Washington State Bar News
Vol. 39, No. 10, October 1985

Patrick C. Comfort, President

A major advance in Federal Code Indexing. . .

. . . 400,000 reasons to buy USCA Now.

With more than 400,000 index references in the new eight-volume index for United States Code Annotated®, there's little wonder some are calling it "the index for the 80's."

It's your completely revised index of all federal statutory law. Where else can you find this many index references? Where else can you find a resource so up-to-date and reliable? Only from USCA®. Only from West.

USCA

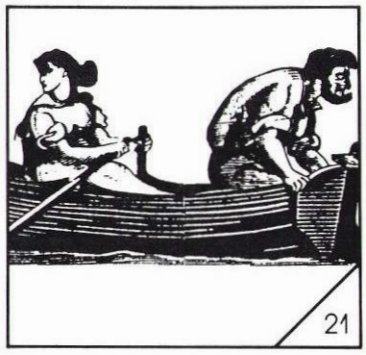
of course

Ask your West sales representative for more information or call toll-free 1(800)328–9352.

WEST PUBLISHING COMPANY

Washington State Bar News
Vol. 39, No. 10, October 1985

FEATURES



IN THE NEWS

DEPARTMENTS

Published by
WASHINGTON STATE BAR ASSOCIATION
505 Madison Street Seattle, Washington 98104
CAROLE A. GRAYSON, *Editor*
JENNIFER KLAMM, *Production Manager*
DENNIS M. EAGAN, *Advertising Manager*

JOHN J. MICHALIK, *Executive Director*
R. WAYNE WILSON, *Director of Public Affairs*

PUBLISHED the last day of the month before cover date. Editorial deadline 25th day of month for *second* issue following. Direct correspondence to *Washington State Bar News*, 505 Madison Street, Seattle, WA 98104, telephone (206) 622-6054. All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or the Board of Governors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement. SUBSCRIPTION, included in active membership, is $12.00 a year for inactive members and $24.00 a year for nonmembers. Single copies $5.00; article reprints $4.00.

Golden Service

Editor:

This letter is in reply to David P. Mickelson's letter in the August 1985 *Bar News* requesting a suitable trustee for a person unable to manage her own affairs and without a family member available to act. I am aware of one private company in the San Francisco area which is composed of social workers and has as its purpose taking care of exactly these types of needs for elderly clients.

Perhaps, there is a similar organization in the Bellevue area. If not, checking with various nursing homes or government social service agencies might help Mickelson locate a social worker who would act as guardian and trustee. Perhaps a home health care agency might be willing to expand its role to provide guardians and trustees to those in need.

JEAN H. CAMPBELL
Pullman

Editor:

This is in response to the "Appeal for Advice" from Bellevue attorney David P. Mickelson in the August, 1985 *Bar News*. In his letter, Mickelson asked the membership of the Association for advice concerning management of a guardianship estate too small to be of interest to a commercial bank when no member of the incompetent's family was interested in or capable of managing the estate's assets and paying the incompetent's monthly bills.

Michelson's problem is not limited to the type of case he described. Occasionally, it is necessary to search for a guardian outside of the incompetent's family circle because of some unusual or delicate intra-family problem. For example, a family member who was originally the guardian of the incompetent's estate may have wrongfully appropriated estate funds or, for some other reason, may be unable to properly account for them. In other cases, it may cause stress within a family for one member to be responsible for the assets of the incompetent member of the family who may then grow to resent the control the relative has over the expenditure of his money. The rejection of unreasonable or foolish demands for the expenditure of monies by the incompetent is fertile ground for bitterness and resentment directed at the family member managing the incompetent's funds. In other cases, the incompetent may express a distrust, rational or irrational, of the family member elected to handle this task. In some instances, as related by Mickelson, there is no family member really willing or able to assume the responsibility despite the clear need for someone to do the job.

Active in guardianship practice, my law partner, Dan M. Albertson, and I encountered each of these situations on a number of occasions. Like Mickelson, we saw the need for a corporate guardian willing to manage small to moderate-sized estates, too small for efficient handling at reasonable cost by a bank or trust company. Contact with the Veterans Administration and the Social Security Administration confirmed that those agencies frequently were incapable of delivering benefits to eligible incompetent persons because of a lack of anyone to properly manage their financial affairs.

With the encouragement of those agencies, we organized the Guardianship Services Foundation, a Washington non-profit corporation organized for the purpose of "providing management services for the assets of persons for whom a guardianship of the estate has been established by law." The most obvious service performed by the Foundation is the conservative management of estate assets. In addition, an incompetent's routine bills will be paid directly from the Foundation's office. For example, rent, utilities, insurance premiums, support payments, nursing home charges and the like can all be paid directly by the Foundation. In appropriate cases, special care or special services to be performed for the incompetent can be arranged. This runs the gamut from hiring a housekeeper to performing cleaning chores, to in-house nursing care, to arranging to have carpets cleaned. When it is deemed necessary to raise cash for the incompetent's needs or in situations in which it is unlikely that the incompetent will ever again utilize an asset such as his principal residence, the Foundation can make all the arrangements necessary for the sale of the estate asset at the highest possible price to include retaining realtors, screening purchase offers and the like as well as securing the necessary court approvals.

Thus far, the Foundation has offered its services only in Pierce, Thurston and Kitsap Counties. Upon a sufficient showing of interest, services may be offered in King County as well. Fees are based upon the size and income of the estate as well as the amount of clerical time likely to be involved in routine management of the estate's affairs.

DOUGLAS K. SMITH
Guardianship Services Foundation
Tacoma

Editor:

David P. Mickelson of Bellevue in the July *Bar News* asked for advice about finding a trustee for a small trust. I suggest he review mentally his previous estates and guardianship to discover if any of the personal representatives did especially good jobs and are retired. We lucked out several years ago when a friend of the testator was named executor and trustee of a testamentary trust. He enjoyed the details, looked after the interest of five grandchildren for several years until each in turn became twenty-five, and has served as either trustee or guardian on several matters since then. I don't know if he is exceptional or not, but I would guess that other retired people might be pleased to have such an occupation.

MARYALICE NORMAN
Seattle

Expanded Information in Discipline

Editor:

I want to take this opportunity to commend you for the job you are doing as editor of the *Bar News*.

Specifically, one change that has proven useful to me as a practicing attorney is the expanded information provided under the "Disciplinary" section of the *Bar News*. Now, we can tell why an attorney has been reprimanded. Before, it was impossible to determine why an attorney's behavior was called into question because of the lack of information provided in this column.

In my opinion, the expanded factual basis for the disciplinary action will help all attorneys from committing the same conduct. It allows us to educate ourselves and to understand different factual contexts in which the rules come into play.

Again, thank you for this expanded section.

JOHN P. ROTHSCHILD
Seattle

Whose Rule of Law?

Editor:

Re: "Advancing the Rule of Law in the World," which appeared in the June, 1985 *Bar News*:

How come no petition against *U.S.S.R.* intervention in Central America? Or for that matter, Russian intervention in Afghanistan, Africa,. . .?

SUSAN PAGE
Seattle

Clothes Don't Make the (Wo)man

Editor:

I read President Campbell's column in the August 1985 *Bar News* with increasing disbelief. I realize I will not be the only person writing, but I felt this article could not pass without comment.

The idea that respect is achieved through costumes is silly. I have heard many complaints about lawyers, but never that they couldn't be identified in a crowded courtroom. President Campbell suggests that a robe would "command respect. . .". I suggest disdain and laughter are more likely (and highly deserved).

If we want esteem and respect, how about doing something about a court system that oversets cases (and I do include the District Courts), requiring attorneys to sit four hours waiting for their case to be heard? I'm sure clients respect and esteem the fact they are being charged legal fees while their attorneys sit doing nothing.

If we want respect, let's keep weeding out the unethical attorneys. As a last point, I found his article overshadowed by the magnitude of the problem presented by the section on attorneys disciplined.

RODERICK S. SIMMONS
Seattle

No Mail Ballot

Editor:

Your editorial in the August 1985 Bar News advocated mail ballots on bar resolutions in lieu of a vote of the membership attending the annual meeting. I disagree.

Members attending the annual meeting are able to listen and partici-

pate in the debate on the resolutions. Members voting by mail do not.

Many of the bar resolutions raise complex policy issues that need to be fully debated before a vote is taken. The debate substantially enhances the quality of the result.

I recognize that those attending an annual meeting, especially meetings out of state, probably do not represent an accurate distribution of our general membership.

If a substantial portion of the general membership believes that the vote at the annual meeting was wrong, our association bylaws provide that they may compel a mail ballot by all members on that issue. I believe that is an adequate safeguard.

Given the alternatives, I prefer an informed vote by those who have the benefit of a vigorous debate.

TIMOTHY BRADBURY
Seattle

Proclamation

Editor:

With some audacity, I am reporting an interesting news event which involves me as a member of the "Noble Profession". In July, on the final day of my service on the State Personnel Appeals Board, Governor Booth Gardner issued a Proclamation honoring me for my service on the Board since February 1983. The Proclamation was read at a luncheon at the Tyee Inn Restaurant by a representative of the Governor and then presented to me in the presence of the other two members of the Board, Marion Daly and Walter White, and about 50 attorneys and state administrative employees and personnel officers. The luncheon was arranged by Ken Elfrandt, counsel and executive director of the Board. You will note that at 85 years, I was the oldest of all state employees when I retired.

CAMERON SHERWOOD
(Admitted to practice January 1928)
Lacey

Editor's note: Mr. Sherwood also indicated that he was planning to attend the State Bar Convention in Seattle, which will have already passed by the time this goes to press.

Moment of Silence Verboten?

Editor:

The August Bar News just came today and of course it is supposed to generate reactions. My only comment on "Not Just Fun and Games" is whether or not this was first checked with the United States Supreme Court.

JOHN HUNEKE
Spokane

Letters to the Editor should be double-spaced typed and signed. The Editor reserves the right to edit any letter as may be appropriate.

U.S. SUPREME COURT FETES APPELLATE HANDBOOK PROJECT

On July 5, T. Noble Foster, WSBA CLE Director, and Joel Griffith Green, Assistant CLE Director, joined representatives of 42 other states in presenting appellate practice handbooks to Chief Justice Warren E. Burger and the U.S. Supreme Court Law Library. The ceremony celebrated successful completion of a nine-year project led by the American Bar Association's Judicial Administration Division to create high quality appellate practice manuals for each state.

Foster served as one of the members of the nine-person steering group that organized the presentation ceremony held at the U.S. Supreme Court during the recent ABA annual meeting in Washington, D.C. It was attended by about 250 people, including the ABA Board of Governors and appellate and trial judges (including Washington Supreme Court Chief Justice James M. Dolliver and Justice Vernon R. Pearson). Each state handbook was presented to the Chief Justice and to the Supreme Court Acting Librarian, Penny Hazelton. Green presented the Washington Appellate Practice Handbook and its 1984 Supplement and called a portion of the roll of state presenters. Justice Burger accepted each handbook for the Supreme Court and noted that he had observed substantial improvements in appellate advocacy quality during the past decade.

Publication of the *Washington Appellate Practice Handbook* was related to, but separate from, the ABA's project. Former Washington State Supreme Court Justice Charles Horowitz and Seattle lawyer Malcolm L. Edwards were co-chair of the ABA Appellate Handbook Committee for the State of Washington. The WSBA provided funding for what was originally conceived as a pamphlet, much in the style of handbooks then in use in the Court of Appeals for the Second, Sixth, and Seventh Circuits. As the scope of the project grew, the decision was made to publish the handbook as a loose-leaf volume as the first in a series of WSBA CLE Handbooks. The supplement was prepared by Karl Tegland and edited by Horowitz, Malcolm L. Edwards, Tegland, Charles K. Wiggins, and Green.

The Handbook is the only comprehensive treatment of Washington appellate practice and procedure and has been recognized by judges and lawyers across the U.S. as *the leading appellate practice manual.* It is the model for most of the existing versions in other states. The handbook and its supplement may be purchased together for $125. For further information, write to Continuing Legal Education Publications, Washington State Bar Association, 505 Madison Street, Seattle, WA 98104 or telephone the CLE Department at (206) 622-6021.

Patrick C. Comfort Elected President for 1985-1986 Term

As the September, 1985 Annual Meeting of the Washington State Bar Association drew to a close, retiring president F. Lee Campbell passed the gavel of leadership to Tacoma attorney Patrick C. Comfort, who will lead the Bar Association during the 1985-1986 term.

A skilled lawyer and community leader, Pat Comfort brings to his office a broad background and an extraordinary record of service to Washington citizens on both sides of the Cascades.

After graduating *cum laude* from Spokane's Gonzaga University, where he had been student body president and editor of the Gonzaga *Bulletin*, Pat attended the New York University School of Law. There he held the Root-Tilden Fellowship from 1952 to 1955. He was graduated and admitted to practice in the state of Washington in 1955. He then served in the U.S. Army for two years and subsequently returned to the private practice of law in the Tacoma area.

Pat became active in state politics and, among many other local, state and national activities, ran successfully for the State House of Representatives in 1960 and 1962. During this period, he began his long term of service to community organizations by co-chairing the drive for Tacoma's St. Joseph's Hospital Psychiatric Unit. He is a former chairman of the Heart Fund Drive for Pierce County and was Cabinet Chairman of the Development Fund Drive for Bellarmine High School, his alma mater. He was elected to the Board of Directors for Pierce County's United Fund for 1970-1972 and president of the Fircrest Golf Club in 1973.

Newly elected WSBA President Patrick C. Comfort receives the gavel of office from retiring President F. Lee Campbell.

In 1971, Pat became a Trustee of Western Washington State College in Bellingham and served as Vice Chairman of the Board from 1975 to 1977. He also was a Trustee of the Tacoma-Pierce County Bar Association from 1973-1975 and was Association President for the 1980-1981 term. He also served as a Board Director for Bellarmine High School from 1974 to 1975 and as Chairman of the Board, 1975-1976.

Pat has a long-standing record of dedicated service to the legal profession, including participation on the Washington State Bar Association's Legislative Committee as chairman from 1974 to 1976. He was elected to the WSBA Board of Governors 1981-1984, representing lawyers in the Sixth Congressional District.

Although he has given much of his time to community and professional affairs, Pat has maintained a busy law practice. He has also been the Municipal Attorney for the Town of Fircrest from 1977 to the present.

Pat Comfort was born and raised in Tacoma. He and his family, including his wife, Shirley and five children, Christopher, age 25; Erin, age 24; Sean, age 21; Kathleen, age 17 and Maureen, age 16, have their present home there. Shirley has maintained close ties with Spokane's Gonzaga University, serving as a member of the Board of Regents, 1977-1978.

Among Pat's special concerns is educating our citizens about how the law and the courts work in our society. During his presidency, he intends to focus on increasing public awareness of these topics through a variety of forums, conferences and other programs.

We look forward to a stimulating, productive year under Pat's capable leadership. We are fortunate to have a leader of his calibre at the helm for the 1985-1986 term.

FORMAL ETHICS OPINION NO. 180

Contacting Physician Witnesses

A number of inquiries have been received concerning the propriety of a lawyer contacting a physician outside the formal discovery process who the lawyer knows has examined or treated the opposing party. This issue was addressed in Formal Opinion 115, issued in December, 1962. That opinion provides:

> An attorney is not permitted to practice any fraud or deception in the contacting of any witness. However, a doctor or physician is in the same position as any other witness who has some knowledge of the facts, except to the extent that such knowledge may be 'privileged'. It is therefore proper for an attorney to contact the physician prior to trial in the same manner as he would contact any other witness provided the attorney does not thereby knowingly induce a violation of the privilege by the physician.

That opinion leaves unanswered the question of whether requesting the physician to provide information acquired in the course of attending the patient in the absence of knowledge by the lawyer that a waiver of the doctor-patient privilege has occurred is to "knowingly induce a violation of the privilege". Whether the privilege exists in any particular situation[1] and whether it has been waived[2] are questions of law which this opinion cannot address. It should also be noted that if the physician is an "expert" the restrictions of CR 26(b)(4) may apply.[3] While this opinion cannot address the legal questions which this issue presents, it should be noted that an intentional violation of the Civil Rules would constitute a violation of DR 7-106(B)(7).

The Board of Governors believes that the practice of contacting physicians in situations where the lawyer does not know the privilege has been waived and has made no effort to determine whether it has been waived is likely to induce physicians to violate the privilege. There is a natural tendency for persons to believe that a lawyer would not ask anyone to do anything improper and, thus, that to respond to the lawyer's questions is proper. When a lawyer contacts a physician without knowing that the privilege has been waived, the lawyer is inducing the physician to violate the privilege. Such conduct would constitute a violation of DR 1-102(A)(4), in that it might deceive the physician, and a violation of DR 1-102(A)(5), since to induce others to violate their professional obligations is prejudicial to the administration of justice.

A statement by the lawyer to the physician that it would be improper for the physician to reveal privileged information would not remedy the situation for it would inevitably require the physician to either speculate or to inquire of the lawyer as to the existence or scope of the privilege. DR 7-104(A)(2) prohibits a lawyer in this situation from giving advice to the physician, other than the advice to secure counsel. In light of the inherent difficulty of determining questions as to the existence and scope of the privilege the Board of Governors believes that a clear, easily applied bright line rule is essential to insure that the conduct of lawyers does not, even unintentionally, induce physicians to violate their obligations to their patients.

Accordingly, Opinion No. 115 is expanded to provide:

> 1) It is improper for a lawyer to discuss any matter pertaining to a patient with a physician who has examined that patient, if a patient-physician privilege exists and has not been waived.
> 2) Where no patient privilege exists or where the privilege has been declared waived by Court Order or by the express written consent of the patient, a lawyer may interview a physician in the same manner as any other witness.
> 3) Where a patient-physician privilege exists and waiver is claimed upon any basis other than the above, a lawyer may discuss matters pertaining to a patient with an examining physician only through the use of discovery procedures provided in the Superior Court Civil Rules.

---

[1] See Tegland, *Evidence Law and Practice* §§176-178

[2] See *Phipps v. Sasser*, 74 Wn.2d 439 (1968); *Feeser v. Wahl*, 38 Wn. App. 753 (1984).

[3] See *Durflinger v. Artiles*, 727 F.2d 888 (10th Cir. 1984); (ex parte contact with expert retained by opponent after opponent decided not to call expert as a witness at trial held a violation of F.R.C.P. 26(b)(4) and to justify exclusion of the expert's testimony); *Campbell Industries v. M/V Gemini*, 619 F.2d 24 (9th Cir. 1980) (ex parte contact with opponent's expert witness held a flagrant abuse of the discovery process which justified the exclusion of the expert's testimony); *Crenna v. Ford Motor Co.*, 12 Wn.App. 824 (1975).

Ordinary People

One lawyer has made all his family's bread for the past twenty years. Another worries about his midlife crises from his office in a tiny historic building. A third one was raised in Naples (Italy, not Florida). The fourth can walk through a gate near the rear of his home, cross a gate to a golf course, tee off on the second hole and play the second through fifth holes, walk out the front gate of the golf course, and walk two blocks to his office. Mix all together and what do you have?

Our State Bar's three new Governors and President.

The September *Bar News* carried the standard ho-hum official biographies of each of these individuals. Official notices do have their value, but the facts which don't quite fit on the curriculum vitae are what gives these four men their true identity.

Meet our new president, Pat Comfort. There's a certain irony to his surname, for here's a man who helped to build one of Tacoma's larger law firms—and then left to go solo in 1976. Why the big change? To be his own person.

Visiting Comfort's very modest office in Fircrest, east of the Tacoma Narrows Bridge, is a lot like visiting your local shopping center. That's because Comfort's office borders a shopping center, in this case the Village Square, aka Manley's. When I set out to discover our President, bread was 3/$1, Carnation ice cream was 3/$5, and Manley's, as it is known to all, was open 'til midnight. I know this because that's what the sign said. Why, in one fell swoop, I could have done all my food shopping, made travel reservations for a trip to Timbuktu, gotten a haircut, bought party favors, added to my shoe collection, stocked up on booze, checked out the latest in wallpaper, gotten my suits dry-cleaned, overdosed on cinnamon rolls, listed property for sale, had a tooth fixed, filled a prescription and engaged our new prez to prepare my will. Oh yes, he and I also could have played a few holes of golf.

We're talking serious suburbia here. Comfort, however, only smiles if someone paints him as a selfless smalltown solo practitioner. But he stayed truly solo for seven years, only two years ago hiring an associate fresh out of the University of Puget Sound Law School.

A Bar president who's been in a big firm *and* on his own will be a fine sight for those sore eyes among Washington's 13,000 lawyers who feel that the leaders among the Bar often do not represent the solo practitioners and small firms—who, Comfort believes, constitute the majority of lawyers in this state.

Meet Frank Hayes Johnson, Spokane's answer to James Beard. Johnson believes in hands-on experience. No labor-saving devices for this fellow who, for the past two decades, has made all of the bread consumed by him, his wife, and three daughters. Every weekend Johnson makes 8-12 loaves of bread, kneading each one until that moment of elasticity that bread makers sweat for. The cook in the family, he's designing the kitchen for their new home while wife Maureen designs the rest of the house. One of Johnson's passions is to visit bakeries in the wee hours and watch the bakers at work. He's done this in several countries. Oh yes—when this lawyer retires, he wants to do "something creative"—open a restaurant. (Ain't law creative?)

Meet Jay V. White. The Seattleite was editor of the *Bar News* two terms ago in the days when one received not a penny as compensation for the responsibility of putting out this magazine. Recently, White bought himself a small house in historic downtown Ballard to use as an office. I'd been by it a million times but had never noticed it. Its wood frame facade is set back from the red brick that characterizes the Scandinavian neighborhood.

Seems that for a long time White has had this dream of setting up a smalltown practice away from the gridlock which seems to characterize downtown practice. And he's had the courage to act on his dream—although he'll also point out that he hasn't cut the umbilical cord quite yet . . . the telephone cord, that is. No, this new Governor's got a Ballard line and a downtown line. All he needs now are clients who won't forsake him for carrying out his dream and leaving his firm after eight years as shareholder and associate.

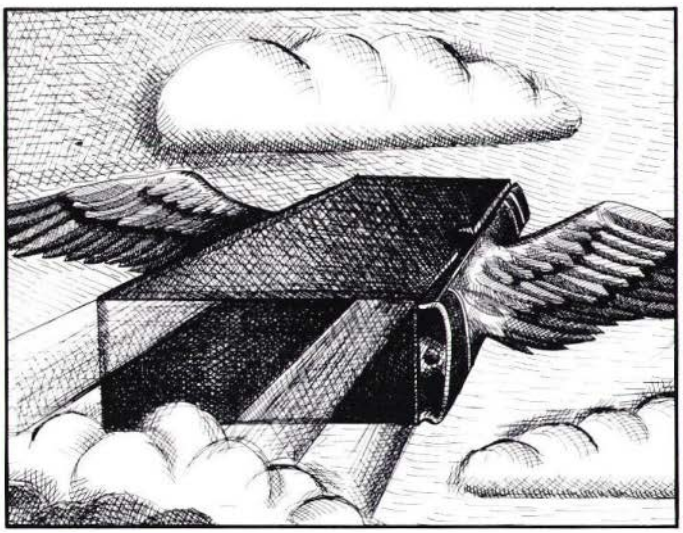
Meet Steven A. Reisler; say "hi", but don't speak Spanish to him. He's liable to answer in Italian. Reisler, immediate past editor of the *Bar News*, received $200 a month for his editorial troubles. This is $200 a month more than he, or any of his comrades, receive for sitting on the Board of Governors. (There's a moral here somewhere, but it escapes the current editor.) The Seattleite was an Intelligence brat, following his father through Europe on his assignments. Ask Reisler about the time he forgot to get off the train before it entered East Berlin. I'm willing to bet that some of the diplomatic skills he learned while growing up will come in handy during his three-year stint on the Board of Governors. Should be intriguing, eh?

Comfort, Johnson, White, and Reisler: New faces among the leadership of the Bar. But they'll be the first to point out that they're "just folks". Hey, I've known these fellas, and they're just like us—they worry about the crabgrass and the bills, and they'd rather be out golfing or running. Yep, they put on their pants just like the rest of us. So give them a call. They'd love to hear from you. Really.

President Pat Comfort:
(206) 564-8400
Governor Frank Johnson:
(509) 838-8601
Governor Jay White:
(206) 789-4483
Governor Steve Reisler:
(206) 622-2991

Carole Grayson

AMERICA, WE'RE COMING ON FAST.



Only Corpex teams up with DHL® to give you overnight delivery of corporate kits.

Notice we said overnight delivery, not overnight shipment. No matter where you practice in the continental United States, you're just 24 hours away from receiving a high quality corporate outfit from Corpex. As part of our constant commitment to provide you with the fastest service possible, we've joined forces with DHL World Wide Courier Express.

We don't have to tell you about DHL's reputation for speed and efficient service. Their network of planes and trucks will get your kit to you on time, every time. So if you call our toll free 800 number and place your order by 2 p.m. EST, you'll have your customized corporate outfit on your desk the very next day.* At no additional cost.

*Some remote locations might require an additional day.

Each Corpex Corporate Kit comes in a matching slipcase complete with:

- Corporate Seal
- 20 Custom-Printed Stock Certificates numbered and imprinted with corporate name.
- Stock Transfer Ledger
- 50 blank sheets for minutes or time-saving printed minutes and by-laws.
- Special Forms section with complete review of latest IRC requirements for Sub-Chapter S election. Medical and Dental Reimbursement Plans. Section 1244 forms, plus annual meeting forms. Available in black, tan, brown and green.

Standard outfit-$47.50; with printed minutes and by-laws, $49.75 (Includes delivery in Continental U.S., Alaska, Hawaii.)

Corpex®

Corpex Banknote Company, Inc. 180 Canal St., NY, NY 10013

FOR NEXT DAY DELIVERY, ORDER BY PHONE BEFORE 2 P.M. EASTERN STANDARD TIME.

CALL US TODAY: **1-800-221-8181.** ASK FOR OUR NEW CATALOG.

Professionalism at its Best

How do you follow a guy like F. Lee Campbell? Especially when you don't own a tie, let alone a black robe or white wig?

I had the pleasure to serve with Lee on the Board of Governors several years ago, and I was impressed by the depth of his service to our association. One can but marvel at the energy and spirit he brought to his role as President of the Association. His term as president was genuinely a productive one and we will long remember his clarion call for "professionalism." On behalf of us all, Lee, thanks for a job well done.

The new kid on the block assumes his presidential responsibilities under no illusions. This association is not governed by the president, but by its elected governors acting as a board. Three new governors start with me at the beginning of my term—Frank Johnson, Jay White and Steve Reisler. The senior members of the board during my term are Betty Bracelin, Don Bond and Ted Zylstra. Ed Lane, Roy Moceri, Angelo Petruss and Hal Vhugen are the second term governors. These are the individuals who will mold and shape this association's policy and give direction to its efforts between now and November, 1986.

I have great respect for your governors. Time and time again, when asked how I enjoyed being on the board of governors, I responded: "It is a tremendous thrill to work in your chosen field and knock ideas about with the best." It was then, and it is now.

If there is one pledge I would make, it is to work closely with the governors and provide them all the assistance possible to enable them to conduct our business in an effective manner for the benefit of all our members. And then, when the governors have spoken, I shall do my utmost to assure that such policy is carried out.

While on this subject, we would be remiss if we didn't mention our outgoing governors, Joe Delay, Bill Dwyer and Paul Gibbs. Their calibre was in mind when I responded with the above quote—"the best."

Sometimes you wonder what it is that leads such people to offer their service despite their full and busy schedules. Lee, this is professionalism at its best. It probably has something to do with our nature as attorneys and, perhaps, the reason why we chose law as a professional career. It is of the nature of an attorney to serve—his or her client; the public; the Courts; and the system. We serve them all and do so, in the main, generously and without complaint. It is something expected of us and we expect it of ourselves. It goes with the territory—the privilege of practicing law. And for this we commend and congratulate you, all our members who have provided such service over the years.

Shortly prior to assuming office, I addressed the judicial conference of the Washington State Courts. During the course of my address, I stressed the need to increase public awareness of the role of law and our courts in society. I believe this is an important mission—important to us all. I am going to encourage the board of governors to direct the implementation of programs through which this may be effected: legal forums conducted by local bar associations and young lawyers; law related education programs; law conferences for non-lawyers; and town hall meetings at which views of the public will be invited. These and other programs are possible, but not without you, and we call upon all our members for support, aid and assistance in this effort.

I am convinced of at least one thing. If our clients and the public better understand our system, how and why it works and how it protects their individual rights, then the keepers of the system will be looked upon in a more favorable light. What better public relations program could be devised?

Thanks for listening. See you next month.

THE NEW RULES OF PROFESSIONAL CONDUCT

by **Kurt M. Bulmer**

The Supreme Court rescinded the Code of Professional Responsibility and replaced it with the Rules of Professional Conduct (RPC). The new rules were effective September 1, 1985. The RPCs reenact some of the previous rules and reformulate others. They also create some entirely new rules and concepts.

Although the legal profession's conduct rules are traditionally referred to as "ethics rules", they are much broader than that. An ethics code carries connotations of moral rightness or wrongness. The RPCs not only contain rules based on morality, but also rules founded on a perceived need to regulate the "business side" of being a lawyer. For example, there is a requirement that all contingent fee agreements be in writing. Unlike theft, there is no moral "rightness" or "wrongness" about a written fee agreement. This is simply a Supreme Court regulation controlling how the practice of law will be conducted in this state.

The RPCs are used in determining grounds for disciplinary actions against an attorney. The rules are also used in legal malpractice cases or other actions against an attorney to establish duties owed by the attorney. Increasingly, the rules are being used in litigation as a "sword" to disqualify opposing counsel. Attorneys also use the rules as rationales for taking or not taking action on behalf of a client or potential client. The rules have broad-ranging effects and impact an attorney in many areas.

Since the rules are created by the state Supreme Court, they fall under the state action umbrella and must stand constitutional muster. Most of the new rules will withstand constitutional challenge without difficulty, but a few, particularly in the advertising area, may be vulnerable. However, the dramatic constitutionally mandated changes to the profession's rules are probably over, and future changes will be a fine tuning of the rules as various courts consider new regulations.

The rules are made up of "shall," "may," and "should" provisions. The "shall" provisions are generally modified by some form of reasonableness test. The "may" and "should" provisions permit an attorney to take or not take action depending upon his or her preference. Some of the "may" and "should" provisions are clearly statements of public policy such as Rule 6.1's statement that "a lawyer should render public interest legal service." It is hard to imagine that such a public policy statement could constitute the basis for an enforceable duty against the attorney by either the Bar Association or someone else. Other "may" and "should" provisions provide a shield that protects the attorney if he or she takes discretionary action. The confidentiality rule, Rule 1.6, says a lawyer may reveal confidences to prevent the client from committing a crime. This discretionary rule shields the attorney from disciplinary action or a breach of confidence suit if he or she chooses to reveal the confidences to prevent the crime.

It is important, therefore, to read each rule carefully to see if it is a "shall," "may" or "should" rule. Also, modifiers such as "reasonable" or "reasonable belief" must be noted. Basic legal interpretation to be sure, but one which has not always been followed in the past when the code was considered an "ethics code" as opposed to a regulatory code.

The new rules are comprised of a preamble, a preliminary statement, a terminology section, and eight substantive matter titles. Each title has separate rules with a total of 51 rules altogether. Noticeably absent is any commentary. In the previous rules, commentary was found in the "ethical considerations". The American Bar Association draft of the RPC contains extensive commentary.

Preamble, Preliminary Statement and Terminology

The Preamble is a general policy statement on the need for lawyers in society and the value of having rules of professional conduct. More important is the Preliminary Statement, which provides that the Rules of Professional Conduct are "mandatory in

nature" and establish "minimal levels of conduct below which no lawyer can fall without being subject to disciplinary action."

The Preliminary Statement goes on to provide that the rules do not "undertake to define standards of civil liability for lawyers." This dictum, which also appears in the previous rules, is, of course, not followed since courts routinely use the rules to establish the duties of an attorney in a legal malpractice action. Perhaps what is really meant is that since the rules do not "undertake" to define standards, there may be other standards which may be applied against attorneys, but that the absence of such an undertaking in the RPC does not preclude their use by a court confronted with the need to define standards for civil liability.

The next section of the rules, Terminology, defines 11 concepts. Most, such as "belief," "knowingly," "reasonable," "reasonable belief," "reasonably should know," and "substantial" simply outline the range of modifiers to be used in conjunction with "shall," "may," or "should" in the body of the rules. "Confidences" and "secrets" have the same meaning as in previous rules. "Law firms" are defined to include private firm attorneys as well as "lawyers employed in the legal department of a corporation or other organization." Although the rules do not specifically say so, it has been assumed that "other organization" includes the government, which thus includes attorneys working for the government in all the provisions of the rules.

Title 1 – Client-Lawyer Relationship

Title 1 is the largest title, comprising nearly one-third of the rules. Crucial sections on fees, confidentiality, conflict of interest and trust accounts are found here. The title attempts to delineate duties owed specifically to clients and reserves for consideration in other titles those owed to non-client parties, the judicial system or the legal profession.

Rule 1.1 – Competence

Rule 1.1 requires that a lawyer provide "competent representation." Competent representation is to be measured against a standard of what is "reasonably necessary" in knowledge, skill, thoroughness and preparation. Previous Rule 6-101 prohibited incompetent handling of a matter, but allowed the lawyer to handle the matter if associated with another lawyer competent to do so. This "exception" has been eliminated.

Rule 1.2 – Scope of Representation

Rule 1.2 defines the lawyer/client relationship and the roles of each. Section (a) requires the lawyer to "abide by a client's decisions." The lawyer must follow a client's decision whether to accept an offer of settlement. Specific client decisions which the lawyer must abide by in a criminal case are whether the client will plead guilty, waive a jury trial, or testify. Prior rules were not as definite and did not set forth specific decisions reserved to the client.

Section (b) is a policy statement that a lawyer doesn't endorse the client's views or actions simply by representing the client. Section (c) says that a lawyer "may" limit what he or she will do on behalf of the client.

Section (d) is more substantial. It prohibits counseling a client to engage in criminal or fraudulent action or to assist in such actions. In an important change from prior rules, the attorney is allowed to discuss and advise a client on all options, even illegal ones. But the attorney must not counsel the client to *engage* in the illegal activity. The rule does permit the attorney to make good faith challenges to the law and to assist the client in such challenges, even in those requiring activity illegal on the face of the law. Presumably an attorney could not counsel a client to commit murder, but could counsel a course of action challenging the validity of a criminal anti-abortion law.

The final section of this Rule 1.2 simply requires a lawyer to advise a client when the RPCs or other laws limit what the lawyer will be able to do for a client who thinks more is permitted.

Rule 1.3 – Diligence

Rule 1.3 requires an attorney to act with reasonable diligence and promptness. This is the same standard as the previous rules.

Rule 1.4 – Communication

Rule 1.4 articulates what was perceived to be the prior rule but was not specifically stated. The two sections of the rule require the lawyer to keep the client informed, to promptly give the client requested information and to explain matters so the client can make a decision. These three requirements are all modified by a reasonableness test.

Rule 1.5 – Fees

Rule 1.5 contains some of the more significant changes to the rules, at least as they relate to the regulatory aspects. This rule relates to fees and fee agreements. Section (a) of the rule requires a fee to be reasonable and provides criteria for determining reasonableness. The reasonableness requirement and the criteria come *verbatim* from the previous rules. The rule goes on to require, in section (b), that the base or rate of fee must be communicated to the client before or within a reasonable time after commencing the representation. The rule provides that the fee communication should "preferably [be] in writing." It would behoove the wise attorney to follow the "preferably in writing" *caveat*. In view of the mandatory nature of fee communications and the strong public policy statement of the Supreme Court on the preference of written substantiation, disputes over fees without a written agreement will likely be resolved against the attorney.

Section (c) recognizes the propriety of contingent fees, but in a major change *requires* that a contingent fee agreement be in writing. When considered with the previous section, it follows that contingency fee agreements must be communicated and must be in writing; hourly and flat fee agreements must be communicated

but need not be in writing, although it would be best if they were. Since the written contingency fee agreement is the "communication" of the basis of the fee, it must be given to the client before representation begins or shortly thereafter. The written contingency fee agreement must contain information about how the fee is to be determined. It must include:

a) What percentages are to be applied to any recovery at the settlement, trial, or appeal stage;

b) What litigation and other expenses are to be deducted from any recovery; and

c) Whether the expenses are deducted before or after the contingent fee is calculated.

Any attorney who fails to prepare a written contingency fee agreement containing the necessary elements does so at great peril. The strong public policy statement of the Supreme Court mandating a writing would indicate that a failure to do so could result in denial of any fee, or at best awarding of the most conservative fee possible. An attorney who attempts to distribute funds in a contingent fee matter without having entered into a written fee agreement at the start of the representation risks having the funds tied up in the trust account for a long time while the client litigates the lawyer's rights to any or part of the funds. If you are an attorney who handles matters on a contingency basis, do not ignore these new requirements of writing, or you will surely regret it eventually. Section (c) requires that at the conclusion of the contingency matter, the lawyer must provide a written statement outlining the outcome (this is required win or lose) and, if any recovery was made, how the funds were distributed. Section (d) of the fee rules prohibits contingency fees in domestic relations matters (except in post-dissolution procedings) and in criminal cases. These rules reflect either prior rules or case law. Section (e) permits the division or "splitting" of fees. This is another major change from prior law. The first section of the rule permits lawyer referral agencies to receive part of an attorney's fee. This is a common funding technique of some lawyer referral agencies. Of greater general interest is the second part of section (e). As in previous rules, fees can be divided between lawyers in different firms in proportion to the services actually provided by each attorney. New, however, is the option of permitting fees to be divided by agreement between the attorneys *regardless of the proportion* of work actually done. In other words, a referral fee can now properly be paid where one was prohibited in the past. To obtain such fee 1) there must be a written agreement with the client; 2) the lawyers must assume joint responsibility for the representation; 3) the client must know of and not object to any of the lawyers involved; and 4) the total fee must still be reasonable. The new rule permits the lawyers to negotiate any deal they wish between themselves as to the division of a reasonable fee. Even if one of the lawyers does little or nothing on the case other than refer it, his or her fee can still be significant if the other attorney agrees and the client does not object. Remember: the client must agree in writing, and both lawyers are responsible for the case. If the second lawyer commits malpractice, the first lawyer is also on the hook.

* * * * *

In the next article we will move into the important items of confidentiality, conflict of interest, trust accounts, withdrawal and the newly defined role of an attorney as "counselor."

The final article in this series will contain a chart showing the disposition of the provisions of the previous rules. It will also show how the Washington version of the rules differs from the ABA version.

Kurt M. Bulmer, former General Counsel of the WSBA, was a member of the Task Force on the Rules of Professional Conduct. He represents respondents in disciplinary matters and lectures frequently on professional responsibility.

HOW IS JUSTICE TO BE SERVED?

by **Robert J. Hoyden**

On August 13, 1984, I was convicted of second degree criminal trespass in the Federal Way District Court. What makes the case peculiar is that I am a process server. At the time of the act which resulted in the conviction, I was serving process that had been issued from the very court that ultimately convicted me. District Court Judge Carolyn Hayek ruled, in effect, that the individual had the right to avoid the service of process by simply posting "No Trespassing" signs on his property.

My conviction has been upheld by the King County Superior Court; by the Court of Appeals, Division One (Case No. 15824-4-I; motion for discretionary review denied March 13, 1985; motion to modify ruling denying discretionary review denied by three judge panel April 24, 1985); and by the Washington Supreme Court (Case No. 51680-4; motion for discretionary review denied June 19, 1985).

By upholding the conviction, the courts appear to be condoning the prosecution of private process servers for trespass. It appears that a precedent has been set for citizens to have a legal tool to avoid the service of process. The conviction, though little noticed except in an article by *Seattle Times* writer Rick Anderson on May 8, 1985, has statewide implications. These implications should be quite clear to attorneys.

Feeling that I had been done an injustice, I took the matter into my own hands. On March 26, 1985 in Olympia, Geoffrey G. Gese, an associate of mine, and I presented State Rep. Paul King (D-Mountlake Terrace) with a rough draft of a bill that we thought would tackle the problem of process serving in our state. Primarily, it will clean up the industry by requiring registration of process servers. Registration will ensure that the courts or lawyers can easily locate the process server in the event of a questionable service. It will also require process servers to be bonded so that a party damaged by the unnecessary actions of a process server has available a course of action or remedy. It will require process servers to perform their duties in compliance with the law and prescribe penalties for non-compliance. Finally, it will give private process servers the right to *reasonably* enter onto private property to serve court-issued process.

Rep. King forwarded the rough draft to the Washington State Code Reviser's Office, where it was drafted into a bill for presentation to all interested parties. Due to time restrictions, the bill will not be introduced until the Legislature convenes in January 1986.

I realize that the courts may be attempting to protect the privacy and property rights of citizens from unreasonable actions of process servers, but they appear to be stepping on their own toes in doing so. Simply stated, how can process be served if process servers are in jeopardy of being convicted of trespass while attempting to serve court-issued paper?

The consequences of my case are taking hold. Some process servers are now refusing to go past "No Trespassing" signs despite their mission for the court. It is conceivable that defendants, in some cases, may have to be staked out or waited for until they leave their premises.

As a result, publication as a method of alternate service will be employed by more attorneys. This may result in more defaults, which would in turn bog down an already crowded system when 3-6 months later any number of levies, garnishments, attachments, and evictions are challenged on the basis of questionable service.

The apparent and unavoidable trouble is clear. All attorneys should take an interest in this matter.

Geoffrey Gese and I are *not* seeking funds. We are interested in opinions, suggestions, or legal assistance which may be available in the legal community. I am *not* seeking aid to overturn my conviction (although I feel that I'm entitled to this), but support and input on an issue that has far-reaching implications.

Please address all correspondence to me or Geoffrey Gese at:

Mutual Life Building
605 1st Avenue, Suite 515
Seattle, WA 98104
(206) 467-4004

TRAINING YOUR SECRETARY

by **Jeff Tolman**

The old adage that "a lawyer's time is his stock and trade" is not entirely true. A more accurate maxim is "a highly trained secretary is a lawyer's stock and trade". Without good staff we would spend hours just spinning our wheels. A good secretary is money in the bank. I know.

For 2½ years I had a wonderful secretary. Carina was bright, personable and efficient, kept track of what I was doing and what I should have been doing and didn't complain very much about my lack of organization. Her presence was always a positive addition to the office. A few months ago, though, she became outraged with me over her Christmas bonus. She felt it was chintzy. One meal at McDonald's and it was all gone. When I told her it was not my problem if she felt compelled to spend the entire bonus in one place, her temper blew.

I knew Carina was mad the day after she received (and spent) her bonus when she typed exactly what I had dictated.

The first letter on my desk read:

"Dear (belch) Mr. (pencil tap, pencil tap) Smith:

Thank you for your (chair squeak) (drink of coffee) (long pause) letter. I have conveyed it to my client (sniff, sniff) who seems in agreement. I will contact (chair squeak) (sound of feet shuffling) you after Mr. Doakes and I have had a chance to meet and discuss your proposal in detail. I would anticipate him coming in next week (sniff) (drink of coffee). I will contact you after that (sound of nose being blown) (belch) (apparent drum solo with pencil).

Yours truly,

Jeffrey L. Tolman

The letter incensed me. So I have thirty or forty thousand bad habits. I didn't need her to point them out to me. I have enough clients and friends willing to do that. At the office, if nowhere else, I am boss!! . . . whether anyone likes it or not!

Immediately, I plotted my strategy to show her who was head honcho of the office. I dictated an entire Dissolution in Spanish. I made appointments and never told her about them. I wrote my letters out in longhand, then dictated them as fast as I could. I dictated a lengthy personal injury demand letter with my mouth full of Kleenex.

Oh, I knew she would come crawling, begging me to go back to my old, bad-but-bearable habits. I knew it.

But a funny thing happened.

She didn't seem to notice any difference.

And each day that I waited for her to come begging, I grew more angry. Finally, in the ultimate slam to her abilities as a secretary, I began doing things right. Without her having to interpret my unorganized mish-mash, I was certain her job would become boring. What challenge would there be in typing a letter that was organized and not dictated by a caffeine-infected, hyperactive motormouth? What would she do with all the time she'd previously spent mothering me through my semi-organized-at-best days? Her urge for a challenge would get the best of her. I knew it.

So I oiled my chair, drank only two cups of coffee each day and dictated plain, clear, organized pleadings and correspondence.

Overtly she seemed happier on the job and, though I felt somewhat out of my element, I began putting out a tremendous amount of work. I knew, though, that she'd break soon from the lack of confusion and pressure.

For weeks our battle of wills raged. Then, as quickly as it began, it ended. Carina walked into my office one day and said she was giving her two weeks' notice. She was leaving!

"I'll be better!!" I screamed. "I'll mainline caffeine and dictate like a madman. I'll never look at my appointment book or tell you when I won't be in. My files will be pigpens again in a few weeks. Be patient. I'll get back to my old ways, honest."

"Why?"

"So you'll stay. We are pals, aren't we? What would I do without you around? And, besides, it has taken me over two years to train you."

But she left and went to work for one of my colleagues who is a pig. For years he'd always had coffee stains on his ties and pleadings. His letters could easily have been Cryptography 101 quizzes. Worst of all, he was never on time. I could never understand why any client would go to a lawyer like him.

Several weeks after Carina changed jobs I saw her new boss. I hardly recognized him. His eyes weren't dilated and he didn't shake. His clothes were fashionable and coordinated. His conversation was lucid and sequential. He looked good. Efficient. Happy.

I asked him how things were going.

"Fine," he replied. "For some reason, I've had a couple of terrific months. I'll sure be glad, though, when I get done training Carina."

Jeff Tolman is a partner in Roof, Tolman & Kirk, a Poulsbo, law firm with three perfectly trained secretaries.

THE QDRO: NEW TOOL FOR DIVORCE SETTLEMENTS

by **Jeff Belfiglio**

A pension benefit is often one of the largest assets which must be divided in a divorce. Before the Retirement Equity Act,[1] it was unclear whether a pension plan could or would honor an order to pay part of the benefit to the non-employee spouse. The Act created a new device, the Qualified Domestic Relations Order ("QDRO"),[2] which can assure a proper distribution of the benefit. A QDRO is now the only state court order a plan is required to recognize.

The Act does not prescribe any particular division of the benefit; the parties or a court can divide the benefit in any manner. If that division is expressed in an order which meets certain requirements of form and content, the pension plan will abide by it.

Requirements, Prohibitions and Options

The QDRO must be a court judgment, decree or order pursuant to a state domestic relations law relating to child support, alimony, or marital rights. It can be an order approving a property settlement agreement. The "alternate payee" entitled to be paid by the plan can be a spouse, former spouse, child or dependent.

The QDRO must specify the plan covered, the name and address of the participant, and the name and address of the alternate payee. It *must* specify the amount or percentage of the employee's benefits to be paid to the alternate payee (or a method to determine the amount) and the payments or period to which it applies. Thus, the order may require payments of, for example, $100 per month for five years, or half of the employee's monthly benefit, or a percentage of the value of the participant's benefit in a lump sum.

The QDRO cannot require the plan to pay a benefit any earlier or in any other form than is allowed by the plan. Nor can the alternate payee receive a joint and survivor annuity with his or her spouse. However, the QDRO can require that payments to the alternate payee begin when the employee reaches early retirement age, even if the employee does not retire. In many pension plans and for all profit-sharing plans, this exception allows payments to begin when the employee reaches age 55.

For an ex-spouse alternate payee, the law allows an important optional provision. The QDRO can provide that the former spouse be treated as the surviving spouse of the employee. It is thus possible for the ex-spouse to receive payments from the plan once the employee reaches age 55 and to receive the entire death benefit if the employee dies before retirement. This may leave nothing for the employee's new spouse or heirs, so attorneys for both parties should be aware of this provision.

Plan Administration.

When the plan receives a court order directing payment, it must notify the employee and the alternate payee and determine whether the order is a QDRO. While it is making that determination, it must hold in escrow any benefits in pay status which would be paid to the alternate payee and segregate any employee accounts. If neither the plan nor a court has decided that the order is a QDRO within 18 months, the plan can ignore it.

Practice Tips

When drafting a QDRO, attorneys should keep the following points in mind:

Contact the plan administrator first. Many larger plans now have model QDRO provisions which they will recognize if incorporated into a court decree. A model QDRO appears below.

Ask the plan administrator about the early retirement date and payment options under the plan.

Consult an actuary to determine the employee's accrued benefit and

the most advantageous form of payment to your client. (Note: a lump sum payment to an alternate payee can be rolled over into an IRA, but 10-year averaging is not available.)[3]

Jeff Belfiglio is an associate at Davis, Wright, Todd, Riese & Jones in its Bellevue office. He is a member of the Order of the Coif and the Employee Benefits Planning Association of the Northwest.

MODEL PROVISIONS FOR QUALIFIED DOMESTIC RELATIONS ORDER

_____ [Participant's Name] _____, whose mailing address is _____, is a participant in the [Employer or Union] Pension Plan and Profit-Sharing Plan. This order applies to each plan named.

_____ [Name of Spouse or other Alternate Payee] _____, whose mailing address is _____, is designated as an "alternate payee" under this order. _____ [Name] _____ shall be entitled to receive from the plan[s] the following benefits:

(a) From the Pension Plan, [specify amount or percentage of benefit, or lump sum, e.g., "$100 per month for life," " ____ % of [Employee's] retirement benefit [for ____ months]", or "$10,000.00."]

(b) From the Profit-Sharing Plan, [specify amount or percentage of account balance].

[Repeat previous paragraph for each alternate payee.]

_____. This Order does not require the Plans to provide any type of form of benefits, or any option, not otherwise provided under the plans, nor to provide increased benefits (determined on the basis of actuarial value). No payment shall be made in the form of a joint and survivor annuity with respect to the alternate payee and his or her spouse. This Order shall have no effect on the payment of benefits to an alternate payee required to be paid under another order previously determined to be a Qualified Domestic Relations Order, as defined by the Retirement Equity Act of 1984.

_____. Notwithstanding the previous paragraph, the plan shall pay the benefits described above, if requested by the alternate payee, within a reasonable time after the date on which the participant attains (or would have attained): (a) [insert early retirement requirements] with respect to the Pension Plan; (b) age 55 with respect to the Profit-Sharing Plan, notwithstanding that the participant has not retired or separated from service at such date. Such payment shall be made as if the participant had retired on such date, but taking into account only the present value of benefits actually accrued and not taking into account any employer subsidy for early retirement.

_____. [Optional. Note: use only for alternate payee who is a former spouse.] [Alternate payee] shall be treated as the surviving spouse of the participant, they having been married for at least one year, for purposes of I.R.C. §§ 401(a)(11) and 417.

_____. The plans shall provide the alternate payee[s] with notice of their procedures for determining whether this Order is a Qualified Domestic Relations Order, and shall make such determination and handle the assets of the trust, as provided by the Retirement Equity Act of 1984.

Submit a form of the proposed order to the plan for approval *before* it is entered by the court. This will avoid later disputes over whether the order is in fact a QDRO.

1 Pub.L. 98-397.
2 *See* 29 U.S.C., § 1056(d), I.R.C. § 414(p).
3 *See* I.R.C. § 402(a)(6)(F), 402(e)(4)(M).

WASHINGTON STATE BAR **NEWSLINE**

The Board's Work

by **Carole Grayson**

SEATTLE--September 10, 1985. All Governors present. Also present: Patrick Comfort, WSBA President-designate; Steven Reisler, Jay White and Frank Johnson, Governors-elect; John Michalik, WSBA Exec. Dir.; Jim Watt, Governmental Lawyers Assn; Chuck Snyder, WSBA Young Lawyers; Patricia Schlosser, Wa. Women Lawyers; R. Wayne Wilson, Cheri Brennan and Jennifer Klamm, WSBA Public Affairs Dept.; Richard F. Jones and Francois Fischer, Editorial Advisory Board; John Fattorini, WSBA Lobbyist; Philip Killien, Dist. Ct. Judges Assn. and Philip Faris, Superior Court Judges Assn.

THE OPERA'S NOT OVER 'TIL THE FAT LADY SINGS — The Board of Governors granted $18,000 of a $36,000 proposal for increased editorial coverage and limited color in the Bar News (the only self-supporting state bar magazine in the country) during the coming fiscal year. Richard L. Wiehl (Yakima), chair of the Editorial Advisory Board (EAB), presented the report and a detailed budget. "The Bar News is the most visible feature of membership in the Bar Association," the EAB report states. "It is the only conduit of information by and between lawyers and their association and officers."

In order to cover direct costs (e.g., typesetting, printing), advertising must fill 50% of the magazine. Wiehl noted that the $5 of annual dues ($160) that goes to the Bar News fails to cover even postage. The proposal outlined 12 areas for expansion: ethics, court rules, CLE programs offered throughout the state, law-related education and MENTOR, local bar associations, the "Around the State" column, columns on charitable contributions and estate planning, Attorney General opinions, more articles in theme issues, and photos and illustrations to support editorial features.

"Over the years the Editorial Advisory Board has developed the opinion that the quality of the Bar News has directly suffered as a result of a prior policy (of the Governors) that the Bar News should be self-supporting," the EAB report says. Governor Dwyer's motion to appropriate $12,000 for added editorial space passed unanimously.

And the fat lady? Just before adjournment and after the regular agenda, Governor-elect Jay White (who is neither fat nor a lady) noted that the November Bar News will feature Washington Volunteer Lawyers for the Arts and encouraged the Governors to allocate $3,000 for color to highlight the issue. Governor Lane noted that it would "encourage" the EAB and "allow the experiment with color." Petruss thought aloud, "If we're going to go into color, let's do it two times. Once would not be often enough to judge." His amended motion to allocate a total of $6,000 for color and art was passed unanimously. Noted Governor Zylstra, "This is what happens in the last minutes of Congress."

BATTING .1000 — Cheri Brennan, WSBA Assistant Director of Public Affairs, went 2-for-2 on proposals before the Board. The Governors unanimously authorized a State-wide Speakers' Bureau ($2,800 had been approved in July as part of the Public Affairs budget.) WSBA will keep alphabetical, topical and geographical lists of speakers. The proposal does not prevent lawyers from continuing to speak to groups on their own. Governor Delay wondered, "Is the WSBA liable if the speaker neglects to execute the (required) disclaimer?" Governor Petruss was disturbed that the Bureau is limited to active and honorary members of the Bar. "Why not utilize the retired lawyers?" he asked.

The Governors also advanced $5,500 to underwrite production of the "You & the Law" handbooks; the Bar will apply for Legal Foundation reimbursement for the publication, which is used in high schools to teach about law and justice.

COURT STRIPPING — The Governors unanimously authorized WSBA President Campbell to write to Washington's legislators and to the House and Senate Judiciary Committee leaders expressing views in accordance with those of ABA President William W. Falsgraf opposing limiting federal court jurisdiction over constitutional cases.

CORRECTION: The name of IOLTA Trustee Rita Bender of Seattle appeared incorrectly in the September Bar News. The editor regrets the error.

WAC 458-20-207

AMENDATORY SECTION (Amending Order ET 70-3, filed 5/29/70, effective 7/1/70)

The word "attorney" as used herein means an individual engaged in the practice of law. The term shall also include a professional service corporation organized under charter 18.100 RCW for the purpose of engaging in the practice of law.

BUSINESS AND OCCUPATION TAX

Attorneys are taxable under the Service and Other Activities classification upon the gross income of the business. Gross income of the business means the value proceeding or accruing by reason of the transaction of the business engaged in and includes compensation for the rendition of services, all without any deduction on account of expenses or losses. (See RCW 82.04.070.) Value proceeding or accruing means consideration actually received or accrued. (See RCW 82.04.090.) Thus, under these statutes, the measure of the tax for attorneys includes compensation or consideration for the rendition of legal service.

Attorneys are bound by the Disciplinary Rules of the Code of Professional Responsibility. DR 5-103 prohibits an attorney from financing the expenses of contemplated or pending litigation unless the client remains ultimately liable for such expenses. An attorney therefore normally acts solely as agent for the client when financing litigation. Accordingly, amounts received from a client for certain expenses of litigation do not constitute income to the attorney. Thus, such amounts are not part of the business and occupation tax measure.

Sometimes in the regular course of business an attorney may receive amounts from a client for expenses of third party providers incurred in connection with a legal matter other than litigation. Such amounts are also excluded from the business and occupation tax, but only if the attorney has no obligation for payment other than as agent for the client or equivalent commitment for their payment.

Thus, the following kinds of expenses are not subject to the business and occupation tax where the above requirements are satisfied.

A. Filing fees and court costs.

B. Process server and messenger fees.

C. Court reporter fees.

D. Expert witness fees.

E. Costs of associate counsel.

F. Costs of third party service providers (for example, accountants, appraisers, architects, artists, draftsmen, economists, engineers, investigators, physicians, surveyors, etc.) who provide services to the client, which the attorney does not or cannot render, and to whom the attorney has no obligation for payment other than as agent for the client.

G. Registration, licensing or maintenance fees.

H. Title and other insurance premiums.

I. Escrow fees paid to third party escrow agents.

In order to support the exclusion from taxable gross income of any of the foregoing expenses, the attorney must maintain records which indicate the amount of the payment received from the client, the name of the client, the name of the person to whom the attorney has made payment, and a description of the item for which payment was made. If the foregoing expenses are incurred outside the context of litigation or contemplated litigation, the attorney must maintain records which indicate the amount of the payment received, the name of the client, and the person to whom the attorney makes payment. In addition, the attorney must provide the person to whom payment is made with written notice that (1) payment is made, or will be made on behalf of a named client, and (2) the attorney assumes no liability for payment, other than as agent for the named client.

General overhead costs are includable in the tax measure even though an attorney may allocate those costs among particular clients. Likewise, any other costs for which the attorney assumes personal liability other than as stated above are includable in the tax measure.

Thus, amounts received to compensate for the following costs are fully subject to tax, even though they may be separately stated on the billings or expressly denominated as costs of the client:

A. Photocopy or other reproduction charges.

B. Long distance telephone tolls.

C. Secretarial expenses.

D. Travel, meals and lodging.

E. Third party service providers (for example, accountants, appraisers, architects, artists, draftsmen, economists, engineers, investigators, physicians, etc.) to whom the attorney assumes personal liability for payment.

RETAIL SALES TAX

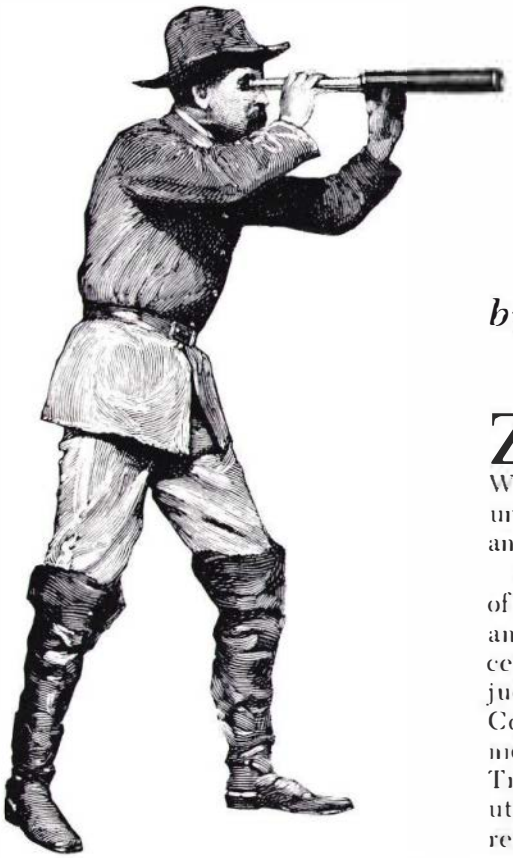
Attorneys primarily render professional legal services and are not required to collect the retail sales tax from clients and others paying for such services. This is so even though the legal services rendered by attorneys may include abstract, title insurance, and escrow business activities which are "retail sales" under the law when performed by persons other than attorneys.

Sales of tangible personal property to attorneys for use in rendering professional services are retail sales upon which the retail sales tax must be collected. Such sales include, among others, sales of office furniture and equipment, stationery, office supplies, law books, and reference materials.

USE TAX

The use tax applies upon the use within this state of all articles of tangible personal property used in the performance of professional services when such articles have been purchased or acquired under conditions whereby the Washington retail sales tax has not been paid.

The above policy was adopted on an emergency basis by Matthew C. Coyle, Acting Director of the Washington State Department of Revenue on August 7, 1985. As we go to press, the ruling is undergoing the standard public hearing procedure before final adoption.



Cox v. Helenius—Another View

by **David A. Leen**

Zachary Mosner's article in the May *Bar News* on *Cox v. Helenius* (103 Wn.2d 383 (1985)) reflects a poor understanding of the law both before and after the Cox decision.

In holding that the commencement of a lawsuit before the Notice of Sale and Notice of Foreclosure was received by a debtor prevents a nonjudicial foreclosure, the Supreme Court (as well as the trial court) merely confirmed what the Deed of Trust Act requires as a condition of utilizing the nonjudicial foreclosure remedy, and that is that there be no pending actions on the obligation secured by the Deed of Trust. The Supreme Court hardly expanded the law in this regard, but rather restricted the ability of a debtor to prevent a nonjudicial foreclosure sale by commencing a lawsuit. Before *Cox*, a sale could be prevented by filing a lawsuit up until the actual time of the sale. This provision existed in the law for almost 20 years and, to my knowledge, was rarely abused. Following *Cox*, the Supreme Court established a cut-off date at the time the Notice of Sale and Foreclosure is received by the debtor. This ruling is likely to prevent 99% of the very few debtors who might abuse the statute to prevent a foreclosure.

To suggest that the *Cox* decision is an "unmitigated disaster" reflects a woeful lack of understanding of the foreclosure process. It is extremely unlikely that a debtor would ever utilize a frivolous lawsuit merely to prevent a foreclosure. This process is much more expensive than utilizing bankruptcy proceedings which result in an automatic stay up to the very last minute prior to the sale. If there is any abuse in the Deed of Trust process, it would surely be in this area. Secondly, why shouldn't a valid lawsuit which properly pleads a claim in excess of the amount of default forestall a foreclosure? Court rules dictate that all claims between parties be resolved in one proceeding and to allow a nonjudicial foreclosure, a resulting eviction, with the debtor prevailing on a litigated claim for an amount greater than the debt associated with the Deed of Trust is absurd.

Mosner questions why lenders didn't appear as friends of the court to support the loss of a residence over a $900 debt. It should be noted that the case was appealed solely because a lax title company insured the purchaser at the Trustee's sale that he would receive approximately 20 times the amount of his investment. It should be also noted that following the decision in the *Cox* case, the same title company promptly launched a lobbying effort in the legislature which completely eliminated the debtor's ability to forestall a sale because of a larger claim against the lender unless the costly procedure to obtain an injunction and post a bond is utilized. This knee-jerk reaction to the *Cox* case may be a victory for insurance companies and unscrupulous lenders but not the general public.

The issue that deserves much more discussion in the *Cox* case centers around an attorney's ethical duty in the foreclosure process. The opinion deserves study because it is a reminder that lawyers are bound by the code of professional responsibility. Mosner assumes that a Trustee in a foreclosure acts solely and exclusively for the benefit of the lender to the total exclusion of any legitimate rights that a debtor may have. An attorney has this duty when representing a party to a lawsuit. The Supreme Court merely held that an attorney could not fill both roles. This is hardly a novel interpretation of an existing law. It should be remembered that reinstatement is the preferred method of resolving the foreclosure process.

David A. Leen argued the Cox case at both the trial court and the appellate levels.

"Real People with Hearts"

by Jo Rosner, *Attorney/Educator &* Cheri Brennan, *Assistant Director of Public Affairs*

Not only were they surprised to find that lawyers are "real people with hearts," but students in WSBA's MENTOR program also discovered attorneys aren't all "stuffy and bald," and that they're "more like normal people" than expected. Students revealed their perceptions of law firms and their career aspirations in responding to a questionnaire about MENTOR, WSBA's law-related education project that pairs law firms and high school classes.

In identifying "the thing that surprised me most about the law firm," students replied:

"it was so efficient;"
"how many different jobs there are;"
"that it had its own library;"
"that it was so big;"
"the computer that tied in with a firm across the U.S.;"
"how many women work there as well as men."

Despite varying opinions of lawyers, law firms, and careers, more than 90 percent of the students rated the MENTOR program as "excellent" or "good." Equally enthusiastic in their praise were the pilot project's teachers and law firms. In the words of one teacher, "this [field trip to the law firm] was one of the best learning experiences for students in learning about American jurisprudence. . .it was magnificent!"

Five pilot sites (Seattle, Spokane, Tacoma, Wenatchee and Yakima) completed programs at the close of school in June.

Favorite activities for students were the tours of law firms, visits to courthouses and mock trials. After participating in MENTOR, the high school juniors and seniors were interested in "what a real lawyer actually does" and the value of good communication skills.

Lawyers were also favorably impressed by their involvement. "A lot of fun—and a bit of work, too!" said one, who added, "Look forward to continued participation."

Joining the five pilot sites with MENTOR programs for the 1985-1986 school year are at least seven new school-law firm partnerships. The roster at press time involves schools in Edmonds, Seattle, Spokane, Tacoma, Yakima and Wenatchee. Their partners include:

Anderson, Hunter, Dewell, Baker & Collins (Everett)
Davies Pearson, P.C. (Tacoma)
Eisenhower, Carlson, Newlands, Rena, Hanriot & Quinn (Tacoma)
Gavin, Robinson, Kendrick, Redman & Pratt, Inc. (Tacoma)
Gordon, Thomas, Honeywell, Malanca, Peterson & O'Hern (Tacoma)
Halvorson, Applegate & McDonald, Inc., P.S. (Yakima)
Jeffers, Danielson, Sonn & Aylward, P.S. (Wenatchee)
Lane Powell Moss & Miller (Seattle)
Lukins & Annis, P.S. (Spokane)
Paine, Hamblen, Coffin & Brooke (Spokane)
Witherspoon, Kelley, Davenport & Toole, P.S. (Spokane)

In preparing for MENTOR's expansion, representatives from the five pilot law firms developed an orientation handbook for future participants. Along with historical information, it contains summaries of project activities and materials, teaching tips, lists of resources, and publicity and correspondence samples. A booklet that highlights the pilot program was also published.

MENTOR began in 1984 when the WSBA Board of Governors approved a proposal of the Law-Related Education Committee. Although patterned after MENTOR programs in New York City and Washington, D.C., our pilot project is unique in its statewide scope. The program is endorsed by State Superintendent of Public Instruction Frank Brouillet and by the Superior Court Judges' Association.

For exchange of ideas and information, please call Jo Rosner or Cheri Brennan at (206) 622-6054.

CLE CLEARINGHOUSE

UPCOMING CLE:

THE USE OF COMPUTERS IN LITIGATION, MANAGING THE GROWING LAW FIRM IN THE 1980s, THE THIRTIETH ESTATE PLANNING SEMINAR, & THE CORPORATE COUNSEL INSTITUTE

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

This year's fall Trial Advocacy program is titled THE USE OF COMPUTERS IN LITIGATION. It is designed to be of assistance to both small and large firms in pointing out how computer usage can provide practical, efficient methods for handling litigation and offer alternative solutions to other law office functions, including law office management.

The program will be presented at five sites: On October 4, 1985 in Yakima (Thunderbird Motor Inn), on October 11, 1985 in Bellingham (Holiday Inn), on October 18, 1985 in Spokane (Cavanaugh's River Inn), on October 25, 1985 in Seattle (Sheraton Hotel), and on October 26, 1985 in Bellevue (Hilton Hotel).

A *special feature* of the program will be a live demonstration of real-time personal computer graphics in order to show the microcomputer's ability to serve as a demonstrative evidence tool that will meet the needs of lawyers and expert witnesses.

Program Chairperson **Terrence P. Murphy** (Terosoft, Inc., Seattle) has assembled a knowledgeable panel which will provide you with information that will be of assistance when determining which hardware and software will help you improve your delivery of legal services. The program includes a presentation of "A Computer Primer" by **Leigh C. Webber** (on videotape) (Assistant Executive Director, Continuing Legal Education Society of British Columbia, Vancouver, B.C.); "Computer Assisted Litigation Support—The Small Law Firm" by **Donald W. Ferrell** (Short & Cressman, Seattle); "Computer Assisted Litigation Support—The Large Law Firm" by **David F. Ross** (Karr, Tuttle, Koch, Campbell, Mawer & Morrow, P.S., Seattle), "Information Databases—There's A World Beyond Lexis and Westlaw" by **Charlotte M. Beatty** (The Information Group, Seattle), "The Process of Selecting Computer Hardware and Software" by **Richard R. Bernstein** (Kargianis & Austin, Seattle), "Computer Simulations: Using Microcomputers For Demonstrative Evidence" by **Bill Stalzer** (President, Applied Graphics Systems, Seattle) and **Dr. Christine C. Schaefer** (Applied Graphics System, Seattle), "Database Software—A Tool For Litigation Support and Other Law Office Functions" by **Chris R. Youtz** (Sirianni & Youtz, Seattle), and "The Lexis/Westlaw 'Debate'" involving the panel.

For further information about this program, please contact program coordinator Colette Cao, Washington State Bar Association, 505 Madison Street, Seattle, WA 98104 or telephone (206) 622-6021.

Two programs which have been highlighted in previous issues of the *Bar News* and are worthy of mention again are MANAGING THE GROWING LAW FIRM IN THE 1980's (Law Office Management Conference), which will be presented on October 23, 24 & 25, 1985 in downtown Seattle at the Four Seasons Olympic Hotel, and THE THIRTIETH ESTATE PLANNING SEMINAR, which will be presented on November 7 & 8, 1985 in downtown Seattle at the Westin Hotel.

Finally, don't forget to mark your calendar for attendance at The Pacific Northwest CORPORATE COUNSEL INSTITUTE. This two-day premier event will be held in Seattle at the Westin Hotel on November 14 & 15, 1985 and will feature **C. Bruce Maines**, President and Chief Operating Officer of Safeco Corporation, as the Keynote Speaker and **Michael J. Parks**, editor and publisher of

Marple's Business Newsletter, as the Friday Luncheon speaker. Watch for further information about the Institute in an upcoming issue of the *Bar News*.

For additional information about these and other continuing legal education seminars sponsored by the Washington State Bar Association, please contact the CLE Department at 505 Madison Street, Seattle WA 98104 or telephone (206) 622-6021.

APPROVED CLE COURSES

WASHINGTON STATE BAR ASSOCIATION

The New Real Estate Contract Forfeiture Act **$50.00**
3.00 hours of credit

10/4/85	Seattle	Sheraton Hotel
10/9/85	Yakima	Thunderbird Motor Inn
10/16/85	Spokane	Cavanaugh's Inn at the Park
10/24/85	Sea-Tac	Hyatt Hotel
Sponsor:	Real Property, Probate & Trust Section and Continuing Legal Education Committee	
Contact:	Sharon Clemence (206) 622-6021	

Managing The Growing Law Firm in the 1980's
Tuition is $275.00; tuition for each additional registration from the same firm is $225.00.
15.00 hours of credit

10/23-25/85	Seattle	Four Seasons Olympic Hotel
Sponsor:	Law Office Economics and Management Section and Continuing Legal Education Committee; Association of Legal Administrators	
Contact:	Sharon Clemence (206) 622-6021	

Trial Advocacy 1985—Beyond Billing and Timesheets: The Use of Computers in Litigation
Tuition is $100.00; tuition for each additional registration from the same firm is $75.00.
6.50 hours of credit

10/4/85	Yakima	Thunderbird Motor Inn
10/11/85	Bellingham	Holiday Inn
10/18/85	Spokane	Cavanaugh's River Inn
10/25/85	Seattle	Sheraton Hotel
10/26/85	Bellevue	Hilton Hotel
Sponsor:	Trial Practice Section and Continuing Legal Education Committee	
Contact:	Colette Cao (206) 622-6021	

Thirtieth Estate Planning Seminar
$165.00
15.25 hours of credit

11/7-8/85	Seattle	Westin Hotel
Sponsor:	Continuing Legal Education Committee; Estate Planning Council of Seattle	
Contact:	Debbie Kirchhauser (206) 622-6021	

Corporate Counsel Institute
$215.00
13.25 hours of credit

11/14-15/85	Seattle	Westin Hotel
Sponsor:	Corporate Law Subsection of the Corporation, Business and Banking Section and the Continuing Legal Education Committee	
Contact:	Colette Cao (206) 622-6021	

CASELAW CAPSULES

Notes From the Academy

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

Creditor-Debtor Law. *(Case 1.)* Defendant's claim against garnishee for "extras" over contract price of house constructed for garnishee was liquidated amount that could be reached by garnishment, since exact amount due could be determined from concrete data proved, the only determination to be made being whether each item was an "extra." Under RCW 7.33.290, providing for attorneys' fees on controversion of garnishee's answer, fees must be awarded to prevailing party. Garnishing creditor was prevailing party when it prevailed as to existence of indebtedness, though not as to amount after garnishee had denied all liability. ***Hinote's Home Furnishings v. Olney & Pederson,*** 40 Wn. App. 879, 700 P.2d 1208 (6/10/85).

(Case 2.) Debt for state sales tax collected by debtor more than three years before filing of bankruptcy petition was discharged. Under § 523(a)(1) of Bankruptcy Code, it was dischargeable if it was entitled to priority under § 507(a). It was not entitled to priority as "tax required to be collected" under § 507(7)(c); legislative history demonstrates that a sales tax is to be treated as excise tax under 507(7)(E), which does not accord priority for taxes for which return was due more than three years before filing of petition. (For legislative history on which court relied, see ***In re Monaco,*** 47 Bankr. 602 [W.D.N.Y. 1985].) ***In re Shank,*** No. C84-1562D (W.D. Wash. 6/28/85).

(Case 3.) Debtor's vested interest in employee profit-sharing trust became property of debtor's bankruptcy estate. It was not excluded under § 541(c)(2) of Bankruptcy Code (restriction on transfer of debtor's beneficial interest in trust that is enforceable under "applicable nonbankruptcy law" is enforceable in bankruptcy) because state spendthrift law as appliable to such employee plans has been superseded by Federal Employee Retirement Income Security Act (ERISA), and ERISA is not "applicable nonbankruptcy law" within meaning of that section. Questions whether or to what extent the interest might be claimed as exempt were not presented. ***Nelson v. White (In re White).*** 47 Bankr. 410 (W.D. Wash. 1985).

—M. D. Rombauer

Evidence. Information obtained by federal officers by electronic surveillance conducted in accordance with federal law can legally be furnished to state officers, regardless of whether surveillance would have been proper under state law. Such information may, in turn, be used by state officers to establish probable cause for state

court order authorizing further electronic surveillance under more restrictive state statute, even though original information obtained by federal officers would be inadmissible in state court under state statute. ***State v. O'Neill,*** 103 Wn.2d 853, 700 P.2d 711 (5/30/85).

—K. B. Tegland

WWL

Washington Women Lawyers (WWL) recently opened its statewide coordinating office in Seattle's Jones Building. The office will serve local chapters in Spokane, King, Whatcom, Pierce and Kitsap counties as well as the Capitol and St. Helens areas. WWL has also hired a part-time administrator to assist in reaching its twin goals of the furtherance of women in the legal profession and equal rights and opportunities for all women. Towards these ends, the organization has taken the lead in endorsing candidates for judicial positions and stands on legislative matters.

WWL has grown over the last 15 years to a membership of 500 attorneys, judges and law students. Participation facilitates both professional and social contacts. Anyone interested in membership should call or write for an application:

WWL
Jones Building, Suite 520
1331 Third Avenue
Seattle, WA 98101
(206) 622-5585

AROUND THE STATE

SEATTLE-KING REPORT
by JAMES L. VARNELL

Honors. The Seattle-King County Bar Association has announced the recipients of its 1985 awards: **Donald Voorhees** as Outstanding Judge; **Frederick Paul** as Oustanding Lawyer for his representation of North Slope Native Americans; **William Dwyer** the Distinguished Service Award for work with the Volunteer Legal Services program; **John W. Kidd** the President's Award for his commitment to delivery of legal services to the poor; and Hillis, Cairncross, Clark & Martin the Pro Bono Service Award for the high level of firm participation in Volunteer Legal Services, Volunteer Lawyers for the Arts, and for work with the American Civil Liberties Union.

The newly-elected officers of the Seattle-King County Bar Association are: **Nancy Gibbs** (U. of W. 1971) president; **Thomas Zilly**, first vice-president; **M. Wayne Blair**, second vice-president; **Rod Kaseguma**, secretary; and **Alice Gustafson**, treasurer. **Earl Lasher, Geoffrey Revelle** and **Matt Sayre** were elected to the board of trustees for three-year terms.

Sharon Stewart Armstrong has been appointed to the King County Superior Court Bench, replacing the retiring **Francis Holman.**

Richard C. Reed is now chair of the American Bar Association Section of Economics of Law Practice. **Omar Parker** has been elected to the American College of Real Estate Lawyers. **J. David Andrews** has been installed as the president of the American Bar Endowment. **Margaret Sullivan Mussehl** has been re-appointed to the ABA Special Committee on Dispute Resolution. Husband **Robert C. Mussehl** has been elected as an Assembly Delegate of the ABA. **Mary Ellen Hanley** has been appointed co-chair of the National Conference of Lawyers and Environmental Design Professions. **Mary Ellen Krug** has been appointed chairman of the ABA Section of Labor & Employment Law. **Thomas Fitzpatrick** has been appointed co-chairman of the National Conference of Lawyers and Representatives of the Media.

Office Moves. **Tren James Griffin,** on leave from Shidler, McBroom and Gates, has joined Stephen, Gates, Jaques, Stone, James of Sydney, Australia after working the past two years for Kim & Chang of Seoul, Korea. Graham & Dunn's two newest shareholders are **Timothy Austin** and **George Cowan.** LeSourd & Patten announces the relocation of its Seattle offices to the Columbia Center; **Charles R. Wolfe** has joined the firm as an associate. **Larry E. Halvorson** has joined Davis, Wright, Todd, Riese and Jones. **Carole Grayson,** editor of the *Bar News,* has opened an office in the Pioneer Building.

Bill Levinson for the first time this decade, did not win the South-King County Bar Association Golf Tournament, as he finished second to **Paul**

"Mr. Modest" **Houser. Jim Curran, Jane Rhodes** and **Leslie Wagner** shared the trophy for fewest post-tournament water hazards avoided.

Seattle Enquirer. This correspondent would like to issue an invitation for reports of all types, including rumors, gossip, innuendo, hearsay and any other news suitable to print in this column regarding the endeavors and accomplishments in any field by any attorney. No report will be excluded, even if violative of ER 802.

PIERCE COUNTY REPORT

by **ROBERT W. MARSDEN**

Congratulations to the Young Lawyers Section of the Tacoma-Pierce County Bar Association for receiving special recognition from the American Bar Association. The Young Lawyers Law Week Program was honored by the ABA in its annual Achievement Award competition. **Marilyn Mauer Wahlberg** accepted the award as the Young Lawyers Section representative to the ABA National Convention.

Larry Couture's all lawyer softball team just wrapped-up another successful season. The heavy hitting of **Bill Tri** and **Steve Fisher** led the team to a second-place finish in league play and several trophies in weekend tournaments.

Don Kelley is making the rounds of the European Grand Prix racing circuit this summer. While Don is out of town, brother **George Kelley** is dutifully "walking" Don's Porsche.

Jeff Gross shot a 77 at the North Shore Golf course to walk off with top honors in the recent Tacoma-Pierce County Bar Association golf tournament. The handicap division was won by **Rich Milham**, while **Mike Pate** took top prize in the calloway division. **Pam Loesch** was the top woman golfer with a score of 99.

Judge **Waldo Stone** placed second in the 60-plus class at the Seafair triathlon. The event included a three-quarter mile swim in Lake Washington, a 20-mile bicycle ride through the streets of Seattle and Renton, followed by a 6.2 mile run around and through Seward Park.

This summer's hot weather took its toll upon many of us. **Herb Gelman**, for example, literally flipped his wig on several occasions. During the hot spell, Gelman was reportedly seen in court without his usually present hairpiece.

CLARK COUNTY

Vancouver attorney **Michael J. Wynne** has been named vice president and general counsel of Raffles Hotels & Inns, a hotel development and management company operating in the western U.S. Wynne was a partner with the Vancouver firm of Horenstein, Wynne and Horenstein for six years.

SPOKANE

William F. "Frem" Nielsen has become a Fellow of the American College of Trial Lawyers by invitation from the Board of Regents. Nielsen is partner in the firm of Pain, Hamblen, Coffin and Brooke, and has been practicing in Spokane for 23 years. He is an alumnus of the University of Washington School of Law.

BRIEFLY NOTED

DISCIPLINE

Disbarred

Everett attorney **Eugene A. Stock** (admitted 1964) was ordered disbarred by the Supreme Court on August 8, 1985. The court found that Stock had committed serious acts of misconduct, including: lending trust account funds belonging to a client's estate to another client without the knowledge or approval of the administrator of the estate; delaying providing an accounting to the heirs of the estate; advising a client to lend $5,000.00 to a corporation without advising the client that he had a personal business interest in the corporation and prior business and attorney/client dealings with a principal in the corporation; disbursing the loan funds after the client advised him that she did not want to make the loan to the corporation; advising a client to loan $14,500.00 to the same corporation without disclosing to her his relationship to the corporation, including that he was now lawyer for the corporation; borrowing $12,285.00 from a client without advising her to obtain independent legal counsel, without making full disclosure to her, and without preparing a mortgage to secure his promissory note as he had told his client he would; acting as lawyer for the corporation in dealings with a third party creditor, without disclosing his personal interest in the corporation; failing to comply with the trust account rules; and committing other numerous less serious violations. The court noted also that Stock had received two previous reprimands.

J. Rex Behrhorst, (admitted 1966) formerly of Port Angeles, now residing in Las Vegas, Nevada, was ordered disbarred by order of the Washington State Supreme Court effective May 29, 1985. This disbarment was a result of repeated instances of conversion of client funds, entering into business transactions with clients, converting client funds obtained through the abuse of a power of attorney given him by a client, and perjury while being deposed by bar counsel.

Censured

Tacoma attorney **Robert A. Izzo** (admitted 1980) has been ordered to receive two Censures pursuant to a stipulation for discipline. One Censure was based upon Izzo's failure to withdraw when discharged by a client. The second Censure was based upon disclosures during an audit of Izzo's trust account that he was not in compliance with DR 9-102(A) and DR 9-102(B)(3).

Seattle attorney **Jon O. Nelson** (admitted 1983) has been ordered censured for failure to timely file his 1983 Declaration of Compliance with (CPR) DR 9-102.

Spokane attorney **Robert G. Schimanski** (admitted 1952) was ordered to receive a Censure pursuant to a stipulation that after paying himself a fee from client trust funds in 1981, he failed to return the funds to trust when his client protested the fee, in violation of DR 9-102(A)(2).

IN MEMORIAM

Gordon Bennett Dodd, who practiced law in the same office at 1411 Fourth Avenue in Seattle for more than fifty years, died August 11 at the age of 83. The Tacoma native received his bachelor's and law degrees from the University of Washington. He was a founding partner of the Dodd, Coney and Bishop firm. During the 1944 U.S. Senate race, Dodd was defeated in the Republican primary by Harry Cain, who lost to Democrat Warren Magnuson in the general election. Remembrances to the University Hospital's Division of Cardiology.

Notice of Election

New members of the Board of Trustees for the Young Lawyers Section of the Washington State Bar Association were chosen for those seats for which vacancies arose for a three-year term beginning in September, 1985. Candidates ran unopposed in each of the districts and were chosen for the seats. The candidates are as follows:

King County at Large – **John McKay**
Sixth District – **John R. Connelly, Jr.**
Eighth District – **Marc S. Stern**

The new trustees took their seats at the close of the Washington State Bar Association Annual Meeting in September.

New Directions in Corrections

The Washington Correctional Association presents "Corrections: New Dimensions" in Yakima from October 16-18. Speakers from the public and private sectors from as far away as Texas and the District of Columbia will address more than two dozen topics. Registration for the entire program is $65. For more information, contact Lola Hanus, registration coordinator, c/o Tri-Cities Work/Training Release, 527 W. Bonneville, Pasco, WA 99301.

NOTICES

NOTICES ADVERTISING

Professional: WSBA Members only. $40.00 per inch. Billed at publication.

Classified: Members—$25 for 25 words, each add'l 25¢. Non-members—$35 for 25 words, each add'l 75¢. Box number service—$6. *Advance payment required.*

Deadline 25th of each month for second issue following. No cancellations after deadline.

Submit double-spaced typed copy (no phone orders) to Lorraine Wall, *Bar News*, 505 Madison Street, Seattle, WA 98104.

PROFESSIONAL

Matt L. Alexander welcomes your Workers' Comp. referrals. Many years experience as practicing attorney and former hearing officer in this field.

Matt L. Alexander
1411 4th Ave. Bldg., Suite 1001
Seattle, Washington 98101
Telephone (206)624-3766

Ann Forest Burns, attorney and forester, is available for consultation or association in timber-related matters.

Ann Forest Burns
Attorney at Law
1218 Third Avenue, Suite 1300
Seattle, Washington 98101
Telephone (206) 624-4212

Antonio Salazar, an attorney with ten years active experience in immigration matters, is accepting consultations and referrals in United States Immigration and Nationality matters.

Antonio Salazar
Attorney at Law
Salazar Law Offices
157 Yesler Way
Seattle, WA 98104
Telephone (206) 624-6414

Consultation, association or referral in Tri-Cities, Benton, Franklin Counties, and Hanford area.

Law Offices of
Gregory C. Dow
1100 Jadwin Avenue, Suite 225
Richland, WA. 99352
Telephone (509)946-7661

Donald R. Burke announces his availability for referral, consultation or association on the first party property and business loss claims of insureds. Seven years experience as a Public Insurance Adjuster/Attorney.

Donald R. Burke
Kelsey Creek Office Park
12951 Bellevue-Redmond Rd.
Bellevue, WA 98005
Telephone (206) 462-9254

Chemnick & Moen, Inc., P.S.

is available for referral or association in medical-legal matters, including obstetrical malpractice cases. The firm will review medical-legal cases without charge or obligation.

2001 Western Ave., Suite 650
Seattle, Washington 98121
Telephone (206) 443-8600

Worker's Compensation referrals invited. Thirteen years experience before agency and courts throughout Washington.

Tracy B. Madole
1928 One Union Square
Seattle, Washington 98101
Telephone (206)622-2200

Douglass A. North announces his availability for referral, consultation, or association on appellate arguments and briefs.

Douglass A. North
Hennings, Maltman, Weber & Reed
215 Norton Building
Seattle, Washington 98104
Telephone (206)624-6271

Don C. Pearson announces his availability for consultation in medical-legal litigation involving the eye and visual system.
Amer. Board of Ophthalmology, FACS, FCLM, WSBA, WSTLA

Don C. Pearson, M.D., J.D.
B-6001 Allenmore Medical Center
Tacoma, Washington 98405
Telephone (206)272-9309

FOR SALE/WANTED

Attorney Jobs: The National and Federal Legal Employment Report—a monthly detailed listing of hundreds of attorney and law-related jobs with the U.S. Government and other public and private employers in Washington, DC throughout the U.S., and abroad. 3 months—$30; 6 months—$50; 12 months—$90. Send check to Federal Reports, P.O. Box 3709, Georgetown Station, Washington, DC 20007, or call (202) 393-3311. Visa/MC.

For Sale or Trade for Rabkin & Johnson's Washington Practice or other general forms volumes; current set of Bankruptcy Service Lawyer's Edition. Call Kim (206) 779-5338.

For sale: *Federal Taxation of Partnerships and Partners*, Warren, Gorham & Lamont, Publishers, Volumes 1 and 2. Current through 1984 Cumulative Supplement No. 3. Best reasonable offer received within 30 days. Call Lynn Weaver. (206) 733-0212.

Law books for Sale. Significant Discount. Excellent Condition. 100% Current. Library Merger. Wash. Lawyer Prac. Manual & Forms. Local Superior Court Rules (All Counties). Collier Bankruptcy Cases, 2d Series, Complete. WSBA Publications (Commercial Law Deskbook, Partnership Handbook). Selected Vols. Wash. Prac. (206) 728-0220.

For sale: IBM Mag Card/A typewriter, card unit, and numerous mag cards; excellent condition; $750.00. Call Barbara at (509) 837-7070.

For sale: ALR 2nd, 3rd, 4th, and Federal; Am Jur 2nd; Am Jur Plead-

ing and Practice Forms; Am Jur Proof of Facts 1st and 2nd; Am Jur Legal Forms 2nd. Updated through 1984 except Proof of Facts. $4,000 or best offer. *Contact* Kenneth Brewe, (206) 259-6184, PO Box C, Everett WA 98206.

Wanted: Conference table, approximately 13 feet long. With or without chairs. Reasonable. Please call or write P.O. Box 550, Sultan, Washington 98294, (206) 793-1222.

Corpus Juris Secundum 2d. – For Sale, Completely up to date, excellent condition. 206-383-4704

Word Processors – For Sale, 3 IBM Displaywriters, 2 printers, and software including Text Pack 4 for time recording. Will sell together or separate. Always on maintenance contract. Possible assumption of lease. 206-383-4704

OFFICE SPACE

One Union Square. View office available in four attorney suite. Reception. Library/conference room. State of the art word processing. A multi-service office for attorneys with complementary practices consistent with future association. (206) 623-9052.

Prestige Bellevue-Kirkland location. Congenial atmosphere. Two modern offices in plush surroundings. Extensive law library, conference room. Telephone system, copier w/collator, and receptionist and/or secretary available. Ted, (206) 828-6515.

Very attractive office in three-attorney suite in downtown Seattle. Five minutes from Courthouse. $385 per month includes base telephone, copier, and reception. Parking and secretarial available. Perfect for beginning practice. (206) 682-1771

Office space available, established firm in Regrade area. Room for one or two attorneys, view, receptionist/secretary available, DEC word/data processing, copy machine, conference room. Robert A. Jensen Seattle, Washington (206) 448-3200

Interurban Building, Pioneer Square. Unique Small & Large Office Suites. Sauna, shower and conference rooms available. Evening security, utilities & janitorial services included. Access to complete secretarial & court reporting services. Easy access to freeways and bus lines. Filler Enterprises (206) 624-0351.

Bellevue: Two-person firm seeks one experienced attorney to share beautiful suite. View of lake/Olympics. Across from One Bellevue Center. Parking, secretarial space, receptionist, library, copier, and conference room. Wang equipment, time and billing, and phone system available. (206) 462-8222.

Hoge Building – Law office available in pleasant work environment. Spacious basic library/conference room, copier, phones. Adjacent suite also available, suitable for one or more beginning practitioners or practitioners with shared receptionist/secretarial. Contact Harvey Grad – (206) 624-0130.

Space sharing—beautifully appointed view office space for 1-3 attorneys, plus secretarial space, 16th Floor, Marsh & McLennan Bldg. Includes furnishings, receptionist, library, conference room, copier, file room, kitchen facilities. Computer with customized legal billing package available, parking available. (206) 624-1199.

1248 sq. ft. top-floor space in Northway E. Bldg. (Seattle-Northgate area) consisting of reception area, 4 offices, utility room and storage room. Coordinated furniture available for sale. Call (206) 367-1941.

First Interstate Center: Several Offices in attractive 25th Floor Suite. Superior facilities, special amenities. Price range is $400 to $1,075 per month. Call (206) 382-2600.

Share office space: Dexter Horton Building. One private office in two-lawyer office. Secretarial space, library. $350.00 per month, plus telephone expense. (206) 622-1340.

Architect designed suite with view office to share with two attorney plaintiffs personal injury firm. 30th Floor, Smith Tower. State-of-art equipment, reception, phones, library, view conference, copier, kitchen. Pence & Dawson. Call Jann Baird (206) 624-5000.

Office in five-attorney suite. Word processing, receptionist, conference room, library, copier. $476.21/month plus share of services used. Parking in building. Bob Dawson (206) 624-5000.

Corner Law Office. View. Center downtown Seattle. Basic library. Reception. Reasonable. Available now. 1112 Seattle Tower/Third Avenue at University St. (206) 623-5600, (206) 622-5555.

Edmonds—Sole practitioner with emphasis in general litigation, business and personal injury, seeks attorney with same or different practice to share office space. Excellent location. Full secretarial support, Wang word processing equipment with billing, copier, library, phones, office furniture and conference room, $1,300.00 per month. Ralph I. Freese, 18604 76th Avenue West, Edmonds, WA 98020, (206) 774-6027.

Market Place Two. One to four offices available in ten-office suite. Exceptional view—Puget Sound, Mt. Rainier. Across from Seattle Club. Parking within building. Secretarial space, receptionist, telephones, copier access, law library, conference room, kitchen, file and supply storage. Contact Anita, (206) 448-1010.

POSITION WANTED

Tax attorney seeking position with law firm in Seattle-Bellevue area. Member of Washington State Bar. *Law Review*, LL.M. Reply to Box 13, WSBA.

POSITION AVAILABLE

Progressive Spokane Patent, Trademark & Copyright firm seeks to include another qualified patent professional in order to continue its 40+ year history of dedication to providing the highest quality of service to our clients. Attorneys and agents with background or experience in all technical arts and having at least two to three years of active experience in patent preparation and prosecution will be given full consideration. Extensive direct personal contact with a broad range of clients involved with varying technical arts is refreshingly a part of our practice. Interested, qualified applicants should submit resumes or contact Randy Gregory at Wells, St. John & Roberts, 815 Washington Mutual Building, W. 601 Main Avenue, Spokane, Washington 99201-0679, (509) 624-4276.

Established Northwest firm seeks associates with 1-3 years' experience for commercial litigation and professional liability defense work in Seattle branch office. Send resume to Box 12, WSBA.

Five-lawyer Denver firm specializing in business and securities litigation and securities and corporate law, seeks affiliation with a Seattle law firm interested in opening a Denver office. Reply to Box 7, WSBA.

Well-established medium-sized Seattle firm seeks an attorney with experience in bankruptcy proceedings, foreclosures, collection matters, and related commercial litigation. Strong academic credentials required. Reply to Box 11, WSBA. Responses will be held in confidence.

PI-Trial attorney. You are a *first rate trial attorney*, happy with your current position. Yet somewhere inside you is a longing for the recognition and rapid advancement that our small and successful PI practice offers. If you are personable, knowledgeable in the ways of insurance companies and have at least five years' experience in PI-trial practice, then contact us. We want to meet you. All replies confidential. Reply to Box 8, WSBA.

Referral Attorneys Needed. Referral attorneys are needed for a National Legal Plan just being introduced in the Seattle area to employee groups and unions—referral attorneys provide legal services in their selected legal field, such as divorce, at approximately sixty dollars ($60.00) per hour. Please submit a letter of interest, firm resumé, and individual resumés for firm members to Legal Plan, 3820 38th Ave. S.W., Seattle, WA 98126.

Medium-sized Tacoma law firm seeks a tax attorney with two to three

years' experience. Master's preferred. Reply to Box 9, WSBA.

Publicly held Bellevue recreation company seeks house counsel. Ability to manage outside counsel and familiarity with real estate and contracts would be helpful. All inquiries held confidential. Box 10, WSBA.

Large, Portland, Oregon, firm seeking a lawyer with two or more years' experience in labor and employment law to join established management-labor practice. Also seeking applicatons from recent graduates with an interest in, and exposure to, the following specialties: (1) ERISA; (2) aviation litigation (pilot/engineer); (3) tax; (4) estate planning; and (5) labor. Send resumé in confidence to Box 6, WSBA.

Insurance defense firm invites resumés from attorneys with 1-3 years' experience. Firm emphasizes litigation practice in product liability, personal injury and medical malpractice defense. Superior credentials are essential, and knowledge of insurance law is desired. Submit resumé to Daniel Mullin, Bassett & Morrison, 2001 Western Avenue, #600, Seattle 98121.

Director sought by Evergreen Legal Services, Seattle, Washington. Large statewide program providing representation to low-income people. Approximately 110 staff, $4 Million budget, 15 offices. Duties include overall legal and fiscal supervision of program. Member of Washington Bar or willing to take next bar exam. Prior legal management experience required. E.O.E. Salary $45,000 D.O.E. Send resumé to: Search Committee, Evergreen Legal Services, 2018 Smith Tower, Seattle, WA 98104.

Wickwire, Lewis, Goldmark & Schorr seeks attorneys with up to five years of litigation experience. Send resumé, references and writing samples to Hiring Coordinator, Wickwire, Lewis, Goldmark & Schorr, 500 Maynard Building, Seattle, Washington 98104.

SEEKS ASSOCIATION

Small Seattle firm seeks qualified associate. The position involves construction law and claims against contractors. Experience in debtor/creditor law or related civil litigation helpful. Confidential resumé to Box 5, WSBA.

WILL SEARCH

Seeking Will of Margaret Ghrames who died in Seattle. Contact Donald Carter at Cogdill, Deno, Millikan & Carter, 3232 Rockefeller, Everett, Washington 98201, (259-6111).

Seeking will of Earl H. Enrico, of Cle Elum, Washington, who died April, 1985. Contact Darrel Ellis, P.O. Box 337, Cle Elum, WA 98922. (509) 674-5501.

Will sought: Anyone with information regarding the will of Evelyn or Thomas Kuefler, please contact Steven Sisson, Hyatt Legal Services, Seattle, (206) 946-0400.

How do you value a business?

To many, the proposition of valuing a business is about as scientific as believing a fortune cookie.

But to us, it's a highly specific and disciplined endeavor. Defining both growth and risk. In a manner requiring relevant and timely judgment.

Providing, of course, good fortune for all.

Management Advisory Services, Inc.

Financial Valuations & Analysis

333 First Avenue West Seattle, WA 98119 (206) 284-9250

WASHINGTON STATE
BAR ASSOCIATION
505 Madison Street
Seattle, WA 98104

Nonprofit Org.
U. S. POSTAGE
PAID
SEATTLE, WASH.
Permit No. 2204
ID No. 9-437