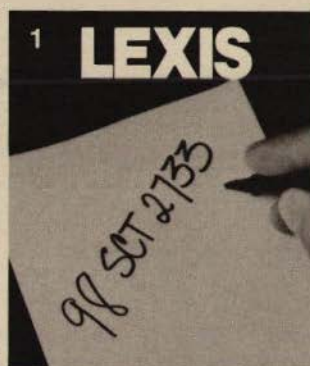
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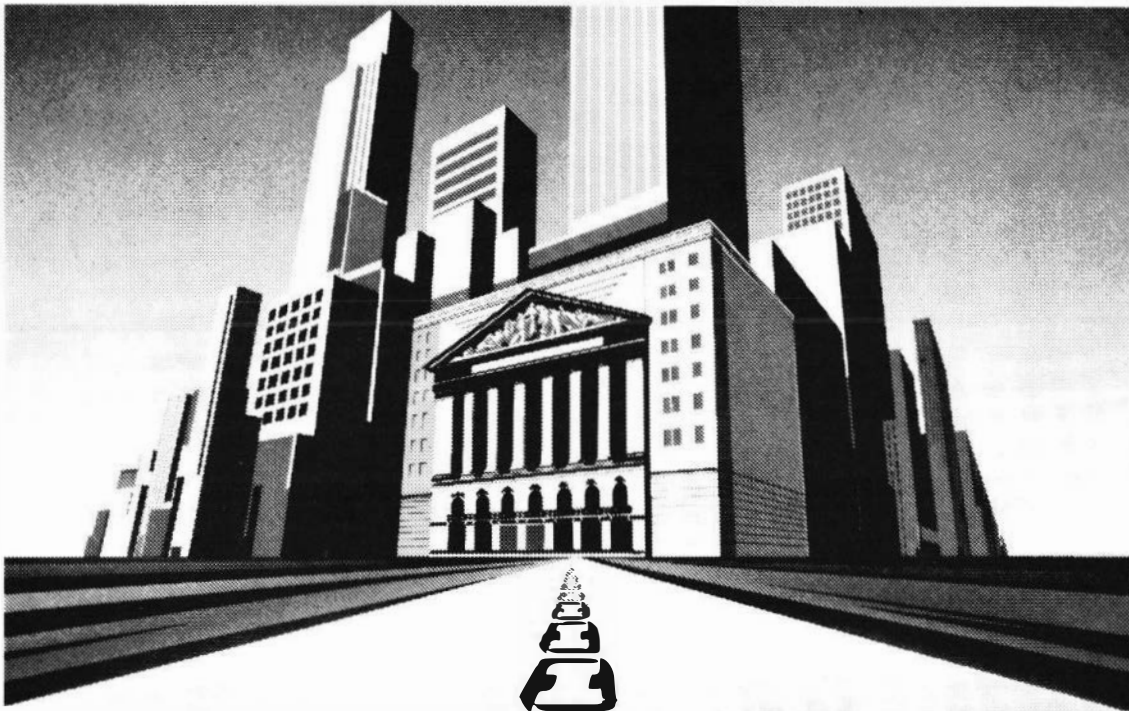


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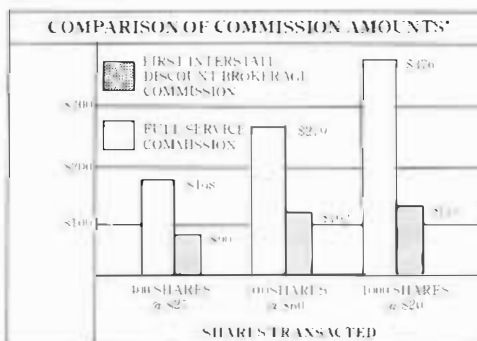


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Editor's Position Open

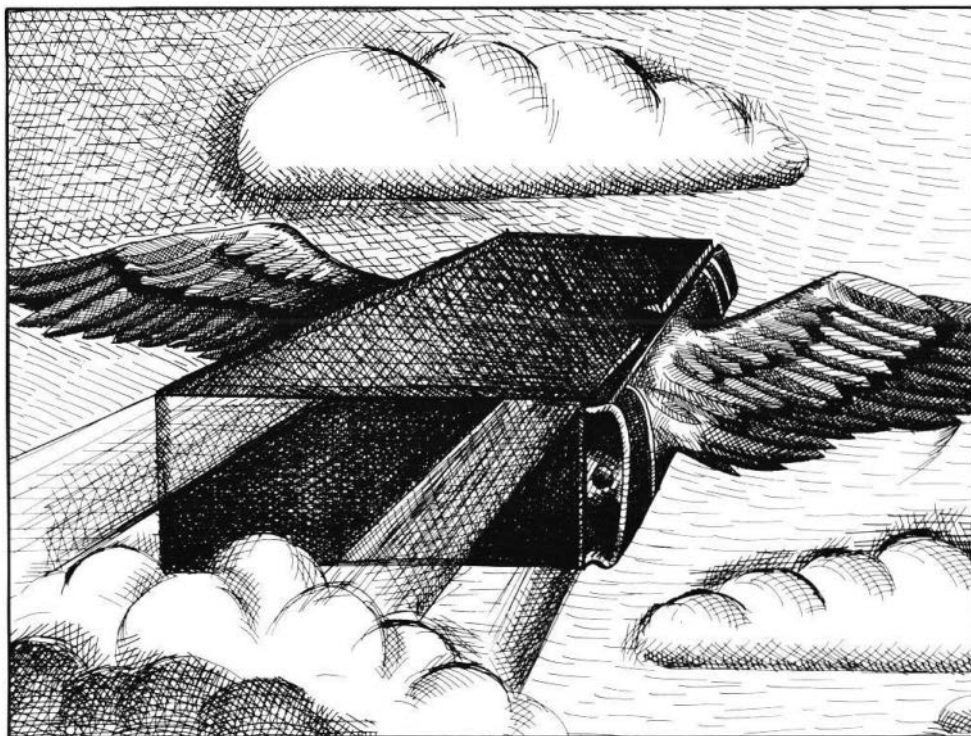
The position of editor for the *Washington State Bar News* will be open as of January 1, 1985. WSBA members interested in becoming editor of the *Bar News* should send a letter stating interest, plus a resume covering prior experience to: Editor's Position, Editorial Advisory Board, c/o WSBA Public Affairs Department, 505 Madison Street, Seattle, WA 98104. The deadline for applications is October 15.

Our Cover



Building for the future? Salvaging the past? In this issue our authors tell you what you need to know to manage your legal practice.

Cover photograph by Seattle attorney Karen Ellentuck (who swears this is some other lawyer's office).



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\$100,000 Term Non-smoker, male

AGE	Monthly Rates	Annual Rates	25% Reduction First Year Lump Sum Premium	You Save
30	\$14.19	\$165.00	\$123.75	\$41.25
35	14.62	170.00	127.50	42.50
40	17.03	198.00	148.50	49.50
45	21.33	248.00	186.00	62.00
50	26.40	307.00	230.25	76.75
55	33.45	389.00	291.75	97.25
60	47.64	554.00	415.50	138.50
65	75.50	878.00	658.50	219.50
70	120.40	1,400.00	1,050.00	350.00

\$250,000 Term Non-smoker, male

AGE	Monthly Rates	Annual Rates	25% Reduction First Year Lump Sum Premium	You Save
30	\$27.09	\$315.00	\$236.25	\$78.75
35	28.17	327.50	245.63	81.81
40	34.19	397.50	298.17	99.37
45	44.94	522.50	391.88	130.62
50	57.62	670.00	502.50	167.50
55	72.25	875.00	656.25	218.75
60	100.73	1,287.50	965.63	321.87
65	180.39	2,097.50	1,573.13	524.37
70	292.62	3,402.50	2,551.88	850.62

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**Male Age 50 — \$100,000
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2nd Year	320.00	7th Year	413.00
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5th Year	368.00	10th Year	511.00

SAMPLE

**Male Age 50 — \$250,000
with Annual Re-entry**

1st Year	\$502.50	6th Year	\$ 875.00
2nd Year	702.50	7th Year	935.00
3rd Year	737.50	8th Year	1,005.00
4th Year	777.50	9th Year	1,085.00
5th Year	822.50	10th Year	1,180.00

*** ACCORDING TO A.M. BEST MAGAZINE**



Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

John C. Is Not R. Jack

Editor:

Volume 38, No. 7 (July, 1984) of the *Washington State Bar News* carried an announcement of disciplinary action issued against a member of the Bar whose name is very similar to my own. Apparently some members of the Bar mistakenly thought that the sanction was directed against me.

No disciplinary sanction has ever been rendered against R. Jack Stephenson of Seattle, Washington.

I would appreciate your publishing this letter to assist me in eliminating the confusion.

R. JACK STEPHENSON
Seattle

Court-ordered Property Divisions

Editor:

From time to time in my practice as a public attorney, I am involved in cases where the county has refused to issue a building permit for a parcel of real property that has been split off from a larger parcel and awarded in a prior dissolution action to the permit applicant. A reminder to attorneys who handle dissolution actions was in order: Court-ordered divisions of real property, including those contained in dissolution decrees, are *not* exempt from the subdivision requirements of Chapter 58.17 RCW and local subdivision ordinances.

Court-ordered divisions were exempt under the state statute as it was adopted in 1969, but a combination of legislative action and executive veto in 1974 removed that exemption. (See Laws of 1974, First Ex. Sess., Chap. 134, Sec. 2.) Before a client agrees to a division of real

property in a dissolution action, the attorney should check with the local planning department to see whether the proposed lots will meet lot size and access requirements and then see that the dissolution decree includes a requirement that the parties join in short platting the property in accordance with the decree and state and local subdivision laws.

Taking these extra steps at the time of the dissolution action will leave the client with a usable, marketable lot and is much less difficult than attempting to accomplish the same result at a later date by getting the divorced parties to voluntarily agree to join in short platting the property, if legally possible, or attempting to modify the property division contained in the dissolution decree.

SUE TANNER
DPA, Snohomish County
Everett

No Tax on Advances

Editor:

In the July, 1984, issue of the *Bar News*, President Bob Redman asserted that advances or reimbursements for filing fees and court costs would be subject to the B&O tax if the State Department of Revenue prevails in the *Walthew, Warner* case.

This is incorrect. Advances or reimbursements for filing fees and court costs are presently excludable from an attorney's gross income for B&O tax purposes. See WAC 458-20-111. Whatever the result in the *Walthew, Warner* case, such income will continue to be excludable unless the underlying law is changed.

I would appreciate it if you pass this word along to our membership. If the Department of Revenue prevails in the *Walthew, Warner* case, attorneys should *not* begin paying B&O tax on advances or reimbursements for filing fees and court costs.

MATTHEW J. COYLE
Department of Revenue
Olympia

Pamphlets available



As a service to its members and the public, WSBA is producing a series of consumer pamphlets on various legal topics. The first pamphlet, which explains probate, is now available. For a sample copy and order form, write to: "Pamphlets," Wash. State Bar Assn., 505 Madison St., Seattle, WA 98104.

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Position Available —Inquire Within

I became the editor of the *Washington State Bar News* in December, 1980. I will relinquish the editorship at the end of December, 1984.

There are two reasons why I choose to quit the *Bar News* in December. First, an altruistic reason: There are now so many lawyers in this state's bar that I believe it is not fair for one attorney to hold any one bar association position indefinitely. After four years, it is time I step aside and let someone else have a little fun.

Second, a selfish reason for quitting: After four years, I have so totally lost track of articles, letters and promises to contributors that I must take the tried and true step taken by every previous *Bar News* editor when he has gotten into this jam—pass the buck to someone new.

ARE YOU QUALIFIED FOR THE JOB?

I never let my obvious lack of qualifications hold me back, so maybe you should not either. But if you do worry about such things, then listen up.

The editor of the *Bar News* is and always has been a full-time practicing lawyer. He or she should be masochistic and healthy. These are prerequisites for the job because you will spend between 25-50 hours every month writing, reporting, telephoning and editing ... in addition to whatever hours you put into your own law practice. A touch of insanity also helps, but it is not a prerequisite—if you are not already a tad loco when you apply for the position, you will be after a few weeks on the job.

You who would be editor should have at least a modicum of writing and editing ability. Prior editing or journalism experience is not necessary, however. Too much experience could prove undesirable. The *Bar News* is produced by and for Washington's lawyers. It is a home-grown, semi-amateur hybrid newsletter, law review and law revue. It is a magazine in which any schlemiel practicing law in Washington could find fame and

recognition. The editor cannot lose sight of the fact that the *Bar News* always must maximize the participation of our own members even though that sometimes costs us the polish of a professional publication.

You who would be editor should have a good sense of humor, a predilection for preaching, a thick skin and a heart of stone. You will need humor to get you through the inevitable publication crises and humor to sprinkle throughout the magazine like pepper on boiled beef. The editor mounts a bully-pulpit every month and you should not be afraid to use it. Remember, however, that this is the news organ of the WSBA and thus may not be the proper forum for every sermon.

You who would be editor must have rhinoceros hide because not everything you do will make every reader happy. Every screw-up, typo, faux pas and transgression will be your responsibility, and if barbs do not bounce off your skin, you do not want this job. You need a heart of stone and ice water blood because you must sometimes cut the guts out of an article to make it fit in the magazine. You will sometimes need to tell friends, judges, professors and politicians that you cannot or will not use their submissions, and be able to refrain from promising that which simply cannot be promised.

WHAT'S IN IT FOR YOU?

The editor's position pays \$200/month, plus expenses. Obviously, this is no way to get rich quick.

However, there are many intangible benefits to the job. You will travel in the company of and associate with the WSBA President and members of the Board of Governors, some of the most conscientious and hard-working lawyers in our organization. While attending Board meetings, you will be exposed to the burning issues which confront our profession and learn the mechanics of managing an organization of 12,000 fiercely independent lawyers. It will be an education unlike any other.

The term of office is indeterminate.

Prior editors have served from two to twelve years. The WSBA, through its Board of Governors, is the publisher of the *Bar News*. The Editorial Advisory Board consults with, but does not dictate to, the editor. The Editorial Advisory Board, in turn, recommends to the Board of Governors whom to hire or fire as editor.

WHAT DOES THE EDITOR DO?

Each month the *Bar News* receives a stack of unsolicited articles, letters and announcements. It is the editor's task to select from and edit that stack and keep contributors relatively informed about the process. The editor also actively solicits articles (*i.e.*, twists arms) for special theme issues of the magazine.

The editor selects cover and interior art and, when necessary, conceives illustrations to be executed by professional and free-lance artists.

Each month the editor writes his/her own column and separately reports on activities of the Board of Governors. No one censures, modifies or otherwise interferes with the editor's reporting of the Board's work.

In consultation with the Editorial Advisory Board, the editor sets publication policies for the magazine. He or she normally meets with the EAB about six times a year. The editor works closely with the Bar's Wayne Wilson (Director of Public Affairs), Karin Foster-Garrison (Managing Editor), Dennis Eagan (Advertising Manager) and Bar Staffers Lorraine Wall and Cheri Brennan—all of whom are the unsung heroes of the *Bar News*.

Being editor of the *Bar News* is a job you learn to love. It is fun and it is meaningful. It is a vehicle for serving the profession and the public. It is a job you will never want to quit.

Interested lawyers should write to the Chairperson, Editorial Advisory Board, Washington State Bar Association, 505 Madison Street, Seattle, WA 98105.

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Lane, Mocerì, Petruss and Vhugen Elected to Board of Governors

The Board of Governors will welcome four new members at the Annual Meeting this September in Vancouver, B.C. Edward M. Lane, Roy J. Mocerì, Angelo R. Petruss and Harold F. Vhugen will begin their three-year terms at the close of the Annual Meeting.

Tacoma attorney Edward M. Lane has been elected to represent lawyers of the Sixth Congressional District.

A Tacoma native, Lane graduated from the College of Puget Sound in 1950, and from the University of Washington Law School in 1954. He was admitted to the Bar in 1954, and served as an Assistant Attorney General 1954-1955. Since then, Lane has practiced law in Tacoma, and is currently a member of the firm of Johnson, Lane & Gallagher, in charge of litigation.

Lane's professional memberships include the American Bar Association, the Washington State Trial Lawyers Association, the Tacoma/Pierce County Bar Association and the American Judicature Society. He was a lawyer delegate to the Ninth Circuit Judicial Conference 1979-1982; Chairman of the State Bar's Court Rules and Procedures Committee 1981-83; Chairman of the Tacoma Pierce

County Bench-Bar Liaison Committee 1976-1983; and a member of the Washington Supreme Court Special Committee for Creating Rule GR 9.

He currently serves on the Panel of Arbitrators for the American Arbitration Association, and as Special Master for the U.S. District Court on the comparable worth case. He is a member of the Board of Trustees of the Federal Bar Association of Western Washington, and of the panel for Rule 39.1 mediation for the U.S. District Court.

Lane will succeed Patrick C. Comfort as Sixth Congressional District representative on the Board.

Roy C. Mocerì, of Bellevue, has been elected to represent lawyers of the Eighth Congressional District.

Born in Seattle, Mocerì was educated at the University of Washington and its Law School, graduating Phi Beta Kappa, and serving as editor of the *Washington Law Review* 1952-1953. He became a member of the Bar in 1953.

A trial attorney whose scope includes aviation and professional malpractice, Mocerì is president of Reed, McClure, Mocerì & Thon in Seattle. He is a fellow of the American College of Trial Law-

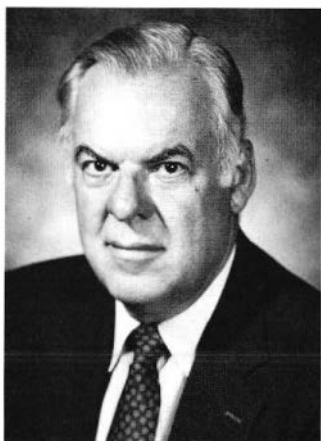
yers, and currently serves as chairman of the General Aviation Subcommittee, Aviation Committee, of the Litigation Section of the American Bar Association. He is a past president of the Washington Association of Defense Counsel 1966-1967, and served on the Board of Trustees for the Seattle-King County Bar Association 1976-1979. Other professional memberships include the International Association of Insurance Counsel and the Federation of Insurance Counsel.

Mocerì will succeed George Kargianis as Eighth District representative on the Board.

Olympia attorney Angelo R. Petruss will represent lawyers of the Third Congressional District.

A Gonzaga Law School graduate, Petruss was admitted to the Bar in 1961. He served as a Law Clerk for Justice Frank P. Weaver of the State Supreme Court 1961-1962. Currently Chief of the Tort Claims Division of the State Attorney General's Office, Petruss has served as an Assistant Attorney General for 22 years.

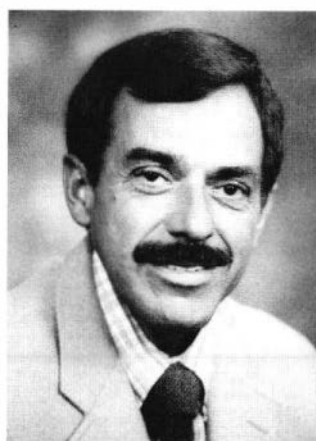
He is a member of the Board of the Trial Practice Section of the Washington State Bar Association, and served on the



Edward M. Lane



Roy J. Mocerì



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Harold F. Vhugen

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State Bar's Legislative Committee 1980-1982.

Petruss will succeed James A. Vander Stoep as Third District representative on the Board.

Seattle attorney Harold F. Vhugen has been elected to represent lawyers of King County as a Member-at-Large on the Board.

Vhugen was educated at Rutgers University, earning his J.D. from its Law School in 1952. A New Jersey native, Vhugen was admitted to practice in that state in 1952, and became a member of the Washington Bar in 1957. He is a partner in the Seattle firm of Levinson, Friedman, Vhugen, Duggan, Bland and Horowitz.

A past president of the Seattle-King County Bar Association 1982-1983, Vhugen also served as that association's Treasurer 1970-72, on the Board of Trustees 1972-1975, as Second Vice-President 1980-81, and as First Vice-President 1981-82. His State Bar activities have included service on the Disciplinary Board 1976-1978.

He is a member of the American Bar Association, the Federal Bar Association, the Association of Trial Lawyers of America, the Washington State Trial Lawyers Association, and the Maritime Law Association of the United States.

Vhugen will succeed Thomas D. Loftus as one of two King County-at-Large representatives on the Board.

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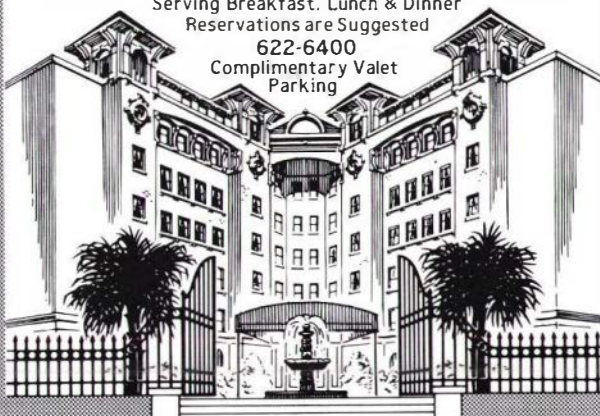
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“Professionalism” Includes Competence and Good Management

The Board of Governors has been devoting a substantial amount of time to the concept of Long Range Planning for our State Bar. More will be reported on that topic in the near future. In our recent discussions, an emphasis on “professionalism” was mentioned repeatedly.

The concept of professionalism, as it relates to the practice of law, may be divided into two mutually *inclusive* parts. The first of these involves competence in the substantive practice of law. That is a concept so basic that no elaboration should be required. Once one passes the Bar Exam and becomes a member of the Washington State Bar Association, basic competence is assumed. It is also assumed that as time passes, through experience and the desire to continue learning, competence will increase. Each of us gives a continuing focus of attention to maintaining and increasing our legal competence.

The other element of professionalism is one which, unfortunately, often does not receive adequate attention. It is the development of good management practices to support the practice of law. Just as the substantive practice of law is considered socially significant, of benefit to our clients, and rewarding and satisfying to us as practitioners, so are the management requirements of a law practice often considered a boring necessity at best, and a downright irritant at worst.

That is too bad for several reasons. In this modern era when the number of lawyers is expanding rapidly and we are living in a “litigious society,” good management systems are an absolute necessity in the conduct of an efficient law practice. The sheer numbers of lawyers and legal actions today have forced us away from the informal relationships and unwritten codes of conduct familiar to older lawyers. The costs of running a law firm keep rising. New technologies and administrative innovations keep multiplying. Being financially competitive and efficient have become prerequisites to survival.

None of these considerations should replace, or even have the slightest influence on, the proper and competent practice of law. But they should not be ignored, or treated with secondary importance. Just how they are handled can have a great effect on our final legal work product.

ERRATA: In the July, 1984, “President’s Corner,” I discussed the State Bar’s amicus brief in the *Walthew, Warner* case. In that discussion I listed a variety of expense advances law firms typically make on behalf of clients which, should the trial court in that case be reversed, would be considered a part of the firm’s gross income for B & O tax purposes. In that listing I erroneously included “filing fees” and “court costs”—two items which are specifically exempt from inclusion for B & O tax purposes.

Of all the complaints that the WSBA receives against lawyers, the emphasis is not, in most cases, on acts of deliberate dishonesty or the incompetent application of law. It has been estimated that most of the complaints we receive center on the neglect of clients or on poor lawyer management practices.

A focus on good management practices is not a sign of a self-serving, financially-oriented attitude, as some have suggested. Nor should it be accused of being a substitute for the personal touch so important in successful lawyer/client relationships.

Good management practices are really the springboard for providing *more* and *better* professional services. They can enable us to reduce overhead costs, produce our legal work product more quickly, devote more hours to law practice and condense those hours given to administrative duties, and actually reduce charges to clients for services provided. In other words, they make sense to both lawyer and client alike.

The September issue of the *Washington State Bar News* concentrates on the area of law practice management. We hope that you will find in it information that will be of immediate practical value to you and your staff. We invite your comments and contributions in this area of lawyering. No one has a monopoly on good ideas for law practice management, and if you have special insights or experiences to share, let us know about them.

We realize that, on the average, only about one lawyer in four or five has a direct responsibility for law practice management. Yet it is in the interest of everyone to share in the concern for good management, and to contribute ideas and involvement in the process. In the final analysis, everyone shares positively in the results, and your role in contributing effectively to those results can be very satisfying, indeed.

This is my final “President’s Corner.” It is beyond my powers of expression to tell you how rewarding the experience has been—and demanding. To my family and my firm, to the Bar Staff, to the Board of Governors and to the lawyers of this state, my thanks for the support, encouragement, advice—and most of all for the pleasure of their association during this past year. In a few months I’ll finally catch my breath, and then sit back and enjoy the recollections.

Legal Malpractice Insurance

What's Ahead for the Lawyer?

Should malpractice be a matter
of concern to the average
Washington lawyer?

The bane of the professional is the malpractice lawsuit. Any legal practitioner, before he/she hangs out a shingle, must weigh whether, when, and how much malpractice insurance to buy. The established sole practitioner and the large firm's managing partner need to know trends in the malpractice field in order that they may plan for the future.

On July 25, 1984, the *Bar News* invited persons knowledgeable in the malpractice field to participate in a no-holds-barred round table discussion about the future of legal malpractice insurance in Washington. The editor of the *Bar News* moderated the discussion. Participants included:

Robert Farrell, General Counsel for the WSBA;

Jack Quinan, of Quinan-Pickering, Inc., insurance brokers;

David Lycette, Seattle attorney with Lane, Powell, Moss & Miller;

Robert Mussehl, Seattle attorney with Mussehl, Rosenberg, Gregory & Cotter;

Graham Gaiser, Senior Staff Attorney for the St. Paul Insurance Companies, and Chairman of the State Bar Association's Professional Liability Insurance Committee.

BAR NEWS: Gentlemen, should malpractice insurance be a matter of concern to the average Washington lawyer?

GAISER: Twenty years or so ago, claims were infrequent relative to what they are now, because, I believe, the claims at that time were for more flagrant types of violations. Today, the consumer client is much more aware of the possibility of bringing a law suit against his or her lawyer.

BAR NEWS: Are there more malpractice claims against lawyers being filed now?

QUINAN: Yes. There *is* an increase in the frequency of claims. There is also an increase in the amount of settlement. On the other hand, claims are down substantially from the 1979 level. I think statistics published by the Standing Committee on Professional Liability Insurance of the American Bar Association clearly show that the frequency of claims is enough of a factor such that any prudent attorney should carry professional liability at minimum limits of 100/300, and perhaps closer to the average limits in this state of a million per claim, with larger firms carrying five million and up.

BAR NEWS: Are there surveys which discuss what percentage of the Washington Bar actually carries malpractice insurance?

GAISER: Yes, the insurance committee did send out a survey, I believe it was 1980 or 1981. As I recall, about a third of the Bar responded, which at that time meant a response rate of about 3,500 lawyers. That survey indicated that 77.8 percent of lawyers responding carried legal malpractice insurance of some type or another. Now there is no real breakdown as to what percentage of respondents were actually in private practice and which were not. I strongly suspect, on the basis of national surveys, that the majority of lawyers who actually need to carry malpractice insurance do not. I think perhaps only 50 percent of lawyers nationwide carry malpractice insurance.

BAR NEWS: Do you think that 77 percent for Washington is an accurate figure?

LYCETTE: I thought it would have been a higher percentage.

GAISER: I can only tell you what the survey was. We don't know the character of the respondents. I thought at the time that 77 percent was a surprisingly high figure.

QUINAN: I think if 60 percent were insured in this state it would be on the high side.

BAR NEWS: Bob Farrell, based on the disciplinary records maintained by the Bar, do you have any idea whether there are more young lawyers or older lawyers that are involved in proceedings which come to the attention of the Bar's disciplinary department?

FARRELL: We don't maintain figures which correlate complaints with the ages of the practitioners. My impression is that we get pretty much of a cross-section of the Bar which is, of course, heavily weighted toward the younger lawyer just in terms of numbers.

BAR NEWS: How about sole practitioners versus larger firms?

FARRELL: Again, we do not maintain figures for whether lawyers are members of firms or sole practitioners. My impression, however, is that many of the people we see again and again tend, frequently, to be sole practitioners.

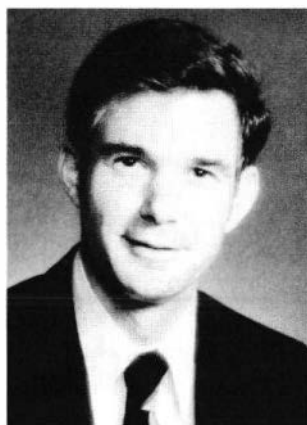
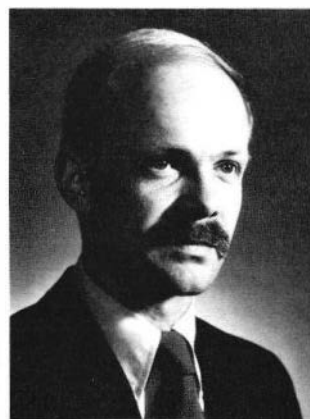
BAR NEWS: Are some malpractice carriers unwilling to carry sole and small practitioners?

QUINAN: Yes. This might be explained by statistics from the ABA Committee on Professional Liability, which show that 51 or 52 percent of the claims are against sole practitioners. But then, as Graham points out, there may be, nationally, a heavy preponderance of sole practitioners. Some carriers don't want the one and two and three man firms. Other insurers are glad to handle them. Some insurers prefer the larger firm.

GAISER: I would just like to correct Jack on one thing. The ABA statistics show that 35.8 percent of claims arose against sole practitioner firms. Firms of two to five lawyers comprised 44.3

OUR PANEL

Right: **Robert Farrell**. Bottom row, left to right: **Jack Quinan**, **David Lycette**, **Robert Mussehl**, and **Graham Gaiser**.



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percent, firms of 6 to 30 lawyers 18.5 percent, and firms of over 30 lawyers, only 1.4 percent. If you have somebody to talk to, to discuss a problem, you are less likely to run into a problem which could result in a claim. I would imagine the same thing holds true for discipline.

FARRELL: I think there would also be a higher level of expertise specialization with the larger firms, and much more sophistication and superior knowledge than a lawyer trying to handle 10 or 15 different areas of the law and trying to be good at all of them.

BAR NEWS: Are there certain types of claims which come up repeatedly in the malpractice area? Do you see types of practice which give rise to malpractice?

GAISER: Well, nationwide, the ABA statistics indicate that of the predominate claims, 24.9 percent come from real estate, 24 percent come from personal injury plaintiffs, 12 percent from collection and bankruptcy matters, and 7.8 percent from family law. Other areas of law are indicated to be lesser percentages. My own experience indicates that family law ranks right up at the top with real estate.

LYCETTE: There is a great exposure for young lawyers, particularly in the areas of domestic relations and real estate. In real estate work in particular, \$100,000 coverage can be inadequate.

BAR NEWS: How about ethics violations and malpractice?

FARRELL: In our office we see an overlap between malpractice matters and disciplinary matters. A matter may very well be a malpractice matter if it involves, for example, a mistake in a case which doesn't really cause concern about the lawyer's overall practice. If a file is misplaced, a single date is missed, and damage occurs, it may not cause our office concern in terms of discipline, because it really doesn't raise concern about what the lawyer is going to do in the future. That single mistake is probably not going to happen again.

On the other hand, if within a single case the lawyer engages in a pattern of misconduct, such as not only missing that date but then deceiving the client as to what is occurring; or if there is a pattern of similar cases involving that same lawyer doing that same thing again, then it becomes a discipline matter. So clearly there is an overlap between the two types of cases.

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BAR NEWS: Are claims often made repeatedly against the same individual?

QUINAN: Over the years, we've seen certain attorneys and certain firms who have had more than their share of claims. And there are certain firms which may give us problems in the future. I have the sense that claims activity is on the increase. Part of the reason may be that there are just more guys in the practice of law that are looking for something to do.

GAISER: Well, I think there might be something to that. Five years ago, anyway, I saw that. Legal malpractice claims were being filed by clients with younger, inexperienced lawyers who really hadn't analyzed the merits of the claims. In more recent years, my experience has been that the frequency of actually filing a law suit for legal malpractice has been somewhat lessened, but the merits of the cases that are filed are probably more substantial.

BAR NEWS: In Oregon, they now have a mandatory program which is administered by the state bar association. Will Washington go that route?

GAISER: The Washington Professional Insurance Committee for the state bar association once looked into the Oregon plan. In fact, we considered it several years ago and rejected the idea. However, we are planning to take a close look at it again.

BAR NEWS: In a nutshell, could you give the pros and cons of having a mandatory program?

GAISER: Well, the basic idea behind it would be this: Malpractice insurance would be mandatory as a condition to practice law in the state, for those people who needed it. Presumably, that would exclude corporate counsel, government counsel and that sort of thing.

The insurance committee is then charged with the responsibility of trying to determine how to implement a plan which would make malpractice insurance available to people who want it, since obviously there are some lawyers in the state who would be of such risk that the private insurer would not offer coverage.

Then we get to a philosophical question: "Do you use the ability or inability to get malpractice insurance as an adjunct to discipline?"—which our committee is not planning to address. That's a policy question for the Board of Governors.

But the Oregon plan is essentially one where all lawyers pay a rather substantial fee for relatively low limits. Where you have a monopoly, the rates are going to be higher. Big surprise! Those states which do sponsor a carrier find that their sponsored carrier charges a substantially higher premium than private enterprise. I am thinking primarily of California in this regard. In California, however, the bar association is not the exclusive insurer, whereas in Oregon, it is.

"It would help if the bar were educated on where these (premium) dollars are going and why it's necessary that the companies are charging them more money."

-QUINAN

LYCETTE: Mandatory insurance is an emotional issue. Personally, I do not like mandatory insurance. It would be nice if everybody had it, but in law, we should respect the attorney's individuality and freedom of choice.

BAR NEWS: Where can we expect premiums to be going in the next couple of years?

GAISER: Up.

QUINAN: It would help if the bar were educated on where these [premium] dollars are going and why it's necessary that the companies are charging them more money. An acceptable loss ratio in the insurance business is generally regarded to be 65 percent. At 65 percent, you've got 35 percent for overhead, acquisition and some profit. The [current loss ratio of] 153 percent says that for every buck you take in in premiums, you're spending one hundred and fifty-three cents in the settlement of claims, and the cost of operating. And that's where we are.

BAR NEWS: Right now, as of July 25, it is an open question whether attorneys are subject to the Washington Consumer Protection Act. It may or may not be decided by the Supreme Court by the time this appears in the *Bar News*. Hypothetically, assuming that at-

torneys are made subject to the Consumer Protection Act, what effect, if any, will it have on malpractice rates or malpractice coverage for lawyers in this state?

QUINAN: This would be a matter of grave consideration for legal malpractice insurance.

BAR NEWS: Graham, what do you think about that?

GAISER: I think the question will be whether or not Washington holds that an insurance errors and omissions policy covers that type of a loss. If it does, it will have a substantial effect on the insurability of lawyers and the availability of the insurance market in this state.

BAR NEWS: Does whether attorneys carry malpractice insurance have any effect upon whether they can be carried by referral panels such as the one sponsored by SKCBA?

MUSSEHL: It is a policy of the Seattle-King County Bar that unless you have evidence of malpractice insurance you cannot be designated to be on the panel. So if you do not have insurance you are excluded from the panel.

BAR NEWS: Do you see an increase in the number of malpractice claims against lawyers such that it will no longer be profitable to offer malpractice insurance?

QUINAN: Somebody will always be there to collect a premium if the ability to do so is not inhibited by outside activity. If this is left in the free market posture, should various carriers presently in the business choose to withdraw, other carriers will come in and say, "We will write that for a price."

BAR NEWS: Are lawyers in danger of being priced out of malpractice insurance?

GAISER: I think lawyers are going to have to get used to paying a substantially higher percentage of their gross income toward insurance premiums than they are now. There are roughly 630,000 lawyers in the United States, yet the premium volume generated is roughly \$220 million. If you take away the acquisition costs, you're left with \$154 million nationwide with which to pay claims.

Income for lawyers in the United States is roughly \$38 billion. So you can see that legal malpractice insurance premiums, at today's rates, are a very small percentage of gross income. Compare that with a doctor. He can be paying an insurance premium for one year of \$80,000. That's a substantially higher

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percentage of his gross income. While I don't see that lawyers are going to be, in any way, reaching that proportion, they are going to have to get used to paying more money if they want insurance coverage.

MUSSEHL: Some medical practitioners think that we're 10 to 20 years from being in the same position as the doctors are right now. That we can expect to have \$20,000-a-year premiums or more.

QUINAN: I don't think that's true, Bob. The *frequency* of claims might be similar but never the *magnitude*. When the local surgeon ligates an artery and a young mother loses a leg, we've got something that is, simply on the face of it, worth a tremendous amount of dollars. When we're dealing with lawyers' cases generally, the remedy is something that is pretty specific without the emotional aspect.

MUSSEHL: I think it would be more predictable in a real property malpractice case: the price of the property is more appraisable and predictable than the value of someone's pain and suffering and loss of limb.

BAR NEWS: Bob Farrell, how many lawyers are now being investigated for alleged disciplinary actions, compared to prior years?

FARRELL: Well, one figure sticks in my mind since it's somewhat startling. Between 1981 and 1983, the increase in complaints was 50 percent. In the same period the number of active lawyers within the State of Washington increased only about 11 percent. So the bulk of that increase is not attributable simply to the increase in lawyer population.

The number of disciplinary actions actually taken against lawyers, or the number of lawyers disciplined during those three years, did not increase. The number of serious actions resulting in discipline remained more or less the same, although the number of people who contacted us expressing unhappiness with their lawyers did increase substantially. Relating it to this discussion, I guess it indicates that they [malpractice suits and discipline filings] can be correlated with an increase in people's dissatisfaction with lawyers.

BAR NEWS: In terms of cases that go to trial, is there any difference in the reaction of juries when they are trying legal malpractice cases? Is there any tendency to be pro, con, sym-

pathetic, or unsympathetic towards lawyers who are on trial?

GAISER: I probably shouldn't say this, but I will. I started defending these legal malpractice cases during the Watergate years. The first time I had a jury case I was scared to death. The reputation of lawyers in general was not very good at that time, and what's the jury going to do? I was pleasantly surprised.

Jurors have a tendency to, perhaps, think of the legal profession in *general* as not being top-quality, but the particular individual there, the defendant, he's a real person: "He's like my lawyer, and I like my lawyer, so this guy's all right." I find that, by and large, where the issue in the case turns on credibility the lawyer will be given a better than even break.

"Conflicts of interest in malpractice law is the one area which has increased higher than any other, and I find it the most difficult to defend."
-GAISER

BAR NEWS: What kind of judgments or settlements are attorneys looking at when they are sued for malpractice?

GAISER: That is the one aspect of it that is encouraging to lawyers. The amount of money that is paid out is relatively low, particularly in comparison with the medical profession. Looking at the bar statistics nationwide, slightly more than one-third of all claims against lawyers, whether in litigation or otherwise, result in payment. Which means that two-thirds result in the claimant getting absolutely nothing. In my own experience, the plaintiff ends up with nothing in roughly 65 percent [of the cases].

QUINAN: Of course, defense costs can be very expensive even when there is no judgment.

LYCETTE: A higher percentage of attorney malpractice cases are tried than is any other category of case. Eighty-five percent of automobile cases

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settle; one-third to one-half of all legal malpractice cases go to trial. Some are unseizable because the claims are specious, and others because the lawyer will not consent to a settlement.

MUSSEHL: Lawyers are certainly interested in the amounts of their premiums, and whether they are cost-effective, and whether they're getting their money's worth. But I would think that a lawyer sitting down and reading the *Bar News* would want to know about his or her own exposure: how one might tighten the law practice to prevent malpractice claims against oneself or one's partners. I think that it's important for lawyers to understand ethical considerations and to be aware that clients, for example, want to make certain that their lawyers are representing their interests.

The appearance of a conflict of interest is something that gets a client quite emotional. I hear it over and over: "Who is my lawyer representing?" For example, some lawyers in family law matters who try to represent both parties are setting themselves up. The percentages are against them that they are going to

have problems both from the ethics perspective (a possible complaint from the bar association), and also a private lawsuit. Two people, in the beginning, may be real friendly toward one another and may convince their lawyer that they can settle this between the two of them. But once you start negotiating, it's just inevitable that there is going to be a conflict.

These are things that I think lawyers want to know about, and sometimes I think the rules can be a little fuzzy. Lawyers really need to know what the proprieties are and where the warning signs are, and to stay away from any possible conflict of interest.

GAISER:

I think conflicts of interest in malpractice law is probably the one area which has increased higher than any other, and I find it the most difficult to defend. While the law may put the burden on the plaintiff client to prove his case, as a practical matter in a conflict of interest case, the burden is really on the defendant to show that the conflict of interest was *not* the proximate cause of any damage. That is oftentimes a very difficult burden to uphold. ☐

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Collecting Your Fees

Fee Agreements, Trial Retainers, and other Tips to Manage the Business of Your Law Practice

by **Michael J. Garrison**

Depending upon your perspective, the 15th of the month is either the time to ask, "Do I have my \$5,000 billed yet?" Or "Our receivables have jumped from \$30,000 to \$40,000 in three months?"

Perhaps the single most difficult task of any practitioner in a small-to-medium-size firm (one to 15 lawyers) is *getting paid*. Many techniques have been bandied about throughout the course of time, varying in degree from "No, you cannot get divorced until you pay me the \$3,000 you owe!" to "Sure, I'll take a \$10,000 unsecured note to represent you in this million-dollar cocaine conspiracy trial (which is due to start in Helena, Montana, in ten days)." While these examples are extreme, most of us have had occasion to confront a similar situation.

While not meant to be the definitive answer to every lawyer's collection problems, here are some collection tips based upon my own experience as an associate and as a principal in my own firm.

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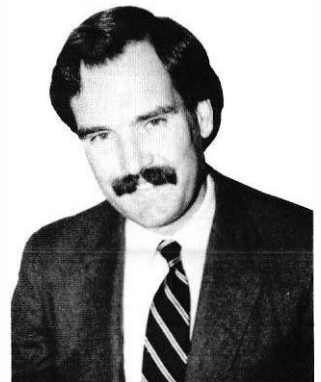
This is the first concept which must be understood. If we were businesspersons with half the intelligence we profess to possess, surely we could have found something more productive to do with our time. Only a lawyer could look another reasonably intelligent individual straight in the eye and tell her that the sound of his voice is worth \$100 per hour. In fact, a lawyer's voice—particularly a trial lawyer's voice—and the wisdom it transmits is his or her stock-in-trade. A lawyer's self-image and the selling of that image is, indeed, a lawyer's stock, if not his trade.

With such an intangible commodity to sell, it only makes good business sense to market that commodity as clearly as possible. ENTER: The written fee agreement. It does not look good on billboards, cannot "take a licking and keep on ticking," but if drafted and used properly, it can become a potent weapon in an attorney's arsenal. Especially for the practitioner who does not have a solid client base of business and insurance companies, or a specialized practice (like tax, bankruptcy, admiralty, *etc.*), the written fee agreement serves not only as a collection tool, but also to buttress any defense a lawyer has to a fee dispute. A written fee agreement is good business practice for *all* lawyers.

THE FEE AGREEMENT

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Seattle attorney **Michael J. Garrison** is a partner in the law firm of Kimball and Garrison. A graduate of the University of San Diego School of Law, his practice encompasses general commercial and civil litigation, with an emphasis in computer products liability.



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The flat fee agreement is used in such cases as a no-contest dissolution, will, will with trust, real estate contract, and other general fixed-fee cases, including some or all criminal work.

The second fee agreement is for cases to be billed at a straight hourly rate. In addition to a general description of the type of case involved, it is imperative that the hourly fee agreement include the rates of billing, a description of what will not be billed, and a very clear recitation of the terms of payment. If your office is using paralegals, the paralegal cost should be set forth in the same manner as the attorney's fee cost. This form would also include billings for secretarial time and copying charges.

The attorney-client relationship,
from the client's perspective,
should be one of problem resolution,
not problem creation.

THE TRIAL RETAINER

One of the items which we originally did not have in our fee agreement (but which we have now added) is a provision for a trial retainer. Our office does domestic relations work as well as general commercial and civil litigation, so we reasonably anticipate that 30 to 60 percent of all of our cases will ultimately end up at trial.

In a client's first meeting with the attorney, he or she is anxious to know his or her full financial exposure. It is at this point that the attorney should discuss the trial retainer and advise the client when the retainer is due. In our office, a trial retainer is generally due 30 days prior to the time the case is set for trial, with a review of the trial retainer figure 60 days prior to the time of trial.

In calculating the trial retainer, it is important to remember that when expert witnesses are involved, they will usually insist upon payment before even showing up at the courthouse.

So if you calculate that your fees for a four-day boundary line dispute trial will be in the neighborhood of \$4,500, and you have two experts coming in to testify about the sanctity of metes and bounds, considering as well the impact of the court's decision upon fees, you can reasonably expect your trial costs to run approximately \$6,000, and perhaps even \$7,000. You would do your client a disservice to tell her at the first meeting that the trial retainer will be in the neighborhood of \$2,000 to \$3,000, and then advise her 60 days before the trial that, in fact, it will be \$6,000 to \$8,000.

This miscalculation is not only a shock to the client, it is also an indication of your inability to properly assess a case from the front end, thus your perceived effectiveness as an attorney may be substantially diminished. If you project a trial retainer of \$2,000, and half-way through the case, you reasonably believe the cost will be substantially in excess of your original estimate, hold a meeting with the client to make sure that both attorney and client are clear as to what needs to be done to see that the trial retainer is paid.

In addition to the trial retainer, it is important to clarify when the final bill is due and owing. In our office, we insist that fees be paid *in full* either 30 days after the trial is concluded, or 30 days after we have completed any work necessary on the file. The reason for the latter provision is so that, in the very rare event that we are forced to withdraw due to our inability to communicate or work with a client, we will have

put the client on notice that within 30 days from the withdrawal the full amount is due and owing. In conjunction with that provision is another provision that, if the agreement is forced into litigation for enforcement purposes, reasonable attorney's fees and costs will be awarded to the prevailing party. Again, this is to put the client on notice that we are serious about collecting our fees, and that if he or she is sued, reasonable attorney's fees and costs will be imposed.

MIXED FEE AND CONTINGENT RECOVERY

The third type of fee agreement is what I call a "mixed fee and contingent recovery agreement." A client agrees to pay up to a certain amount of money to be credited against whatever the ultimate recovery is. If you calculate that it will cost approximately \$5,000 in attorney's fees to bring a case to trial, and that one-third of your reasonable recovery will be between \$10,000 and \$15,000; and further, if the client does not have the financial wherewithal to bear the full brunt of the fees, including the trial, this type of arrangement can be very beneficial. The client sees that he is going to have to pay some fees, and therefore makes a financial commitment to the case, which is very important. At the same time, the client realizes that the lawyer is also taking some risk in the recovery, and thus reasons that the lawyer is going to work as hard as if he were being paid by the hour, because the overall net recovery on fees is contingent upon the ultimate trial result.

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—all are tied up in someone else's assets.

The amount required in the cash part of the fee agreement should be enough to cover work up to the time of trial. The gamble is what, if anything, will be the recovery at the time of trial. I suggest that this "gamble" causes a very nice unity of client and attorney, and that the client feels that the lawyer must be working to his or her ultimate potential because the bulk of the fee is in the same status as the client's case during the course of the trial—in limbo. If the client doesn't recover, neither does the attorney.

It is also important to make sure that the client receives full credit for any and all monies paid against whatever the ultimate net recovery turns out to be. Thus, the client will not feel he is paying both a set cash fee and one-third (or the agreed percentage) of the recovery received.

OTHER CONSIDERATIONS

Other items to be included in all fee agreements, regardless of the type of case, are:

- costs including, but not limited to, travel, meals, deposition/discovery, *etc.*; and
- how these costs are to be paid, *i.e.*, whether the lawyer pays the costs and bills the client, or the client is immediately responsible for payment.

With regard to hourly and fee/contingent agreements, it should be specified whether travel time—the cruise to Port Angeles, the flight to Walla Walla—is billable time. Most attorneys would presume that this time should be billed; clients do not always agree, or worse yet, are completely unaware of the practice.

Most clients cannot pay their fees in full each and every month. The lawyer has two options:

- (1) set up a payment schedule wherein the client agrees to pay a minimum monthly payment, or
- (2) have the client go out and borrow the money.

For many reasons the second option should be very carefully explained. The attorney-client relationship, from the client's perspective, should be one of problem resolution, *not* problem creation. Requiring a client to borrow the money from a third party when a fee schedule is workable could create more problems than it solves.

REVIEW THE AGREEMENT WITH THE CLIENT

Having prepared this glorious document in its infinite detail, do not, under any circumstances, just shove it under the client's nose and tell her to sign it without bothering to take the time to explain it to her. There is nothing more embarrassing than having a former client tell a judge in court that she did not understand what she was signing, that she did not know what

a retainer was or how it was being accounted for, and further that she did not expect to be billed for nonlawyers' time. Despite the fact that the fee agreement was very clear on all these points, the client then tells the court that she was told to sign the agreement, tender her check, and leave—perhaps without a copy of the fee agreement in her possession! It is sound practice to spend at least one-half hour of the initial meeting going over the fee agreement. This way there are no questions later as to what, if any, terms are applicable, how they apply, and what they mean.

We lawyers need to remember that we are in a service industry. We are providing a service. Just as a mechanic upon whom one relies will take the time to explain why the engine in your new El Dorado had to be rebuilt after 10,000 miles (because you forgot to check the dipstick and add some oil), so the lawyer should take the time to explain to the client exactly what the fee agreement means.

I contend that at this particular time in the attorney-client relationship, when the fee agreement is being made, the lawyer has a fiduciary duty to disclose any and all terms contained within that agreement, even if it means that the client and the lawyer must negotiate certain of those terms. Once the agreement is in place and the client understands what the retainer will be, what the minimum monthly payment will be, and what the trial retainer will be, the lawyer is at least 60% of the way toward seeing that the fees billed are, in fact, paid.

LATE CHARGES

The fee agreement should specify that unpaid balances will gather interest at a certain rate. At the bottom of our firm's statements is printed the phrase, "INTEREST AT 1% PER MONTH WILL BE APPLIED TO THE UNPAID BALANCE." In addition, the statement is then rubber-stamped in glaring, garish red ink, "PAYMENT DUE BY 15TH OF THE MONTH." We have found that people will make a good effort to pay their bills on or before the 15th.

WHEN THE CLIENT REFUSES TO PAY

If a client has not made a payment for two or three months, and you are still performing work on that client's file, a harsh letter advising him that you must withdraw if he does not pay may achieve the desired result. If the client chooses to ignore the correspondence, or does not respond positively, the lawyer is pushed to choose between abiding with the client or filing a Notice of Intent to Withdraw.

Once you have advised the client that you will use this tool, do not then shy away from it. In the psychology of the attorney-client relationship, an unwillingness to file your Notice of Withdrawal after you have advised your client that it is exactly what you intend to do alerts the client that if

he bluffs long enough, you will blink and not carry out the action. It also tells the client that you do not always carry through. Thus, your strength as an advocate comes into question: the client sees that he can back you down, and concludes that this is what opposing counsel has been doing all along. I submit that the chances of being paid in full on that particular file become substantially reduced if you come to the threshold and refuse to cross it.

After the case is finished, the 30 days have passed, and you still have not been paid in full for your services, advise the client that either payment arrangements will be made or action will be instituted to see that payment is made. Again, once you have advised the client of your intention to exercise your right to take judgement against him for failure to pay fees, it is imperative that you follow through.

The options for the lawyer at this particular point are several:

- the file may be turned over to one of many collection agencies in the area for collection; or
- it may be turned over to a collection service which the American Bar Association at least recommends; or
- the lawyer, on his or her own behalf or in conjunction with another firm, may turn the file over for collection vis-a-vis litigation.

One should review the options carefully, taking into ac-

count the overall relationship of the firm to the client, and the client's willingness to make an effort to pay. However, it is not improper to sue a client if, in fact, there is a failure to pay. It has been my experience that when a client is sued, either a check is tendered for payment in full within 15 days of the client being served (and this is a client who swore he would not pay more than ten cents on the dollar), or a reasonable settlement is worked out.

If, however, you are forced into a situation where the dispute is carried to trial and judgement is entered, do not be afraid to pursue that judgement. Remember, at that particular point in time the judgement you are going after must be near and dear to your pocketbook, because it is *your* money we are talking about, not some obscure third party you are either trying to collect from or defend against. That new word processor, the personal computer, your Bar dues for the year—all are tied up in someone else's assets.

MORE COLLECTION TIPS

To help keep the accounts receivable under control, provide monthly itemized statements. The itemization should be reasonably accurate and detailed, but should not constitute a short story. The entry for the fees charged should be made shortly after the work is completed or the conversation ended. Make the description to the point, and make the charge reflect the time involved. If a client sees that the services for which

HOW TO BECOME A DEFENDANT

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she is paying are accurately maintained and disclosed, she has a basis upon which to feel comfortable when writing the check every month. Also, if at the conclusion of trial you are required to present to the court a cost bill including attorney's fees charged, you may easily provide a compilation of your monthly billing statements.

Again, the emphasis is upon service. How many times would you automatically pay a bill for "services rendered" by a mechanic or a plumber? If you provide your client with a clear understanding of the service provided, she will be better prepared to pay the bill.

Other tips on billings and receivables:

(1) Never bill a client for discussions concerning fees. Tell the client at your first meeting that the monthly bill can be reviewed at any time.

(2) Do not assume that clients do not carefully review their bills. They do.

(3) Never bill a client for work done on a file which is *not* currently being handled by your firm. This can easily be done, especially if the client has more than one legal problem being addressed by the firm.

(4) Avoid using "reviewed file" as preface in billing descriptions. Clients see this month after month and expect that the attorney has the file memorized by the time trial rolls around.

(5) Designate a "hit person" for bill collecting. Next to the bar exams, this rates high on the avoidance list. Find the eager, tenacious member of your firm to be in charge. Learn from him or her so that when it's your turn to collect, you will be girded for the task.

(6) Remember, uncollected fees are not bad debts to be written off.

(7) When in doubt, secure the fee. A careful explanation of the necessity to do this should overcome most fears clients would have.

IN CONCLUSION

There is nothing like the client who pays his or her bill in full every month. However, this is the dream client which most small-to-medium-sized firms simply do not attract within their first few years of existence, unless from a previous association, or as a relative or friend of the attorney prior to the time he or she set up practice. By following some of the steps I have outlined, you will be able to make your monthly rent payments, pay your staff, and keep your Chevette running.

Above and beyond paying the bills, by running a law practice as a business, a lawyer is able to focus on that which he prides himself—his legal talents—rather than having to focus on that part of the practice which to a lawyer we all find tedious—the necessities of business. Adopt reasonable business practices, and the practice of law will become significantly more enjoyable. □



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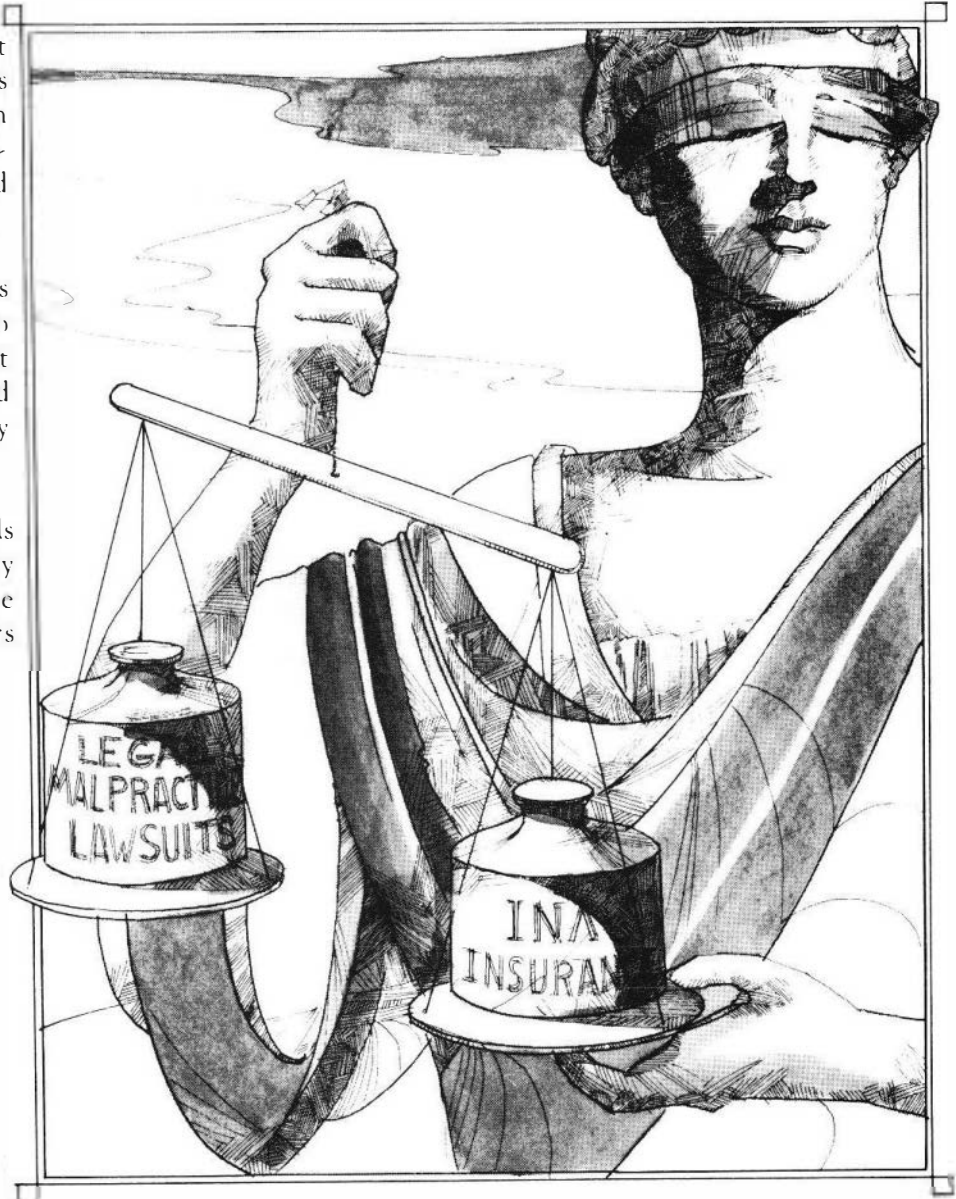
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A Computer System in Your Future

There are approximately 7,000 software products currently available for microcomputers.

by **Terrence P. Murphy**

Even we attorneys, known for our conservative ways, are looking at a computerized future. Larger firms are already enjoying the benefits of sophisticated computer systems, but only recently has the availability of inexpensive microcomputers with sufficient memory and speed made computerization practical for small and medium-sized firms. Unfortunately, good software packages for law office management are difficult to find, despite the enormous sales of business microcomputers in the past two years.

WHY SOFTWARE HAS BEEN SO MUSHY

Software development always lags behind hardware. Additional reasons for the lack of adequate software are found in the microcomputer industry's marketing and distribution channels. Previously, the industry was dominated by computer hobbyists who bought software primarily through mail order advertising. Lack of documentation (instruction manuals) was part of the challenge to the computer hobbyists who enjoyed finding the errors in the software program and "patching" them to make it work properly.

Users of microcomputers in the business world are interested in their computers strictly as business productivity tools, so they seek bug-free (error-free) software with documentation. Software retailers have evolved in an attempt

to meet that need. There are approximately 7,000 software products currently available for microcomputers—and a typical retail salesperson can demonstrate only five to ten of these. For obvious reasons, they concentrate on the "top ten" sellers, a category that does not include law office management systems. (In any case, retailers normally do not provide a key ingredient to a successful system that I will comment upon later: on-site and telephone support.)

So, law office management software has continued to be sold primarily through the traditional mail order methods to people who lack the computer expertise to distinguish good from bad products. We probably all know a story about a law firm that was burned in this manner.

The attorney/office manager who has learned enough about software to avoid these pitfalls might make a long distance call to one of a number of companies advertising software in a legal publication. He or she will probably receive one of these responses:

1) "There will be a retail dealer in your area in the next few weeks, so give me your name and number and they will call you" (almost always untrue).

Terrence P. Murphy, formerly managing partner for a Seattle law firm with a practice that emphasized tax law, has developed a software package for law office management that will be released by the end of 1984.



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The novice to bankruptcy practice will find this set invaluable; the experienced practitioner will find it a handy reference and useful research aid." Robert G. Mooreman (U.S. Bankruptcy Judge for the District of Arizona) and I. Marshall Gan (Clerk to Judge Mooreman) in the **American Bankruptcy Law Journal**, Vol. 58 (Spring 1984).

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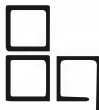
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- 3) "We don't have a dealer in your area, so we can't help you" (at least they are honest).

A BETTER SOFTWARE SOLUTION

As the microcomputer software market grows up, it is providing a better answer for those who make a thorough search of alternatives: law office management software designed by attorneys and accountants, provided with reliable and accurate documentation, and supported locally by software firms that provide live demonstrations by people who know the product and who are on call to answer questions as they arise.

The client's bill
is often the firm's last chance
to "sell" the work performed.

This leads to my first dictum on selecting law office management software:

If the person demonstrating the product does not thoroughly know the product **DO NOT BUY IT**. In watching a system demonstration, keep these questions foremost: If the computer fails to print out bills for a month, will this person be there to help? If so, can he or she solve the problem? No other questions are necessary if either is answered in the negative.

SELECTING LAW OFFICE MANAGEMENT SOFTWARE

Following some additional basic steps will help you select a computer system that meets your needs, and that *continues* to do so.

1. First select the software that meets your requirements. *Then* buy the hardware it runs on.
2. Get the whole staff involved: the office manager or secretary who will input information as well as the attorneys who will benefit from the availability of information. It is important that all persons understand what the system can and cannot do—and how long it takes to accomplish its tasks. An understanding of the system will inspire its more effective

use. You will also want to involve all levels of staff in the next step.

3. Determine what the system must accomplish. You will want it to handle general accounting, trust accounting, time and billing, and possibly litigation support. You will also need to know the number of timekeepers, the number of clients, etc., that it must handle now and in the future. *Choosing and Using Computers to Improve Your Law Practice*, by Kline D. Strong, a detailed analysis of the issues to consider in purchasing law office management software, will help you. If you are not versed in accounting, you should also read *Simplified Accounting Systems and Concepts for Lawyers*, also by Strong. Both books are available through the American Bar Association Section of Economics of Law Practice.

4. Consider the system's design. Does it truly meet the needs of legal practice or is it simply a generic package sold to other professionals with time and billing requirements? Is it easy to use so that training is simple? Does it provide adequate flexibility to meet the needs of your specific practice? Does it offer the reports you need? How quickly does it process the data?

Based on my experience in attempting to choose law office management software for my law firm, I found the following problems to be common with the software I reviewed:

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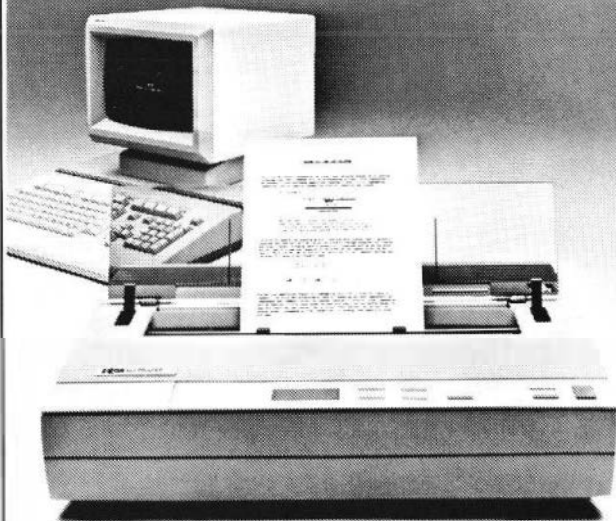


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- Most systems do not include both an accounting module and a time and billing module. In an efficient system, the two share information, so both modules are vital. Beware: Most systems that do have both modules are not integrated. Again, this means they do not share information. Without integration of the modules, the information must be entered separately into both modules. Lack of integration increases the amount of input time, increases the risk of error, and makes errors more difficult to track.

- Most so-called systems designed for attorneys do not include trust accounting, an obvious requirement for all practices. Again, integration of trust accounting with both the time and billing and the accounting modules is a must.

- Try this simple test during a demonstration. Assume it is July 15 and all billing information for the month of June has been entered into the computer. Request the system to print out the bill for XYZ Company for the period June 1 through June 17. (There are many reasons why this may be necessary in an actual situation.) This is the first test of the system's flexibility—and many systems fail because billing, as other reports, is designed to operate only on the basis of monthly periods. A system that fails this test will no doubt be unable to print either of the following reports: 1) all time entered by Attorney A for the period January 1 to February 15, and 2) all time entered for XYZ Company during the same period.

- Another problem often arises when entering the description portion of a time entry. The client's bill is often the firm's last chance to "sell" the work performed. In my view, it is best sold by a detailed description of what the attorney has done. Many systems do not allow room for a detailed description: even three or four lines may not be sufficient.

Also look for ease of entry in inputting the description. Many systems treat each line separately, requiring special attention so the line's entry does not run over the allotted number of characters. Word wrap-around eliminates this problem. Many systems require that an entire line be retyped if there is a mistake to be corrected; more efficient systems allow insert and delete functions as in word processing.

5. Make certain the software is supported locally. Buy it from a local dealer who provides training, usable documentation, and telephone and on-site support. Determine what support comes with the system and what you will be expected to pay for separately. Ask whether a service contract is available. Remember my earlier dictum: It is essential that the support staff knows legal practice and accounting.

Careful selection of an appropriate, well-designed computer system will provide you with virtually instant, current information on client billing, trust account status, the number of hours billed by individual members of your firm and other information to increase your firm's efficiency. Good systems for attorneys are finally coming onto the market. Now is the time to enter the computer age! □

A Benefit Program for Law Office Employees

A law firm gains a competitive edge
by offering attractive
benefit packages.

by **Richard H. Drew**

Benefit programs, sometimes called health and welfare plans, are important components of a total compensation package. It is important that they be viewed as exactly that: tax exempt *compensation*. Employees often consider their benefits to be as important as cash compensation, partly because of these tax implications. Many companies, law firms included, can gain a competitive edge in recruiting and *retaining* good employees by offering attractive benefit packages.

KINDS OF PLANS

Group health plans offer a definite advantage over individual health plans. With a group plan, a firm can have "guaranteed issue," *i.e.*, the insurance carrier will guarantee that all employees will be covered despite existing health problems. With individual plans, the employees have to submit health statements for review by the carrier.

Both individual and group health insurance plans have a waiting period before pre-existing conditions will be treated. These are conditions which the employee incurred prior to the time he or she became covered. Some plans have waiting periods; under other plans these conditions may *never* become covered. The same features may be found in disability plans. Life insurance may cover all employees immediately regardless of physical condition.

Medical societies (Blue Shield, for example) are basically associations of physicians. Plans developed by these organizations emphasize payment of physicians' charges, and generally pay hospital, ambulance, lab, x-ray and prescription drug expenses at about 80%. Blue Cross, which is an association of hospitals, places the emphasis on payment of hospital charges in full, while payment of other medical services is at 80% or less. Insurance companies, by contrast, tend to deal *equally* with all expenses, thus their coverages are often easier to understand.

An HMO (Health Maintenance Organization) is an alternative approach to an employee health plan. In the King, Snohomish and Pierce County areas, Group Health Cooperative of Puget Sound is one example of a well-established HMO. It provides virtually 100% coverage for all health problems, but its plans require health statements to determine pre-existing conditions—which may never become covered.

With all kinds of plans—health, life, disability, *et al*—insurance carriers will require all eligible (full time) employees to be covered when the group is small. Obviously, no insurance carrier wants only impaired risks.

WHO SHOULD PAY?

Who should pay the cost of the plan? Employers disagree as to how much to require employees to share in the expense.

Employees almost always favor full payment by their employers. Notwithstanding employee pressures, many employers have decided similarly. They believe that the extra expense is more than repaid in added employee appreciation. Other considerations also help persuade employers to pay the lion's share of the cost. Administration is simplified, for example, and there are savings when the program is not contributory.



Richard H. Drew is an insurance consultant with the Seattle office of Marsh & McLennan Group Associates.

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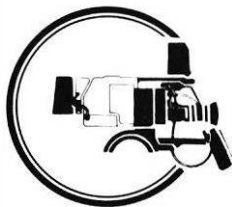
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The most pervasive reason for employers to pay the cost of benefits directly is that the tax laws operate to make employer-paid plans almost essential. Money spent by the employer for benefits is counted as a business expense and is therefore tax deductible. Moreover, because of a favored tax position, this employer contribution is not taxable income to the employee.

If, for example, an employee is in a 25% tax bracket, he or she will have to earn \$133.33 in order to have \$100.00 left over to pay a premium. By contrast, if the employer is in the same 25% bracket, he or she will only have to pay \$75 for the same policy. Obviously, tax positioning makes an enormous difference in the cost of benefits, and proper planning can actually result in greater take-home pay for an employee.

Tax laws operate
to make employer-paid plans
almost essential.

For an employer, employee benefits could be a way to distribute earnings to the proprietor or key employees on a tax advantaged basis.

DESIGNING THE PLAN

Medical benefits, of course, are only one part of a complete employee benefit plan. A full program would consider all the risks to which the employee's paycheck is subject, including:

- the risk of premature death (life insurance),
- the risk of disability (sometimes referred to as "economic death"), and
- the risk of outliving his or her earning power (retirement).

In addition, it is often desirable to use employee benefit plans as incentive plans (profit sharing), or as a means of tax deferral or avoidance (deferred compensation, pension or profit sharing plans).

The best way to plan a benefit program is to select a knowledgeable professional upon whom you can depend to apply his or her knowledge and expertise to help you design a comprehensive plan. The broker or consultant you choose can also help you in planning the distribution of costs, communicating the plan to employees, and selecting underwriters, insurance companies, or investment media. Competent guidance in this highly complex field can help you develop a plan which will be more sure to serve its purpose, and the process will be much less time-consuming. □

Some DOs and DON'Ts of Political Advertising

How can you run for office without
legally stubbing your toe?

by **R. Mark Allen**

Prior to the November, 1984, elections, candidates will try to maximize their public exposure with political advertising.

Aside from marketing strategy, the legal niceties of political advertising may play the most crucial role in a candidate's campaign. Candidates in 1984 will seek offices ranging from the Presidency of the United States to local magistrate. Their campaign skills will range from sharp to nil. Many a campaign will be operated on a shoestring, by a volunteer staff that knows little of federal, state, and local political advertising requirements.

The following is a thumbnail sketch of the various areas to investigate when attempting to answer questions from candidates about their own rights and obligations, and those of the media, in relation to campaign advertising.

INTRODUCTION

Federal statutory and administrative law largely regulates broadcast political advertising; state law applies in only a few areas. There is no federal regulation of the print media, and few state laws which relate to printed political advertisements.

In 1984, the Washington legislature passed House Bill 1133. It restructured the current requirements, placing them under the jurisdiction of the Washington State Public Disclosure Commission. In doing so, it made violations of the law non-criminal. The bill became effective on June 6, 1984, shortly before the official candidate filing period (July 30-August 3).¹

CONTENT REQUIREMENTS

Neither the Federal Communications Commission (FCC)² nor broadcast stations³ may censor the content of political advertisements. A broadcaster may not be held liable for defamatory or other unlawful material broadcast by a political candidate.⁴ There is no similar restriction on print media.

Sponsor identification—All written political advertisements must include the sponsor's name and address.

Sponsor identification for broadcast advertisements is more complex. Although broadcast announcements are exempt from the state's address requirement, the FCC's sponsor identification requirements do apply. The identity of the person or group paying for or furnishing the consideration (including film, audio, videotape, and other materials) must be disclosed.⁵ Identification must be made at the end of an announcement which is five minutes in duration or less, and at the beginning and end of any announcement which is over five minutes long.

There is no requirement, either state or federal, in reference to broadcast or print media, which requires that the campaign committee chairperson, treasurer, secretary, or any other officer be named. However, the media must retain certain records which would include that information.

Proper wording—Any announcement must include the words "paid for by," or "sponsored by," or "furnished by," accompanied by words identifying the person or group of

¹ RCW 29.18.030.

² 47 U.S.C. 326.

³ 47 U.S.C. 315.

⁴ *Farmers Educational & Cooperative Union of America, v. WDAY, Inc.*, 360 U.S. 525, 3 L.Ed. 2d 407, 79 S.Ct. 1302 (1959).

⁵ 47 U.S.C. 508; 47 C.F.R. 1212(d).

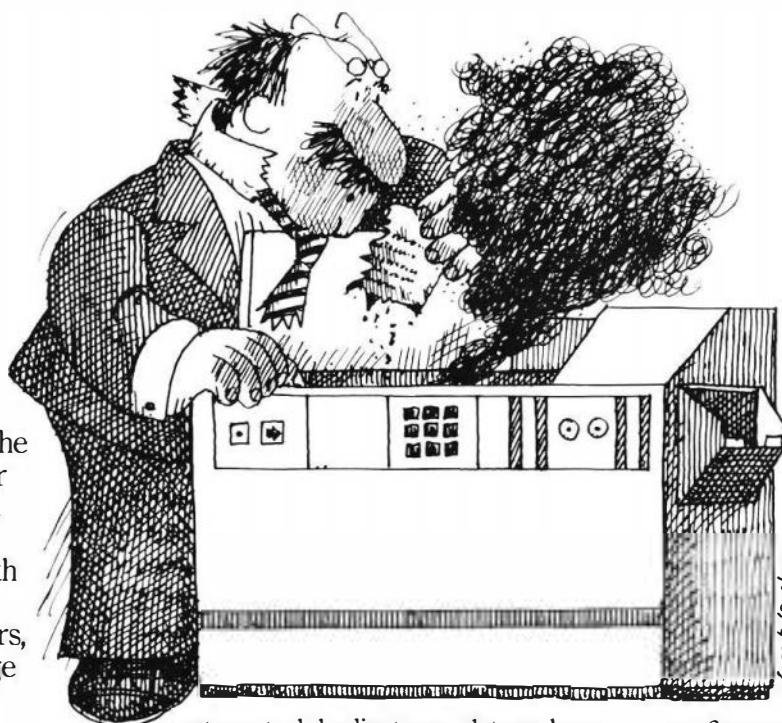
R. Mark Allen is a 1980 graduate of Southwestern University School of Law in Los Angeles. He is an associate of the Seattle firm of Ogden, Ogden & Murphy, a lobbyist, and Assistant to the President and General Counsel of the Washington State Association of Broadcasters.

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persons actually paying for the broadcast (or, in the case of free advertisements, the person or group furnishing the materials).⁶ Sponsorship wording for candidates for federal office differs markedly because of the authorization requirement.⁷

Party affiliation disclosure—Both print and broadcast ads for state candidates must identify the political party affiliation under which the candidate filed for office. It is unclear whether candidates for federal office are bound by this requirement.

Representations—Federal law does not regulate representations made by candidates in their advertisements. State law *does*, and the regulation applies to both print and broadcast ads. A person may not sponsor a political ad which contains information that the sponsor knows, or should reasonably know, is false.⁸

Political advertising may not falsely represent that a candidate is an incumbent when he or she is not. Debate in the House Constitution, Election and Ethics Committee during consideration of this issue indicated the committee's intent that this provision apply where an official, appointed to fill a vacancy in an elected position, runs for election to that position for the subsequent term, and includes the phrase "re-elect" in his or her campaign.

Furthermore, a candidate or his supporters may not falsely claim the endorsement or support of any person or organization. Use of an assumed name is also prohibited.⁹ This does not, however, prohibit the use of a "nickname."

Pictures—In print or television advertising, when the political advertisement contains any photographs of the candidate, several requirements of state law apply. At least one of the pictures used must be a "recent picture," taken within the last five years. In addition, the recent picture may be no smaller than the largest of all pictures used in the advertisement.

Corrupt practices—It is unlawful to offer, directly or indirectly, any bribe or reward as an inducement to any person:

- to vote for or against (or not to vote) any ballot issue or candidate,¹⁰
- to knowingly and willfully make a false assertion which has a tendency to prevent a candidate's election,¹¹ or
- to offer consideration to induce a voter to vote (including transportation to the polls). It is also unlawful for a candidate to solicit such considerations.¹²

⁶ 47 C.F.R. 73. 1212(a).

⁷ 2 U.S.C. 441(d); 11 C.F.R. 110.00.

⁸ EHB 1133, Section 3.

⁹ EHB 1133, Section 1(1). However, while using an assumed name in a political advertisement is punishable civilly pursuant to EHB 1133, the filing of a declaration of candidacy under a false name, with intent to mislead or confuse, is a felony. RCW 29. 18.070, *et. seq.*

¹⁰ RCW 29.85.060.

¹¹ RCW 29.85.070.

¹² RCW 29.85.080; RCW 29.85.090. It is also a crime to advertise that one

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ACCESS

There are no regulations which mandate candidates' access to print media. Newspapers and other print advertising media may deny or limit any candidate's access, at their own discretion.¹³

Broadcast media are not treated the same way as the print media. Section 315 of the Communications Act of 1934 (as amended) applies a number of access and procedural requirements to stations and candidates alike. In addition, the FCC's administrative rulemaking authority has given rise to self-generated administrative gloss on the Commission's statutory mandate.

Equal opportunities—The term "equal time" is a misnomer. Section 315 requires stations to provide "equal opportunities" to opposing candidates. The idea is that a candidate must be given not only an equal amount of time, but also the opportunity to gain access to an audience similar in quality (demographics) and quantity (numbers) to that which an opponent had access.

The candidate requesting the equal opportunity must be

a legally qualified candidate.¹⁴ The request must be made in response to a "use" by a legally qualified candidate, which use occurred after the requesting candidate became qualified. The candidate who requests the opportunity and the candidate on whose use the request was based must be opposing candidates for the same office.

The appearance on which the request is based cannot have been on a program exempt from equal opportunities obligations by Section 315:

- bona fide newscasts,
- bona fide news interviews,
- bona fide news documentaries (if the candidate's appearance is incidental to the presentation of the subject covered), and
- on-the-spot coverage of bona fide news events, including political conventions and candidate debates.

Finally, the request for equal opportunities must be made within seven days of the use upon which the request is based. A station is not obligated to inform a candidate's opponent of the candidate's appearance on the station.

will solicit or procure signatures on an initiative or recall petition. RCW 29.79.490, RCW 29.82.220.

¹³ See *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, holding that any compulsion to publish that which reason tells the newspaper's editor should not be published is unconstitutional.

¹⁴ 47 C.F.R. 73.1940(a) defines a legally qualified candidate as one who has publicly announced candidacy, is qualified to hold office if elected, has fulfilled all requirements to qualify for a place on the ballot. Presidential candidates criteria differ, however. See 47 C.F.R. 73.1940(a) (2), (3) and (4).

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Federal candidate access requirements—No federal or state law requires access for state or local candidates. However, the FCC has stated that stations are expected to allocate reasonable amounts of time to other election contests.

POLITICAL ADVERTISING RATES

Print media—State law regulates the rates of newspaper political advertising. A newspaper's rate for political advertising may be no higher than the national advertising rate extended to all general advertisers in the newspaper's published rate card.¹⁵ There is no similar provision for printers of leaflets, yard signs, magazines, or other print-type media. The state statute does not apply to broadcast advertising.¹⁶

Broadcast media—Political advertisements broadcast during the 45 days prior to a primary election, and during the 60 days preceding a special or general election, must be sold

A broadcaster may not be held liable for defamatory or other unlawful material broadcast by a political candidate.

to candidates at the station's "lowest unit rate." The lowest unit rate is, in fact, an earned discount for volume purchasers, applied to candidate purchases without the candidate having to earn the discount by making a volume purchase.

When candidates purchase advertisements to be broadcast outside the particular 45 or 60 day pre-election period, they may be charged no more than the comparable rate charged to general advertisers for such advertisements.

In order to enjoy the lowest unit rate and comparable rate benefits:

- the user must be a legally qualified candidate;
- the candidate must personally appear in an identifiable manner by voice or image;
- the advertisement must be in connection with the candidate's campaign; and
- the election in which the candidate is running must be within the station's coverage area.

¹⁵ RCW 65.16.095.

¹⁶ *Ibid.*; see also *KVUE, Inc., v. Moore*, 709 F.2d 922, 9 Med. L. Rptr. 2334 (5th Cir., 1983) (U.S. App. pending).

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MISCELLANEOUS

Nondiscrimination—A broadcaster may make no distinction in charges, practices, regulations, facilities or services rendered to candidates opposing each other for a particular office. A station may not, therefore, permit one candidate to preview an opponents advertisement before it is broadcast.

A candidate may not stockpile
equal opportunities
to saturate the airwaves
in a last minute,
pre-election blitz.

The advertising blitz—A candidate may not stockpile equal opportunities to saturate the airwaves in a last minute, pre-election blitz. Stations' schedules are not infinitely flexible, and they will not be required to honor such unreasonable requests.

Advertising on election day—There is no prohibition on advertising, either broadcast or print, on election day. However, electioneering within 300 feet of a polling place, including handbilling, is a misdemeanor.¹⁷

Equal opportunities for supporters—Federal law does not grant a candidate the right of equal opportunities based upon an advertisement broadcast by the supporters of an opponent, in which the opponent does not personally appear. However, the candidate's supporters would be entitled to access to an equivalent amount of time.

Political editorials—FCC rules require that a station which broadcasts a political editorial (endorsing or opposing a candidate) offer the candidate adversely affected by the editorial an opportunity to respond. Within 24 hours of the air time of the editorial, the station must send to the candidate affected:

- notification of the time and date of the broadcast of the editorial;

¹⁷ RCW 29.51.020.

- a tape, script, or summary of the editorial; and
- an offer of response time.

If a political editorial is to be broadcast within 72 hours of election day, notice must be given sufficiently far in advance to allow the adversely affected candidate the opportunity to prepare and present his or her response.

ENFORCEMENT

The "content" provisions of state law are enforced by the Public Disclosure Commission (PDC). The PDC is also authorized to create, by rule, exceptions to the legal identification requirements.¹⁸ The provisions of the Corrupt Practices Act (offering consideration as an inducement to vote for/vote against/not vote) are criminal proscriptions.¹⁹

Liability for failure of a political advertisement to comply with state law lies with the sponsor, not the advertising medium. Liability shifts to the medium only if the station or publisher changes the content of the advertisement without the sponsor's consent, and the change results in the advertisement's noncompliance.

¹⁸ EHB 1139, Section 1(2). Illustrative exceptions would include campaign buttons, balloons, pens, pencils, keywriting, inscriptions, etc. *Ibid.*

¹⁹ RCW 29.85.060, RCW 29.85.070, RCW 29.85.080, RCW 29.85.090, RCW 29.79.490, RCW 29.82.220.

Enforcement of the federal law affecting political advertising rests almost entirely with the Federal Communications Commission.

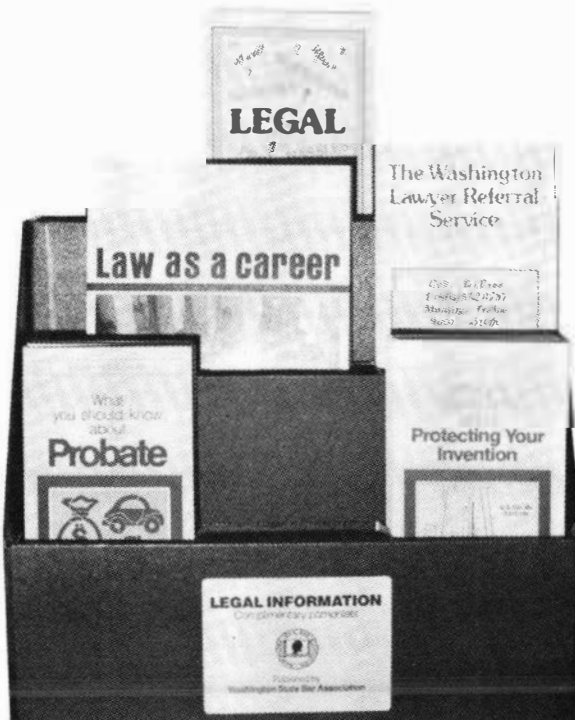
While the FCC will attempt to adjudicate disputes involving the substance of its rules, it will not become involved in contractual disagreements. Disagreements over whether the candidate's advertisements were correctly read by the announcer, were broadcast at the times promised, were broadcast as many times as was contracted, *etc.*, are best settled by negotiation by the parties or civil actions in local courts.

FCC rules apply to candidates and to their campaign committees. Broadcasters are responsible to the FCC for assuring that the proper authorization information is included (in broadcast and print advertisements).

CONCLUSION

Political advertising on radio and television is highly regulated by federal law. State laws apply to a lesser extent. Some state regulations apply to print media advertisements. Experience teaches that in the heat of campaign, candidates and their advisors sometimes overlook the various legal requirements which affect political advertising.

These guidelines are general summaries only, and should be the beginning, not the end, of the answer to questions posed by a candidate who seeks advice about political advertising. □



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Regulating Political Campaign Signs

Campaign signs should not be allowed up too soon, or for too long, or in the wrong places.

by **Edward D. Seeberger**

Autumn is the season when political campaigns reach their peak. Particularly in even-numbered years, it visits upon our state the most colorful of fall crops, political campaign signs.

In typical American fashion, regulation of what are variously called yard signs or lawn signs or campaign signs is haphazard and exists at several levels of government. Seven of Washington's 39 counties and 36 of our 50 largest cities have some kind of legislation aimed specifically at campaign signs. Add the state to this total and there are 44 jurisdictions with distinct statutes, ordinances or codes designed to restrict or control lawn signs in Washington state.

Only a few jurisdictions indicate a rationale for their lawn sign ordinances. They largely content themselves with general statements about health, safety, morals, general welfare or esthetics. Seattle says the purpose "... is to protect the city from visual pollution or litter. ..."¹ Mason County says it is needed "... to promote the public health, safety, welfare, convenience and enjoyment of public travel."² Kent believes these laws are necessary "... to protect public investment in the City Street System, and to encourage visitors to the city by conserving

the natural beauty of the city."³ But these are the exceptions. Most cities and counties get right to the details without justification or explanation. Those details, on close inspection, turn out to be as varied as the signs themselves.

STATE LAW

State laws governing lawn signs have three general purposes:

- traffic safety,
- esthetics, and
- fair elections.

These laws apply everywhere, of course, from the pea fields on the lower slopes of the Blue Mountains to the windy beaches near Clallam Bay.

In the category of esthetics, it is illegal to erect or maintain a campaign sign which is visible from the main traveled way of the interstate system, the primary system, or the scenic highway system. However, if the signs are at least 650 feet from the right-of-way and are primarily situated for viewing from other roads, they are legal.

In the area of traffic safety, it is unlawful to put a cam-

¹ Seattle Municipal Code 2.24.020.

² Mason County Ordinance No. 86-83 (1).

³ Kent Ordinance No. 1733, Section 1.

Edward D. Seeberger is Staff Director for State of Washington Senate Committee Services. He directs the 50 to 60 lawyers, analysts and clerical persons who staff the various committees of the State Senate. He has also been counsel to the Senate Democratic Caucus, attorney to the Senate Energy Committee, and caucus attorney for the House Democrats. He is a former State Representative from the 14th District (Yakima) and was a deputy prosecutor in Yakima.

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9/21-22	8416	9-5	Third Annual National Fishery Law Symposium (\$275)
9/29	8417-1	9-12	Basic Income Tax—Part 1 of 5 A Refresher Course and '84 Update (\$75 or \$350 for all sessions)
9/29	8418	9-12	Corporate Practice Under the New (1984) Financial Provisions in the Washington Business Corporation Act (\$75)
10/6	8419	9-3:30	Criminal Evidence Evidentiary Issues in the Prosecution or Defense of a Criminal Case, Including Washington's Exclusionary Rules (\$125)
10/13	8420	9-2:30	International Trade & Technology Transfer: A Changing Environment (\$100)
10/13	8417-2	9-12	Basic Income Tax—Part 2
10/19-20	8421	9-5	Federal EPA Hazardous Waste Conference (\$250)
10/27	8422	9-12	Criminal Sentencing Reform Act of 1984 (\$75)
10/27	8423	9-12	Settlement of Boundary Disputes (\$75)
10/27	8417-3	9-12	Basic Income Tax—Part 3
11/10	8424	9-5	Incorporating Small Businesses (\$135)
11/17	8417-4	9-12	Basic Income Tax—Part 4
12/1	8425	9-12	The New Federalism (\$75)
12/8	8417-5	9-12	Basic Income Tax—Part 5

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paigned sign which could be mistaken for a directional or warning sign near any street or highway.⁴ While it might be a great eye-catcher, it would thus be imprudent to post signs for your favorite candidate which resemble the familiar STOP signs or DANGER signals.

It is also illegal to maintain campaign signs in unincorporated areas within 100 feet of the intersection of a highway and railroad crossing without permission of the Utilities and Transportation Commission.

In 1984, the legislature passed HB 1133, which made several significant changes in election laws which relate to yard signs. Political campaign signs are no longer required to state the name and address of the sponsor, although the party of the candidate in a partisan race must be clearly identified.

The most important change incorporated in HB 1133, however, is in the area of protecting lawn signs. It is now misdemeanor to remove or deface lawfully placed campaign signs. The defacement or removal of each sign constitutes a separate violation. Anyone who has ever been involved in a campaign using lawn signs knows how difficult it is to maintain them. There is often the suspicion that a worker from the opposition is out late at night pulling down and destroying your campaign signs.

PERMITS, DEPOSITS, FEES & BONDS

One county and seven Washington cities require a permit, fee, deposit or bond before lawn signs may be erected in their jurisdictions, and four jurisdictions require money up front to assure proper removal.

The purpose of deposits or bonds is to provide an incentive for the appropriate disposal of signs. All the deposits are refundable if the campaign signs are removed within the time specified. In Redmond, the \$250 bond is forfeited if the signs are not removed.

Deposits or bonds are not the only method to ensure removal of signs. Mason County provides that the candidate or campaign treasurer is liable for the expense of abating such a "nuisance" if the county chooses to do so. The county may also charge candidates who do not remove their signs with a misdemeanor punishable by a fine of up to \$250, or confinement in the Mason County jail for 90 days, or both. Even then, should it choose, the county could pursue an order compelling removal.

LENGTH OF DISPLAY

For those jurisdictions that choose to do anything about lawn signs, regulating when they may go up and for how long is most common. Twenty-eight cities and four counties have such laws. As in other matters, there is considerable variation. The chart compares how various jurisdictions regulate the length of display.

⁴ RCW 47.36.180.

LAWN SIGN ORDINANCES IN WASHINGTON STATE

City or County	Permit?	Fee?	Deposit?	Bond?	Before Election	After Election	Maximum Size
Auburn	If 16 sq. ft. or over	no	no	no	unspecified	14 days	Under 16 sq. feet w/o permit
Bothell	no	no	no	no	30 days	7 days	Depends on zone
Bremerton	yes	no	no	no	30 days	7 days	30 in./24 in. w/o permit
Camas	no	no	no	no	30 days	5 days	6 sq. ft. (3 ft. high)
Centralia	no	no	no	no	unspecified	14 days	unspecified
Chehalis	no	no	no	no	unspecified	14 days	unspecified
Des Moines	no	no	no	no	30 days	10 days	32 sq. ft.
Edmonds	no	no	no	no	30 days	10 days	8 sq. ft.
Ellensburg	no	no	no	no	60 days	7 days	10 sq. ft.
Everett	no	no	no	no	60 days	unspecified	unspecified
Hoquiam	no	no	no	no	60 days	unspecified	24 sq. ft. (6 ft. high)
Kelso	no	\$5	\$50	no	unspecified	10 days	4 ft. high or wide, 8 ft. long
Kent	no	no	no	no	30 days	5 days	unspecified
Kirkland	yes	\$5	\$25	no	30 days	7 days	6 sq. ft.
Lacey	no	no	no	no	next to last Monday in July or 60 days	7 days	10 sq. ft.—residential, 32 sq. ft.—other
Longview	no	\$5	\$50	no	unspecified	10 days	4 ft. high or wide, 8 ft. long
Lynnwood	no	no	no	no	unspecified	14 days	32 sq. ft.
Mercer Island	If over 6 sq. ft.	no	no	no	unspecified	7 days	6 sq. ft. w/o permit
Mountlake Terrace	no	no	no	no	closing date for filing	14 days	16 sq. ft.
Mount Vernon	no	no	no	no	unspecified	10 days	unspecified
Olympia	no	no	no	no	four months	5 days	unspecified
Puyallup	no	no	no	no	unspecified	10 days	8 sq. ft. (42 in. high)
Redmond	no	no	no	\$250	unspecified	14 days	4 sq. ft.
Renton	no	no	no	no	unspecified	10 days	32 sq. ft.—single-faced, 64 sq. ft.—multi-faced
Richland	no	no	no	no	45 days	10 days	32 sq. ft.
Seattle	no	no	no	no	July 1 or 30 days prior to election	13 days	6 sq. ft.
Sunnyside	no	no	no	no	unspecified	unspecified	24 sq. ft.
Tacoma	no	no	no	no	60 days	7 days	8 sq. ft.—residential
Wenatchee	no	no	no	no	unspecified	unspecified	Up to 18 sq. ft., depends on street frontage
Yakima	no	no	no	no	60 days	unspecified	24 sq. ft.
Clark County	yes	no	no	no	unspecified	15 days	unspecified
King County	no	no	no	no	unspecified	10 days	unspecified
Mason County	no	no	no	no	unspecified	15 days	unspecified
Snohomish County	no	no	no	no	first day of filing or 30 days	10 days	unspecified
Thurston County	no	no	no	no	unspecified	20 days	unspecified



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Starting times before the election, where specified, range from four months in Olympia to 30 days in Bothell, Kirkland and several others. Removal deadlines are tighter, varying from a brief five days following the election in Camas, Kent and Olympia, to 20 days in Thurston County. All jurisdictions allow a successful candidate in a primary election to leave his or her signs up until the time specified following the general election.

It is interesting to note how these laws reflect the varying concerns of the communities involved. The ordinances of Puyallup and Kelso specify only when yard signs must be taken down. This suggests a substantial tolerance for the signs, but a strong desire to see them gone by a date certain. The city of Kent, on the other hand, barely tolerates yard signs at all, limiting them to a mere 35 days. In the middle are Hoquiam and Yakima, which have a 60-day maximum, leaving the starting and stopping date up to the individual campaigns (and providing an interesting enforcement problem).

With so much variation in the laws of overlapping jurisdictions, some strange situations can occur. For example, Seattle does not allow yard signs until July 1, but King County has no specified starting date. The first legislative district includes part of both Seattle and unincorporated King County divided almost down the middle by a busy arterial, North 145th Street, which also forms a Seattle city boundary. Both sides of North 145th look the same: heavily residential. However, only first legislative district residents on the north side of 145th may put up lawn signs prior to July 1. (The author makes no judgment as to whether the effect of these laws favors residents to the north or those to the south.)

USE OF PUBLIC PROPERTY

Twenty-two Washington cities and five counties forbid placing yard signs on public property or specify that such signs may only be placed on private property. Common principles of ownership dictate that permission is required from any owner, public or private, before legally entering, posting, and maintaining a sign. In May of this year, the U.S. Supreme Court ruled that it was within a city's constitutional powers to attempt to improve its appearance by prohibiting campaign signs on public property.⁵ What is surprising is that three and possibly four jurisdictions in Washington State actually allow and, in one case, almost encourage the placing of yard signs on public property.

The city of Edmonds states: "Campaign signs are permissible on the edge of public rights-of-way (provided they are not hazardous to pedestrian or vehicular traffic)..."⁶

Mason County does not say signs may be placed on public property but recognizes them in a negative way: "Any

⁵ *Members of the City Council of Los Angeles v. Taxpayers for Vincent*, 52 LW 45 94 (May 15, 1984), U.S.

⁶ Edmonds Municipal Code 20.60.080 (H).

political sign erected or maintained on county road rights-of-way of Mason County which remains more than 15 days following the election for which it is intended shall be a public nuisance. . . ."⁷

The town of Fircrest boldly proclaims: "Any sign of a temporary nature when placed upon public property will only be allowed to remain at the discretion of the Town of Fircrest. . . ."⁸

The city of Richland is most generous: "Political signs may be erected on city-owned land which is vacant and otherwise unoccupied, unleased and unused for public purposes. . . ."⁹

SIZE & NUMBER OF SIGNS

There is great variety in local laws governing the size of political campaign signs. Redmond is the toughest, establishing a mere four square feet maximum. The city of Kent, which is the most restrictive in limiting the duration of the sign period, makes no mention whatsoever of sign size. Twenty-four cities (no counties) have size limits.

A few cities also have restrictions regarding the number of signs. In Auburn, there can be only one sign 16 square feet or larger per candidate or issue per lot. The city of Camas

allows only one sign per yard. Centralia limits signs to one per candidate on a private lot. Chehalis permits two signs per candidate on each lot. Des Moines and Wenatchee prohibit more than one sign per street frontage.

OBSERVATIONS

Having been involved in many political campaigns over the years, including two where I was the candidate, I know the value of yard signs. They are one of the few "cheap" forms of advertising available. Radio, television, daily newspapers, and commercial billboards are too expensive for many local races. In the "major markets" like Seattle and Tacoma, much of their value is wasted on voters outside the intended district anyway. Not so with lawn signs. In 1984, it is possible to buy 500 yard signs for about \$300. Carefully placed throughout a legislative district, they can be a very effective and inexpensive way to get a candidate's name and brief message known.

Not only are yard signs affordable and "targetable," they serve as a focal point in getting persons involved in a campaign. Public relations experts are usually hired to spend big money on mass media. But the professionals are helpless when it comes to lawn signs. It takes manpower to staple the signs, nail them to stakes, get permission from property owners, pound them into the ground, maintain them on a regular basis, and remove them. Lots of people are needed to run a successful yard sign campaign, which is exactly the same thing needed to win an election.

⁷ Mason County Ordinance No. 86-83 (2).

⁸ Town of Fircrest Ordinance No. 645 (15) (b).

⁹ Richland Municipal Code 27.01.060 (4) (a).

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Lawn signs imply the active support of the residents of the property upon which they are placed. Most people are selective about which campaign signs they will allow on the front lawn. The sign is, after all, a message directed at neighbors. It says "I believe in this candidate and you should, too." For the average voter, it is one of the most public political acts possible.

If campaign signs are so good for the system, why regulate them at all? Should not the 46 cities and counties with no yard sign ordinances be congratulated for their patriotism and wisdom?

I believe not. Lack of laws means lack of protection. Unregulated and unrestrained campaign signs can result in a cheapening of the political process, cause unsafe vehicular and pedestrian traffic conditions, and be a blight on our communities and the environment.

What is needed is a *balance*. Campaign signs do serve a public purpose, but they should not be allowed up too soon, or for too long, or in the wrong places. They should not be a danger to motorists or pedestrians, or be so large as to constitute a nuisance to a neighborhood.

Most of all, campaign sign ordinances must be enforceable. Law enforcement officials are understandably reluctant to venture into this area because, among other reasons, they have higher priorities. Therefore, campaign sign laws need to be fundamentally self-policing. This can be done by requiring enough of a prior deposit from every candidate or campaign to not only ensure the signs will be taken down but that size and location restrictions will also be obeyed. This type of local ordinance, coupled with the strengthened state laws making unauthorized removal of campaign signs a misdemeanor, could bring a measure of order and sense to this part of our political process.

Borrowing somewhat from codes of the cities of Richland, Bremerton and Tacoma, I offer my own model political campaign ordinance:

"Political campaign signs are allowed in Seebergerville subject to the following conditions:

(a) Prior to placing any political campaign signs, the name and address of the candidate or other person responsible and a \$200 cash deposit or bond shall be left with the city clerk. The deposit shall be refunded within 14 days following the appropriate election, provided the conditions of this ordinance are met.

(b) Campaign signs shall be no larger than six square feet.

(c) Political signs shall not be displayed more than 60 days prior to and five days after the date of the election for which intended.

(d) Political signs may be erected on city-owned land which is vacant and otherwise unoccupied, unleased or unused for public purpose, provided such signs are not a hazard to vehicular or pedestrian traffic. A list of such land is available from the city clerk.

(e) Violation of section (a) is a misdemeanor. Violation of sections (b), (c), and (d) shall result in forfeiture of all or an appropriate portion of the deposit or bond." □

WASHINGTON STATE BAR NEWSLINE

The Board's Work



by Steven A. Reisler

IS SPECIALIZATION IN YOUR FUTURE?

SUNRIVER, OREGON, August 17-18 --
Specialization . . . a tool for modern
times or the demise of an open bar?

Tacoma attorney Claude Pearson, Chairman of the WSBA Board of Specialization, told the Board of Governors that specialization is the legal practice of the future, and the future is now. Presenting the Governors with a seven-point plan similar to the ABA specialization model, Pearson asked the WSBA to approve the plan and recommend it to the Supreme Court for adoption.

The proposed "umbrella" plan for specialization primarily differs from the ABA model in that it provides only for optional lay participation in the regulation of specialists and, more significantly, in that it does not permit "grandfathering" of senior members of the bar.

The "umbrella" plan presented by the Board of Specialization would require bar certification for any lawyer who would want to call herself a "specialist." To qualify for certification under the plan, a lawyer would need to comply with the following standards:

- 1) Maintain professional liability insurance.
- 2) Demonstrate substantial involvement in the specialty field (30% of practice) during the five years immediately preceding certification.
- 3) Accrue 45 hours of CLE credits in the area of specialization in the three years preceding certification.
- 4) Submit the names of five lawyers/judges (experienced in the field) who will vouch for the specialist's competence [peer review].
- 5) Pass a written examination as required by the Board of Specialization.
- 6) Pay any certification fees established by the Board.
- 7) Obtain recertification upon the expiration of five years.

Pearson maintained that specialization is already a fact of legal life, and that the Bar must do something to regulate it. Specialization, he argued, would provide greater access by the public to "appropriate legal services," increase the competence of the bar and encourage reasonable costs for appropriate legal services. Pearson also said that specialization would have the side-benefit of regulating otherwise uncontrollable legal advertising.

Second District Governor Ted Zylstra was skeptical. "How does specialization help lawyers? How does it help the public?" he asked. "I've never experienced any field of specialization where the specialist was 'inexpensive.'"

George Kargianis, Governor from the Eighth District, replied that we already have de facto specialization; only by adopting a reasonable plan will the bar ever

get a handle on it. As things now stand, Kargianis said, the layman cannot distinguish the novice lawyer from the true specialist.

WSBA Young Lawyers representative John Ennis, however, observed that the junior members of the bar would probably object to any specialization plan which would require five years experience for certification. Young lawyers would resent having to take yet another examination before they could get into the "real practice of law." Furthermore, Ennis asked, what does "peer review" mean to the young or sole practitioner?

King County Governor Bill Dwyer supported the specialization proposal. "Does anyone think the public is best served by what we now have? The profession is becoming more specialized all the time, and we have no control over it."

Don Bond, the Fourth District's Governor, urged the Board to move cautiously on specialization. "This could be the single biggest issue facing our lawyers today," Bond said. "I want this to be submitted to all the members for their opinions." Governor Kargianis, however, urged the Board to take decisive action without ducking the issue: "It is bullet-biting time. We must vote yes or no on the specialization plan and let the Supreme Court solicit comments." Governor Zylstra demurred: "Many members think we make decisions behind closed doors. We have an obligation to let them know we want their input and opinions."

The Board ultimately voted to defer final consideration of the specialization plan until its December meeting. In the meantime, the Board directed the President to institute an educational program about specialization and to disseminate information about the plan to local bar associations with invitations for comment.

CASE EXAMPLE #1

In a surprise move, the defense called to the stand a foreman who had little ostensibly to do with the case, but whose testimony quickly turned potentially damaging.

The foreman claimed that the plaintiff's construction company had operated negligently. Asked to be specific, he cited the company's handling of expensive stainless steel bolts, worth over \$800 each. He alleged that the bolts had been left thoughtlessly in the mud and snow, many damaged beyond use.

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The documents demonstrated beyond a doubt that the foreman had left the job several weeks before the bolts were delivered!

Remarkably, plaintiff's counsel had this information in hand before rising to cross examine. The potentially damaging allegations were diffused and the witness discredited. In the client's own words: "it was just one of the invaluable assists Cipher gave us in what eventually became a significant court victory."

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OTHER WORK:

Rental Discounts -- By a 9-1 vote, the Board approved a WSBA/Hertz rental car discount plan similar to one provided by Avis.

International Law Section -- By unanimous vote, the Board permitted the creation of the International Law and Practice Section.

Law-Related Education -- Without dissent, the Board approved a "mentor" program for high school students by which lawyers will help incorporate the teaching of law into school curricula.

Tel-Law -- By unanimous vote, the Governors adopted a resolution favoring the establishment of a state-wide "Tel-Law" program, subject to a report on the costs involved. Tel-Law programs are currently in place in King, Pierce and Spokane counties.

Judicial Poll -- Voting 8-2 (Zylstra and Comfort opposed), the Board allocated funds to conduct a lawyer preference poll for candidates running for contested Supreme Court positions. Opponents of the preference poll feared that it would prove to be a popularity contest unrelated to judicial qualifications, and that it would handicap candidates domiciled in smaller legal communities.

MEETINGS OF THE BOARD OF GOVERNORS ARE OPEN TO WSBA MEMBERS. THE NEXT MEETING IS SEPTEMBER 11 IN VANCOUVER, B.C.

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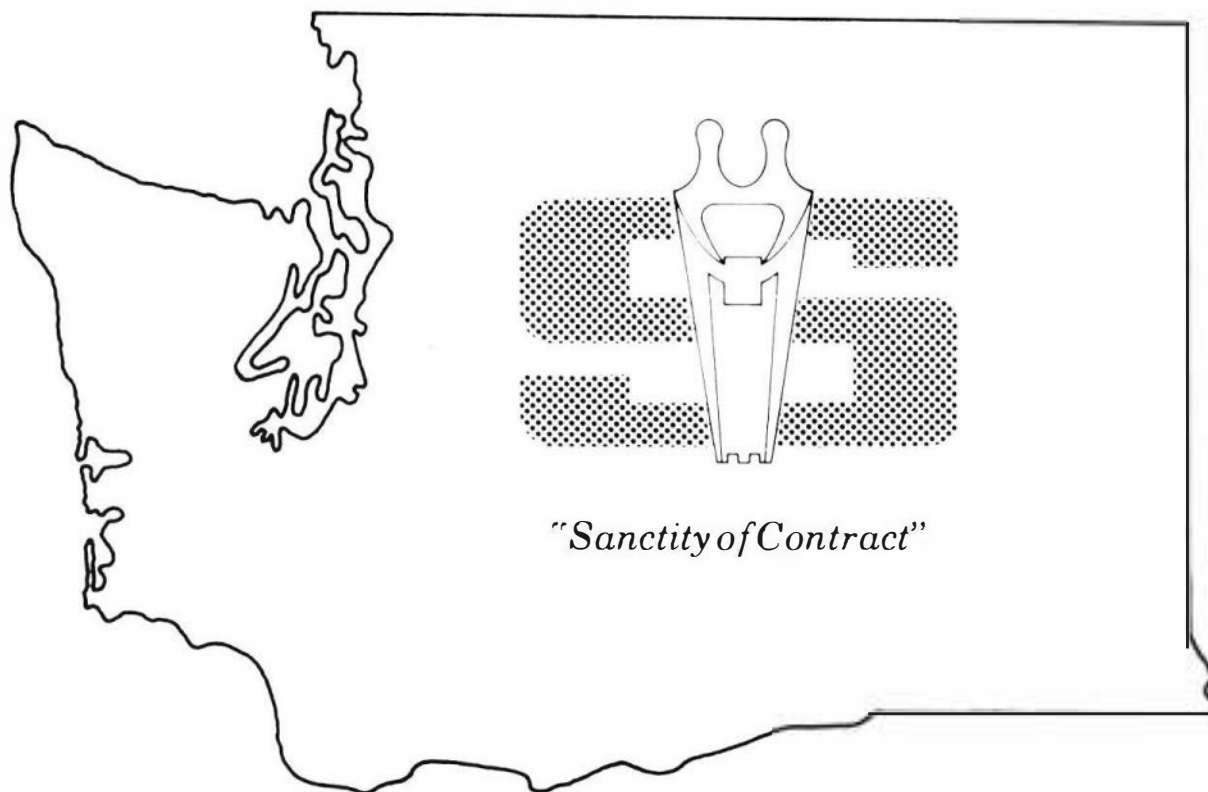
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Anatomy of a Tax Shelter & Tort and Products Liability Practice

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

ANATOMY OF A TAX SHELTER will be presented in Seattle on October 5 at the Madison Hotel. Co-sponsored by the CLE Committee of the Washington State Bar Association and the Washington Society of Certified Public Accountants, the seminar has been approved for 6.00 hours of continuing legal education credit and one day of CPE credit.

The program is designed to benefit tax practitioners in the legal and public accounting professions who are called upon to assist in the preparation or evaluation of tax shelter offerings. The distinguished faculty assembled by program chairpersons **Robert D. Kaplan** and **Jeffrey P. Maxwell** is comprised of experienced practitioners, both attorneys and CPAs, who are intimately familiar with issues concerning tax shelters.

Andrew H. Zuccotti will address the topic of "Tax Shelter Pass-Through Techniques"; **Robert D. Kaplan** will speak on "What Do You Need to Say?—Tax Shelter Opinions"; **Darrell D. Hallett** will provide insight on "Penalties and Compliance"; **John R. Walsh, Jr.**'s presentation will deal with "Economic Evaluation"; and **Lloyd W. Born** will speak about "Client Suitability" and "Burned Out Shelters."

As a special feature of this seminar, arrangements have been made to feature **David Robins**, Executive Assistant to the Assistant Regional Commissioner (ARC) of Examination, San Francisco, as the guest luncheon speaker. Mr. Robins' informative and thought-provoking presentation will provide background information regarding positions of the IRS on "where we've been, where we're at, and where we're going" concerning tax shelter offerings. In addition, Mr. Robins will be accompanied by the IRS Senior Regional Analyst in charge of tax shelter programs for ARC (western region), **Kathleen Koehler**. The two of them will entertain questions from the luncheon audience following Mr. Robins' remarks.

For further information regarding this seminar, please contact Sherrie Hewitt, WSBA, 505 Madison Street, Seattle, WA 98104, (206)622-6021.

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tion and inform you about practice and procedure under the Tort and Products Liability Reform Act of 1981. The program will be presented at three sites: on November 2 the seminar will be presented in Spokane at Cavanaugh's Inn at the Park; on November 9 the program will be presented in Seattle at the Westin Hotel; and on November 16 it will be presented in Olympia at the Westwater Inn.

Seminar Chairperson **William A. Pelandini** has assembled an excellent faculty consisting of **Robert J. Bryan, Susan R. Davis, J. Murray Kleist, Hugh R. McGough, Thomas J. McLaughlin, Frank R. Morrison, Jr., Robert P. Piper, Michael H. Runyan, and Curtis L. Shoemaker** for this program.

Topics which will be covered include "Claimants and Product Sellers Under the Act," "Standards of Care of Product Sellers—Plaintiff's Viewpoint," "Useful Safe Life and Other Affirmative Defenses," "Apportionment of Fault Among Plaintiffs and Defendants," "Settlement Procedure: What is Reasonable?," "Commercial Economic Loss—Remedies Under the Act," "Update on Federal Legislation," and "Washington Pattern Jury Instructions: Panel Discussion."

For further information regarding this seminar, please contact Debbie Kirchhauser, WSBA, 505 Madison Street, Seattle, WA 98104, (206)622-6021.

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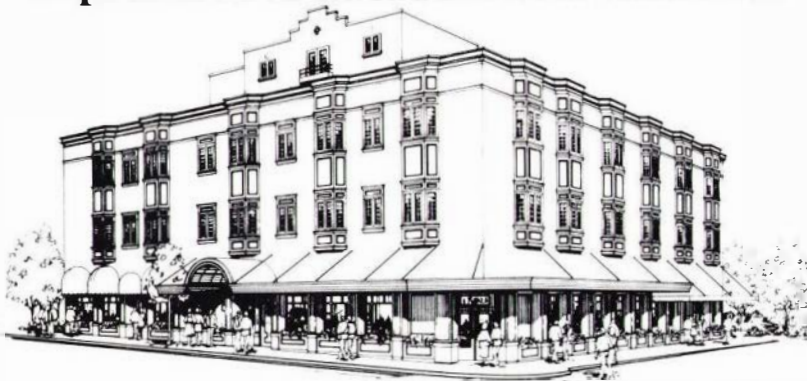
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CREDITOR-DEBTOR. Each unpaid child support installment becomes judgment that continues valid for period of statute of limitations on judgments (now 10 years) beyond due date. Entry of lump-sum judgment for unpaid support installments merely fixes amount owed and does not establish new date from which statute of limitations runs on individual installments. *Kruger v. Kruger*, 37 Wash. App. 3279 (1984).

—*M. D. Rombauer*

CRIMINAL LAW AND PROCEDURE. (1) When accused is charged with one offense but evidence shows more than one has been committed, state may elect particular offense or jury may be instructed that it must agree unanimously that one particular act was committed, in order to convict. *State v. Petrich*, 101 Wn.2d 566 (1984). (2) One who rents car and does not return it may be punished under special failure-to-return statute, even if all elements of theft are present. *State v. Shriner*, 101 Wn.2d 576, 681 P.2d 237 (1984). (3) Expert testimony on battered-woman syndrome may be admissible. *State v. Allery*, 101 Wn.2d 591 (1984). (4) In second-degree assault case, state has burden of proving beyond reasonable doubt absence of self-defense. *State v. Acosta*, 101 Wn.2d 612 (1984). (5) Washington death penalty statutes violate state constitution to extent they permit consideration of aggravating factors other than those on a short list. *State v. Bartholomew*, 101 Wn.2d 631 (1984). (6) One may be guilty of first-degree robbery as accomplice, even without knowledge that principal offender was armed with deadly weapon. *State v. Davis*, 101 Wn.2d 654 (1984). (7) Witnesses who have been hypnotized may not testify in criminal cases to facts not recalled prior to hypnosis. Special procedures are required to insure that testimony is limited to facts recalled before hypnosis. *State v. Martin*, 101 Wn.2d 713 (1984). (8) Police roadblock is proper that does not stop all cars for inspection but stops first one to come along after inspection of preceding car. *State v. Marchand*, 37 Wn. App. 741 (1984). (9) Intent to deprive of property permanently is not element of theft by deception (or of any other form of theft except by taking). *State v. Vargas*, 37 Wn. App. 780 (1984). (10) Superior court (though not district court) lacks authority to permit deferred prosecution in misdemeanor cases. *State v. Hayes*, 37 Wn. App. 780 (1984). (11) Passenger who grabs steering wheel and causes accident is person operating vehicle for purposes of negligent homicide statute. *In re Arambul*, 37 Wn. App. 805 (1984).

—*G. R. Nock*

MORTGAGES. When holder of mortgage foreclosed without joining real estate contract purchaser who was junior in priority, foreclosure sale did not extinguish rights of purchaser, who was an omitted junior. Purchaser was entitled to have specific

performance of contract by tendering full performance and equitably to redeem from mortgage (not statutory redemption) by paying mortgage debt. These rights continued until barred by either statute of limitations or laches. In circumstances of this case, where purchaser at mortgage foreclosure sale had not changed position, trial court erred in invoking doctrine of laches. *Brost v. L.A.N.D., Inc.*, 37 Wash. App. 372, 680 P.2d 453 (1984).

—*W. B. Stoebuck*

REAL PROPERTY. When purchaser of vacant lot received deed that described different lot than salesman had shown, there was no violation of Consumer Protection Act, RCW 19.86, when evidence showed only that salesman made innocent mistake. Salesman's acts were not deceptive, nor did they have potential for repetition. *Sato v. Century 21 Ocean Shores Real Estate*, 101 Wn.2d 599, 681 P.2d 242 (1984).

—*W. B. Stoebuck*

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CODE OF PROFESSIONAL RESPONSIBILITY COMMITTEE

FORMAL ETHICS OPINION NO. 178

Misleading Firm Names Are Prohibited

(1) Attorneys who are not partners may not hold themselves out as partners by using the term "law offices."

(2) It is inherently misleading for a sole practitioner to use the term "and associates" when there are in fact no associates.

(3) The "of counsel" designation can be used only in limited circumstances.

(1) Attorneys who are not partners may not hold themselves out as partners by using the term "law offices."

An inquiry has been received as to whether sole practitioners sharing office space may use the same letterhead under the title, "Law offices of Smith, Jones and Black."

The Code of Professional Responsibility prohibits attorneys from holding themselves out as having a partnership with one or more other lawyers unless they are in fact partners. DR 2-102(C).

The purpose of this rule is to avoid deceiving the public about a lawyer's professional relationships, as EC 2-13 explains:

In order to avoid the possibility of misleading persons with whom he deals, a lawyer should be scrupulous in the representation of his professional status. He should not hold himself out . . . as being a partner or associate of a law firm if he is not one in fact, and thus should not hold himself out as a partner or associate if he only shares offices with another lawyer.

In order to avoid any potential for misleading the public, lawyers merely officing together must have separate letterheads, cards, pleading paper and telephone listings, although they may use a common telephone line or number.

This rule has an advantage for lawyers who are not in fact partners, since it avoids potential claims that all members of the "law office" are liable for one member's malpractice. Nothing in this opinion should be construed as prohibiting a true partnership from using the term "law offices" in the firm name.

Similarly, a lawyer should not use a fictitious composite such as "Jones & Brown" where Jones is deceased and either (a) there never existed prior to Jones' death a genuine partnership between Jones and Brown or (b) Brown's assumption of Jones' name is based on his occupancy of the office

space occupied by Jones prior to his death. This practice is a misrepresentation and should not continue.

(2) It is inherently misleading for a sole practitioner to use the term "and associates" when there are in fact no associates.

The use of the term "and associates" in a firm name implies that the named lawyer or lawyers have other attorneys working for them, which if true is not objectionable. If, however, there are no other lawyer employees, it is inherently deceptive to use the "and associates" designation.

(3) The "of counsel" designation can be used only in limited circumstances.

"Of counsel" is not the appropriate designation where the lawyer is a partner, associate, or an outside consultant, or a forwarder-receiver of legal business, or one merely sharing office space. To be listed as "of counsel," the lawyer must be an active member of the Washington State Bar Association and have a close, i.e. regular and frequent, continuing relationship with the lawyer or law firm, for example, the relationship of a retired or semi-retired former partner who remains available to the firm for consultation and advice.

Opinions 42, 55, 95 and 151 are hereby withdrawn.

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Around the State

SOUTH KING COUNTY

by A. ROBERT E. THOMSON

New officers were elected by the South King County Bar Association and installed at the annual Spring Banquet. The newly-elected officers are: **Gary F. Faull**, President; **Carlos M. Sosa**, Vice-President; **Judith R. Eiler**, Treasurer; and **A. Robert E. Thomson**, Secretary. New and hold-over trustees are: **Jack Hawkins**, **Robert Smythe**, **Tim Edwards**, **Robert Stead**, **Jane Rhodes**, **Barbara Heavey**, **Joe McGoran** and **Leslie Wagner**.

Judy Eiler and **Paula Pridgeon** have opened a law office together in West Campus in Federal Way. **Gail Crawford** has joined the firm of **Smythe, Van Sicken** and **Sosa** in Auburn.

The annual South King County Bar Association Golf Tournament, formerly known as the "Phil Biege" open, was held Friday, July 27. The watchword has always been that a poor score is the sign

of a thriving law practice. We don't know what that says about **Bob Kuvera's** winning score of 74, but Bob has indicated that he is not giving any lessons, so hold all calls.

The event was unusually well attended by judges and other dignitaries, including **Bob Redman**, the president of the Washington State Bar Association. This year marked the first year that **Phil Biege** has not run the tournament, and **Rich Bathum** is to be congratulated for a fine job in his stead.

PIERCE COUNTY

by ROBERT W. MARSDEN

Congratulations to **Ed Lane** for his recent election to the WSBA Board of Governors. Ed recently won a run-off over **Allan Billett** for the sixth district position, replacing **Pat Comfort** on the Board.

A familiar face is occupying the post of executive director of the Tacoma-Pierce County Bar Association. **Joyce**

Feely, who was hired six years ago to operate the Association's Tel-Law program, has been named to replace **Beth Jensen** as executive director.

Barton L. Jones, a former associate with **Ralph Turco**, has opened his own practice in Tacoma.

Larry Couture reports that his all-lawyer softball team was unable to repeat as league champion this year. The team wound-up the season tied for second place with a 7 and 3 record. Early season injuries (**Dave Tuell**—rotator cuff injury to his right shoulder; **Bob Marsden**—bone spur in his left heel) and the loss of three Rule 9 ringers during a critical point in the season (allegedly they were studying for the July Bar Exam) were cited as excuses...er...reasons for the team's failure to win another league title.

MEMORANDA . . .

King County Superior Court Judge **Lee Kraft** has announced that she will not file for reelection to another term, and will join the Seattle law firm of **Diamond and Sylvester** as a senior partner in September...Attorneys **Mark J. Sullivan** and **Rodney T. Harmon** have joined the litigation department of **Nelson & McCarthy, P.S.**, in Seattle...**Davis, Wright, Todd, Riese** and **Jones** in Seattle has announced that **Linda M. Youngs** has joined the firm as attorney of counsel, to be headquartered in Bellevue.

IN MEMORIAM

Retired Seattle attorney **Jeffrey Heiman**, 80, died July 16. A graduate of the University of Washington School of Law, Mr. Heiman was admitted to practice in 1926. After a term as an assistant district attorney, he maintained a private law practice in Seattle for 50 years, until his retirement in 1981. Mr. Heiman was a member of the Seattle-King County Bar Association, a past president of B'nai B'rith in Seattle, and active in community organizations.

Coming Attractions

To acquaint citizens with their legal rights and obligations, the Washington State Bar Association is producing a series of pamphlets on various legal topics. This public service project includes publications on wills, probate, marriage, dissolution, contracts and other areas of the law.

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Briefly Noted

Law of the Sea Conference

The 18th Annual Conference on the Law of the Sea will be held at the St. Francis Hotel in San Francisco September 24-27. Registration information may be obtained from Law of the Sea Conference, Office of Special Programs, University of San Francisco, Lone Mountain Campus, Ignatian Heights, San Francisco, CA 94117, telephone (415)666-6809. Hotel reservations may be obtained directly from the St. Francis Hotel, telephone (415)397-7000.

Domestic Violence Seminar

"Victims of Domestic Violence: Effective Representation," is the theme of a seminar to be held October 19 at the Thurston County Courthouse complex. The program will address recent changes in the state domestic violence law which becomes effective September 1, as well as safety and other issues of concern in domestic violence cases.

Sponsors of the program are members of the Capital Area Chapter of Washington Women Lawyers, in conjunction with Puget Sound Legal Assistance Foundation and Safeplace (Rape Relief and Women's Shelter of Thurston County). The course has been approved for 4.0 CLE credits. For more information, call Puget Sound Legal Assistance Foundation in Olympia, (206)943-6260.

Today's Constitution and You

"Today's Constitution and You" is a long-term project designed to increase public awareness of the U.S. Constitution, in celebration of the document's bicentennial in 1987. The project is sponsored and administered by Metrocenter YMCA in Seattle, with the efforts of volunteers from many professions.

Upcoming activities of the project include: participation in a CLE program on constitutional issues for the WSBA Annual Meeting; "Exercise Your Constitution," a drive for voter registration

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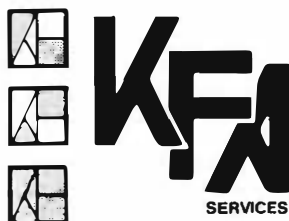
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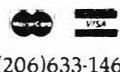
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Gayton Elected President of Loren Miller Bar

Seattle attorney Gary Gayton has been elected president of the Loren Miller Bar Association for 1984-85.

Other officers are: Vice-presidents—Kirkland Taylor, Connie Proctor, and Jackie Brown, all of Seattle; Treasurer—Craig Lewis, Seattle; Secretary—Gordon McHenry, Jr., Seattle; Corresponding Secretary—Monica Benton, Seattle; Financial Secretary—Beverly Johnson, Tacoma; and Parliamentarian—Barbara Laners, Seattle.

The Loren Miller Bar Association is a state-wide association of Black lawyers. For more information, contact Monica Benton at (206)593-6542.

AA for Attorneys

Alcoholics Anonymous meetings for attorneys are held Wednesdays at noon at the Golden Gavel Restaurant, 422 4th Avenue (near the King County Courthouse) in Seattle.

Notice

Seattle attorney **Craig S. Palmquist** was transferred to inactive status on June 29, 1984.

DISCIPLINE

Suspended

Seattle attorney **Robert A. Sutton** has been suspended pending the outcome of disciplinary proceedings by order of the

Washington State Supreme Court, effective July 25, 1984.

Reprimanded

Richard N. Pratt of Everett, Washington, has been ordered reprimanded based upon findings that he failed to file a Notice of Appeal on a criminal traffic conviction after having agreed to do so for his client, and that he failed to respond promptly to the Association's investigation of his client's complaint.

Censured

Attorney **Emily R. Hansen** has been ordered to receive a Letter of Censure by the Disciplinary Board. Ms. Hansen was censured for removing client funds for payment of her fees, when she knew that part of her fee was disputed by her client.

STATE LAW LIBRARY Recent Acquisitions

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by calling (206)753-6525, or mailing your request to: Washington State Law Library, Temple of Justice, Olympia, Washington 98504. A bi-monthly *Selected Recent Acquisitions* list, generally containing 200-300 new titles, is also available. Copies of the list may be obtained by sending your request to the Washington State Law Library at the above address.

ACCOUNTS AND ACCOUNTING

Gunter, Samuel P., and others. *Basic accounting for lawyers: a video handbook*. New York: Practising Law Institute, 1982. Pp. 319.

ARBITRATION

Dunlop, John T. *Dispute resolution: negotiation and consensus building*. Boston: Auburn House, 1983. Pp. 296.

ATTORNEYS

Bennett, Joel P. *Winning attorneys' fees from*

the U.S. Government. New York: Law Journal Seminars-Press, 1984. V.p.
Napley, David. *The technique of persuasion*. 3d ed. London: Sweet & Maxwell, 1983. Pp. 187.

BIOGRAPHY

Kaminskaya, Dina. *Final judgment: my life as a Soviet defense attorney*. New York: Simon and Schuster, 1982. Pp. 364.
Strum, Philippa. *Louis D. Brandeis: justice for the people*. Cambridge, Mass: Harvard University Press, 1984. Pp. 508.

COMPUTERS

Office automation & word processing buyer's guide. New York: McGraw-Hill, 1984. Pp. 328.
Rhoads, Forrest Dean, and John Edwards. *Law office guide to small computers*. Colorado Springs, Colo.: Shepard's/McGraw-Hill, 1984. V.p.

CONTRACTS

Drafting basic contracts and business forms. Seattle: Seattle-King County Bar Association, Young Lawyers Section, 1983. V.p.

CRIMINAL LAW AND PROCEDURE
Nineteen eighty-four: was Orwell right? perspectives on criminal procedure. Seattle: Washington State Bar Association, 1984. 1 vol. (loose-leaf).

ETHICS

Practical issues of professional responsibility in the practice of law. Boston: Legal-Medical Studies, 1984. Pp. 369. (loose-leaf).

FAMILY LAW

Post-marital dissolution proceedings. Seattle: Washington State Bar Association, 1984. 1 vol. (loose-leaf).

LAND USE PLANNING

Schmidman, Frank, and others. *Handling the land use case*. Boston: Little, Brown, 1984. Pp. 710.

LAW OFFICE MANAGEMENT

Financial management of your law practice. Seattle: Washington State Bar Association, 1984. 1 vol. (loose-leaf).

MALPRACTICE

Baum, David B. *Handling the medical malpractice case: an advanced look*. Berkeley: California Continuing Education of the Bar, 1983. Pp. 59.

MEDICAL JURISPRUDENCE

Evans, David G. *A practitioner's guide to alcoholism and the law*. Center City: Education Services, 1984. Pp. 91.

SETTLEMENTS

Settlements and negotiations. Seattle: Washington State Trial Lawyers Association, 1984. Pp. 201.

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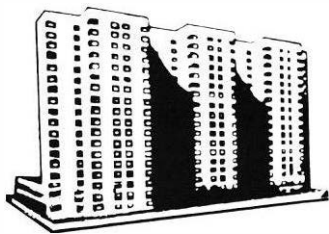
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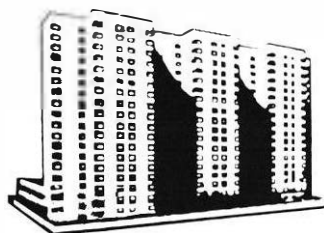
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WILL SEARCH

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MISCELLANEOUS

42 U.S.C. §1983: Lawrence B. Linville would like to exchange briefs, ideas and other information with other attorneys who also represent clients pursuing claims under 42 U.S.C. §1983. Lawrence B. Linville, Clinton, Fleck, Glein & Linville, 2112 Third Avenue, Suite 500, Seattle, WA 98121.

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