

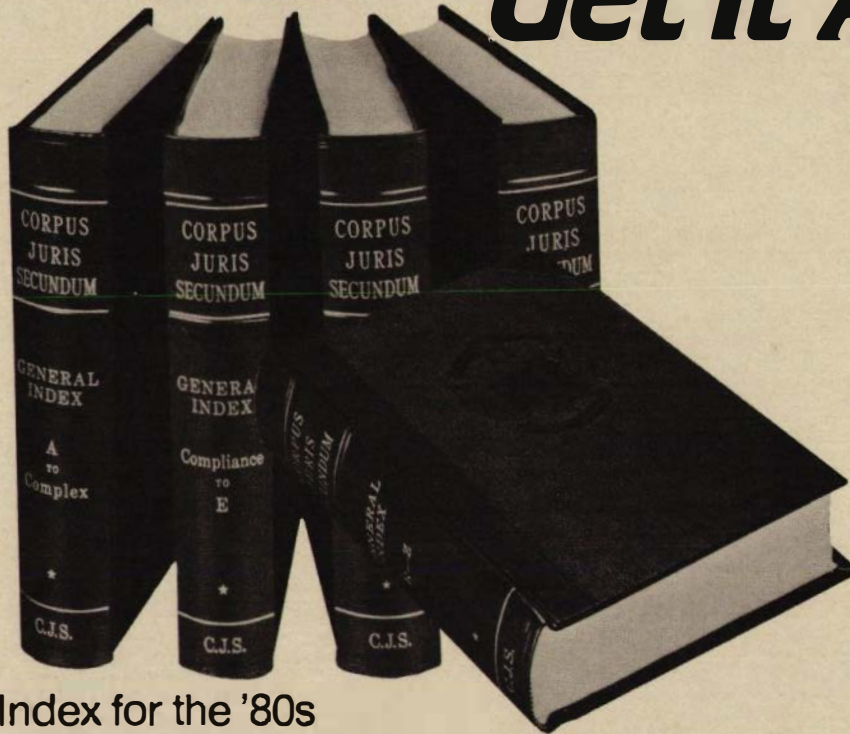
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# Washington State Bar News

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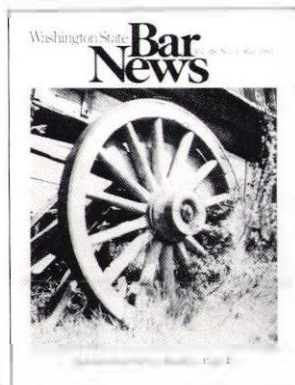
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#### Our Cover



*Scotch broom partially obscures a wagon wheel in Edmonds, Snohomish County, four decades ago. From Here Rolled the Covered Wagons, by Seattle authors Albert and Jane Salisbury (N.Y.: Bonanza Books, 1948). Used with permission of the authors.*



**Dangerous, but Democratic**

Editor:

Since I was admitted to practice in 1978, I've been working hard to get my practice started. I haven't had the time, energy, or inclination to involve myself in the politics of the WSBA, although from time to time I have had strong feelings about actions it has taken.

I have heard a rumor that someone represents me on the WSBA, but I have never met him. I don't know his name or address, his personality, or the way he votes on issues. I know that he has never asked me how I would like him to vote on any given issue, nor has he ever contacted me at all. It is long distance for me to call him, whoever he is.

Often I feel as though the WSBA is like a giant dog, wagging a tail onto which we lawyers are fastened. I say fastened and not hanging, because we don't have the option to let go. I would like it better if I had some control over this dog.

I know that there are many other attorneys who have strong feelings about WSBA actions, but are not interested in politics. Are we the silent majority? The silent minority? I would like to find out.

Accordingly, I propose that on important issues, such as IOLTA and lawyer specialization, the WSBA take a poll by mailing individual ballots to each of its members, and that the WSBA then adopt the position of the majority of the members. The principal of one man, one vote, is dangerous, but democratic.

My dues are \$165 per year. The WSBA couldn't have spent much of that on my plastic card: it crumbled four years ago. The total cost of the poll couldn't be more than a dollar or two per attorney, hardly over 1 percent of our annual dues. The poll would directly benefit us lawyers.

If you know who my representative is, please pass this letter along to him. Oh, and if the WSBA can afford it, I could use a new plastic card. Thanks.

**IAN MACRAE**  
Fall City

**Take a Vote  
on Specialization**

Editor:

I propose that no action be taken on the proposed specialization plan until the plan is submitted to a vote of all members of the Bar.

**STEVE SMITH**  
Tacoma

Editor:

Specialization is a thinly disguised attempt by the large urban firms to monopolize some of the most lucrative areas of business available to lawyers—including large corporations and insurance companies—and to limit admission to these specialties to persons who choose to work for large firms.

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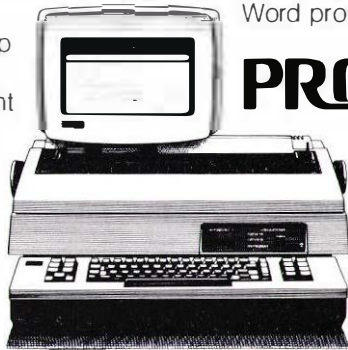
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The public will not be served. The anti-competitiveness fostered by specialization will drive up the cost of services. In the specialist firms, the majority of the work will be done by nonspecialist associates, as it always has been. A person who truly needs a specialist has no trouble finding one now.

The simplest way to determine whether the Bar wants specialization is to take a vote. Let us have a vote of the membership of our bar association before we drastically alter the way law is practiced in this state.

**GREGORY J. WALL**  
Seattle

### Law Games

Editor:

We are a small firm, but no longer try little cases. Litigation costs too much to justify trying cases involving relatively limited sums of money. The absence of small cases in our firm eliminates the traditional training

ground for new lawyers. Our situation is probably quite typical in this regard.

Trial seminar materials are useful, but are no substitute for hands-on experience. It has occurred to me that hands-on experience could be replicated by adopting videogame technology to a trial format.

Simulators are used to train pilots, policemen, and marlin fishermen. I suggest the development of a trial simulator.

**HUGH HAFFER**  
Seattle

P.S. Maybe law games revenue could eliminate the need for Bar dues!

### Bone-Head Law

Editor:

My picks for the first annual Bone-Head Legislation Award (because this is the first year, laws passed by the Washington legislature in 1984 also qualify): Chapter 263 of the 1984 laws,

the Domestic Violence Prevention Act—good intentions cannot make up for bad law. Chapter 250 of the 1984 laws establishing tax on people's pleasure boats—in one paragraph it seems to exempt vessels less than 16 feet long, and in another paragraph seems to include such boats, if they are propelled by a motor.

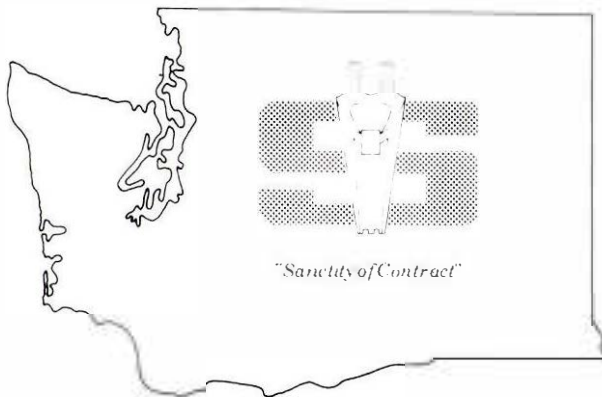
**WILLIAM R. McCANN**  
Sedro Woolley

### The Meaning of IOLTA

Editor:

What IOLTA means to me: a bill for \$23.00 to print enough checks to last me for three years, when I already had three years of existing trust account checks which now have to be burned. The understanding I had when IOLTA was being approved was that it would result in no cost to me. As a lawyer, I should have been more cynical.

**THOMAS M. BLAKE**  
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**Child Support Guidelines Short on Long Term Solutions**

by Charles A. Schaaf

The Washington Superior Court Judges Association Uniform Child Support Guidelines cause unnecessary difficulty in negotiating settlements in child support cases. To avoid this, the following words should be added at the end of Local Rule 94(d)(3): "For use in proceedings for temporary maintenance and child support."

The guidelines lump maintenance expenses with proper child support expenses in setting up their schedules of suggested support amounts. The schedules are based on studies showing the average amounts spent by families. The source tables include such categories as food, clothing, shelter, transportation, medical care, family size, and income level.

To allot these expenses to the various members of the family, the makers of the table assume that expenses for food, clothing, medical care and the like can properly be divided equally between the children and the custodial parent(s).

The assumptions used in allotting expenses for shelter and transportation are outrageous. The guidelines are totally unsuitable in determining levels of permanent child support. In their supporting statements, the makers of the tables indicated that they realized that this approach did not correspond in any meaningful way to real-life situations. However, because they thought it difficult to work out a proper allocation between adults and children in these matters, they chose this method.

If this testimony were offered in a child support proceeding, it would be laughed out of court. Let us take a simple example: An adult and three children spend \$400 per month on housing. An adult living alone at the same level of amenities spends at least \$280 per month. The \$400 housing expense should be allocated \$280 for the adult, and \$40 to each of the chil-

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dren. Instead, the child support schedule allocates \$100 to each of the children.

Transportation expense causes a similar problem. At all levels of society, the major portion of transportation expense is incurred by adults to get to work, the grocery store, church, etc. This is true even if the adult has no children.

Use of the support schedule at trial encourages the judges to order child support based in large part on expenses which should go to the maintenance of the adult. In the many cases in which these expenses should be paid by the non-custodial parent, they should be specified as maintenance rather than as child support.

There is another major difficulty with the Child Support Guidelines. Under the routine visitation schedule of alternate weekends, alternate holidays, and six weeks in the summer, the non-custodial parent has the children for one-fourth of the year. The custodial parent maintains housing for the children on a year-round basis, even though the children spend one-

quarter of their time away from home. The support schedule fails to recognize that the non-custodial parent must also maintain housing for the children year-round, even though the children spend three-fourths of their time with the other parent. Further, as routinely applied, the guidelines give the non-custodial parent no credit for providing one-quarter of the children's food during the year.

The superior courts have the authority to adopt rules of pleading, practice, and procedure for use in their courts. The Child Support Guidelines are *not* such a rule. The legislature has given the Department of Social and Health Services the authority to set up child support schedules (following public testimony and argument under the Administrative Procedures Act) to administer the AFDC laws and to collect reimbursement from absent parents. No corresponding authority has been given to the superior courts to set up child support guidelines to administer the marriage dissolution and general family support laws. The courts have

not been funded nor given the staff necessary to do such a job properly.

In summary, the Child Support Guidelines calculate the amount of money reasonably necessary to support a family's children and to pay most of the custodial parent's own separate expenses for housing and transportation. They provide a method for dividing these costs, based on the following assumptions:

- (1) these costs should be divided between the parties in proportion to the actual income of each party (valid to a certain extent); and
- (2) the only portion of these costs actually paid by the non-custodial parent consists of support money paid to the custodial parent (pure nonsense in most cases).

Due to these shortcomings, the Guidelines should be treated with the utmost disrespect in setting permanent support levels.

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*Charles A. Schaaf is a sole practitioner in Forks.*

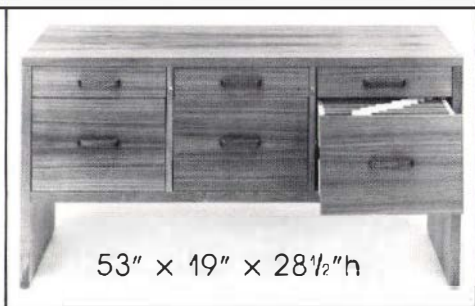
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## The True Meaning of Professionalism

“There is a growing spirit of public service among lawyers,” American Bar Association president John Shepherd told 200 lawyers at a March meeting of the Seattle-King County Bar Association. “This is a new era, a time of renewed commitment to professionalism.”

On April 16, the Washington State Supreme Court heard oral argument on the petition of Gordon Walgren for readmission to the Washington State Bar Association. As the Court deliberates in its collective wisdom on this highly visible issue, it would do well to consider the words of ABA chief Shepherd, and also of WSBA president F. Lee Campbell, at the March SKCBA gathering.

Professionalism is an important subject, and rightfully so. The fact that it is currently an “in” topic on the lawyer banquet circuit unfairly undermines its continuing significance to the practice of law. Fortunately, most lawyers are intuitively aware of this, and know that actions speak louder than words. They consider the amount of editorial copy given to the subject an embarrassment of riches.

*No one is against professionalism.*

President Shepherd spoke of today’s “heightened concern for service” among lawyers. President Campbell, however, believes that “professionalism has been on the decline since *Bates v. Osteen*.” But he pointed out our Bar’s noteworthy efforts to preserve the high standards of our profession, and specifically mentioned the Task Force on Lawyer Competency. Among the Task Force’s recommendations: periodic peer review, voluntary judicial review, establishment of a skills training program, discipline for repeated complaints of case neglect, and compliance with law office management standards.

These are laudable suggestions to foster the practice of law. Professionalism, however, is more than the daily practice of law. It is also an attitude. Both Shepherd and Campbell recognize this. To Shepherd, professionalism comprises three elements: service

to the public, fidelity to clients and colleagues, and professional integrity. To Campbell, quoting Simon Rifkind, it is “that commitment to public service that transcends the ordinary making of a living.”

I like to believe that most lawyers incorporate these principles into their lives.

When all is said and done, though, the most important words at the SKCBA meeting were said by President Campbell. “The practice of law, he reminded us, is a privilege, not a right.”

President Campbell is right. The practice of law is a privilege, not a right. His colleague from the Show Me state, President Shepherd, was also correct when he said, “Attacks on our professionalism cannot go unchallenged. It’s up to us.”

It is up to us.

And to the Washington State Supreme Court, which now has the challenge to demonstrate to 13,000 lawyers and over four million Washingtonians what professionalism truly is.

And what it is not.

\* \* \* \* \*

Tomorrow is another day. . . The Board of Governors meets in Spokane later this month. Highlight of the agenda: The proposed specialization plan.

As I write this on a rainy March night, I have not yet seen the results of the specialization survey sent to all lawyers earlier this year. Only Rip Van Winkle would be unaware of the considerable passion that the proposal has generated on both sides. Preliminary grapevine information indicates that support for the plan is, uh, underwhelming.

My crystal ball tells me:

—The elected officers of the Bar will yield to the mass dissatisfaction with the plan. Somewhat.

—The specifics of the proposal will be sent back to the drawing board. To return another day. In a modified form.

*Carole Grayson*

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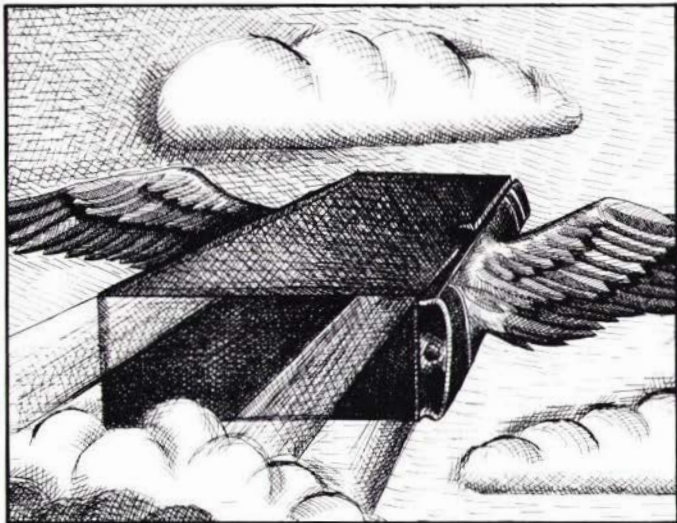
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## How Do You Treat Your Clients?

We have been hearing and reading a great deal about professionalism lately. I have been a contributor to this, through comments in my earlier monthly columns. Advertising and commercialism have been referred to as major contributors to an apparent decline in professionalism; however, there are other contributing factors which must be acknowledged. The one I would like to address this month is the relationship between lawyers and their clients.

I am told by our Bar staff that one of the complaints most frequently made against lawyers involves neglect. A typical complaint is that the lawyer accepted employment and then either failed to do anything or, if something was done, failed to keep the client advised. Neglecting work and failing to communicate are certainly not faults which can be attributed to most practitioners, but we must be honest with ourselves and admit that it is not difficult to develop those faults. The pressures of time and work make it very easy for a lawyer to put matters off and to delay contacting a client. As lawyers and members of a profession upon which people depend for advice and resolution of their problems, we must constantly remind ourselves of our obligation to handle every matter for which we are engaged in a prompt, forthright and responsible manner. This is a professional responsibility and there is seldom a good excuse for either neglect or failure to communicate.

Have you ever taken the time to step back and conduct a self-audit regarding your involvement with clients? Have you considered how they react to you during conferences? Have you thought of why they sometimes seem to be argumentative and reluctant to accept your opinion? Are you prompt in keeping appointments with them? Do you return their calls promptly? Do you make them feel comfortable when they are in your office? Do you take the time to fully explain things to them? Do you make them feel you are their equal rather than some form of superior authority? Are you courteous to them? Are you patient when listening to explanations of their problems? I suggest that every one of us should do a little periodic self-auditing through consideration of these questions. No two clients are the same and some must be treated or handled in a different manner than others—but the basic principles of courtesy, honesty, patience and promptness apply to *every* lawyer-client relationship, regardless of the personalities involved.

I feel that to a great extent poor lawyer-client relations have contributed to the weakened public image of our profession. Some would say that instances such as the recent lawyer invasion of Bhopal have done the most damage. That sort of thing certainly has had a substantial effect upon the lawyer image; however, I am convinced that much of the damage must be related to the everyday



acts of discourtesy, neglect and failure to communicate for which far too many of us are responsible.

This just might be what professionalism is all about. One of the best ways for a lawyer to obtain new business is to do good work for his or her clients and to have their respect. A satisfied client will most likely recommend others to the lawyer involved. In my opinion a satisfied client isn't just one for whom a good result has been obtained. It is one who feels that his or her lawyer has done everything reasonably possible to accomplish the desired result, in an honest, courteous, dignified and respectable manner, whether the result was achieved or not. I suggest to you that in our efforts to improve the image of the legal profession we must place much more emphasis upon establishing and maintaining a good relationship with each of our clients.

*Lee Laughly*

# Deed of Trust Foreclosures:

## After *Cox v. Helenius*

by Zachary Mosner

The recent Washington state supreme court case of *Cox v. Helenius*, 103 Wn.2d 383, 693 P.2d 653 (1/10/85), drastically affects the process of non-judicial foreclosure. It also will likely raise the costs of title insurance. *Cox* undoubtedly will cause malpractice premiums to increase for counsel acting as trustee. It will delay a process that was designed to avoid judicial involvement.

Why didn't lenders appear as "friends of the court" to argue against the result we now face? A strong lobbying effort in the legislature would be advisable to overcome the effect of the case.

The trustee in *Cox* represented San Juan Pools, which took a deed of trust as collateral for a pool being installed at an expensive residence in Magnolia in Seattle. The pool was defective. The owners stopped making installment payments. The attorney for San Juan, after threatening to send out a notice of default, did so. He appeared as trustee after unsuccessful negotiations with the homeowner.

After receiving the notice of default, homeowner's counsel commenced suit against San Juan and later amended the complaint to request an injunction. The trustee ignored the suit and sold the property. The Supreme Court held that the commencement of the lawsuit before notice of

sale and notice of foreclosure were received was sufficient to postpone the sale. Cautious title companies, lenders and trustees should be wary of dicta as well.

### PREVENTING A NON-JUDICIAL FORECLOSURE

Until *Cox v. Helenius*, it was commonly assumed that to prevent a sale after the issuance of the notice of default, the debtor had to post bond, and obtain an injunction and pay sums due and owing into court.

It is now the rule that should a grantor or successor file a suit under RCW 61.24.030(j) before the notice of sale and foreclosure are received, the filing alone, without bond or injunction, is sufficient to prevent sale:

Using these rules of statutory construction, we conclude that an action contesting the default, filed after notice of sale and foreclosure has been received, does not have the effect of restraining the sale. 103 Wn.2d at 388.

The court's ruling is ambiguous at best. The notice of default makes it clear that the notice of sale may be recorded no sooner than thirty days thereafter. Had the court said that the mere filing of suit would suffice to prevent sale if the event occurred the later of the end of the thirty day period or the date of recordation of the notice, the lines would be clearly, if not fairly, drawn.

However, the court's statement that filing will suffice to prevent sale until the notice of sale has been received is

*Zachary Mosner is a Seattle attorney.*

an invitation for debtors to perjure themselves and deny receipt, avoid service of process and/or mail delivery and thereby preserve the right to file a lawsuit and prevent sale without posting bond or obtaining an injunction *long after the notice of sale has actually been recorded*. This loophole in logic and practicality renders useless the court's next statement:

RCW 61.24.130 sets forth the *only* means by which a grantor may preclude a sale once foreclosure has begun with *receipt* of the notice of sale and foreclosure. That section allows the superior court to issue a restraining order or injunction to halt a sale on any proper ground. (emphasis added) 103 Wn.2d 388.

It becomes apparent that there are now two ways to stop trustee sales under state law. The debtor need only

## The holding of Cox v. Helenius is an unmitigated disaster.

file suit after receiving the notice of default without posting bond or making any further payments to the creditor. The more traditional route for injunction is described under RCW 61.24.130, but debtor and counsel would probably not choose this more expensive process.

The debtor need only allege sufficient factual and legal disputes in the complaint, however spurious, to prevent summary judgment. If this occurs in King County, creditors will wait for up to two years to come to trial, as though this were a mortgage foreclosure. In the interim, perhaps the lender will convince the court to appoint a receiver to collect funds with no legal recourse where the note has matured and the unit is residential.

*Cox v. Helenius* so greatly expands debtors' rights in this respect that few debtors need use bankruptcy proceedings now to obtain an automatic stay. They need only file a lawsuit filled with disputed factual assertions and the property may be tied up longer than it has been historically in voluntarily filed bankruptcy proceedings. Further, after imposing this lengthy delay, should the debtor lose in state court, nothing prevents a bankruptcy filing to impose yet another stay.

Neither the case nor statutes define credit for time run in situations where the debtor files suit before receiving notice of sale and foreclosure and then loses the lawsuit. When the lender prevails a few months or a couple of years later, will the full 120-day foreclosure cycle be reimposed? Likely. What if the debtor finds new grounds for



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objection? Could filing suit once again prevent sale? Probably.

Contrast this to RCW 61.24.130, which allows credit for the time run during the injunction and which allows the court lifting the injunction to reset sale no sooner than forty-five days later.

### CONFLICTS OF INTEREST

For years, the supreme court avoided issues of fiduciary duties in deed of trust foreclosures. It now makes clear that the trustee is a fiduciary to both the mortgagee and mortgagor, and requires definitive impartiality. 103 Wn.2d 388-90. The duty imposed is "exceedingly high." 103 Wn.2d 388. Somehow, though, "less extensive than those of trustees in other fiduciary settings." 103 Wn.2d 389.

Counsel are put on warning that should they be active as an advocate in negotiations with a delinquent debtor, they should not later appear as a trustee. The court extends its own inherent powers of review and goes beyond case law or statute in citing the Code of Professional Responsibility and DR 5-105(B):

The person serving as trustee and beneficiary should prevent a breach by transferring one role to another person. 103 Wn.2d 390.

The mere substitution of a "straw man" is not sufficient.

Now that the Disciplinary Rules are invoked, even if this part of the opinion is *dicta*, no attorney in his or her right mind is going to take a chance where there is *any* potential conflict.

Consider the following example: Lawyer for Bank is informed that Bank wants to send out a notice of foreclosure and sale, having already sent out the notice of default. Before appearing as successor trustee, debtor files for Chapter 11 relief. Lawyer appears for Bank in bankruptcy court and successfully argues that the property has no equity and is not necessary for reorganization, thereby causing the stay to be lifted. Debtor's counsel admits in bankruptcy court that debtor can't cure the debt and has no defenses to the note.

Can Lawyer now appear as successor trustee? No. The lawyer was an advocate for the beneficiary and argued against the interest of the debtor in bankruptcy court.

Cox leaves us with several unclear rulings and creates a morass for lenders, counsel and trustees to wade through. Considering the pitfalls on the "receipt" and other issues, title companies will increase premiums and may become extremely selective on which lenders and trustees they will do business with. The holding of *Cox v. Helenius* is an unmitigated disaster. Its *dicta* could make matters worse.

It is not too late for the legislature to respond to this decision in a fashion that preserves the non-judicial process and allows for a more predictable course of conduct by debtor and creditor alike. □

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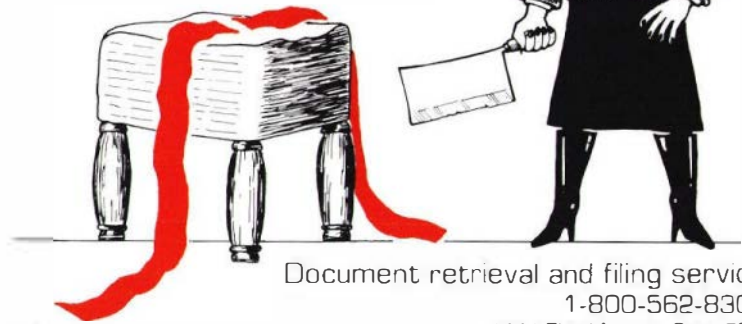
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# Myths and Realities

## About IOLTA

by **Barbara C. Clark**  
*Director, Legal Foundation of Washington*

**T**he interest on lawyers' trust account program created last year by rule change to the Code of Professional Responsibility by the Washington Supreme Court went into effect March 1, 1985. [See Update on IOLTA, *Bar News* February, 1985] Attorneys who have clients' funds in trust that will be held for a short time or that are nominal in amount must deposit them in a pooled interest-bearing trust account. The interest earned, minus service fees, is to be paid to the Legal Foundation of Washington, a nonprofit charitable organization. The foundation will disburse the funds for law-related charitable and educational uses.

I have been intimately involved in the development of Washington's IOLTA program, first as interim administrator and now as director. Our phone immediately began ringing after being installed in late December. It didn't quiet down until the end of February. Lawyers and banks called to ask questions or seek solutions to problems in setting up IOLTA accounts.

Many questions have been answered, most problems solved. However, contacts with attorneys and financial institutions have revealed a number of myths about IOLTA:

**MYTH:** The Washington State Bar Association funds IOLTA.

**REALITY:** No. The Supreme Court required the Washington State Bar to incorporate and establish the Legal Foundation of Washington as a separate entity to act as the recipient of the interest generated on IOLTA accounts. The WSBA did indeed see that the foundation was established. However, a nine-member board of trustees

runs the foundation as a wholly separate entity. We are, of course, grateful for the Bar's assistance during our infancy and we look forward to a continued good working relationship.

**MYTH:** I don't have to have an IOLTA account. My pooled client trust account is too small to generate a positive net return to the foundation.

**REALITY:** All pooled client funds must be put into an IOLTA account. This is required regardless of the size of the account. DR 9-102. A number of attorneys have called and written both the foundation and the WSBA to express their concern on this issue. The foundation will closely monitor the small trust account and its financial impact on the account holder and the foundation. We will include our findings in the foundation's annual report to the Supreme Court.

**MYTH:** I will send you the money myself, rather than involving my bank.

**REALITY:** Please don't. The disciplinary rule change requires attorneys to set up IOLTA accounts with financial institutions. It is the duty of the institution to remit the interest to the foundation along with all necessary reporting. DR 9-102(c)(4).

**MYTH:** I need a pooled client trust account in order to be licensed to practice as an attorney in Washington.

**REALITY:** You do not need a pooled client trust account in order to be licensed in Washington. You must have one only if you hold client funds in trust as set forth in DR 9-102.

**MYTH:** My bank won't open my IOLTA account after March 1, 1985.

**REALITY:** Financial institutions may open these accounts, if they choose to handle this type of account, after March 1, 1985. March 1 was the date by which all attorneys holding pooled client funds in trust were to have transferred them into an interest-bearing IOLTA account.

**MYTH:** IOLTA account requirements apply only to client funds received in trust after March 1.

**REALITY:** IOLTA requirements apply to all client funds that are being held in a pooled trust account as of March 1, and to those nominal and short-term funds received after that date.

**MYTH:** The bank is taking service fees owed out of my trust account principal where the bank fees are more than the interest earned.

**REALITY:** The majority of banks do not take bank fees out of trust principal when the account does not earn enough interest to cover the fees. Further, during the first three months of IOLTA's operation (March-May, 1985), the trustees have authorized financial institutions to withhold all fees charged to IOLTA accounts from the total interest remittance to the foundation. This means that the foundation is paying all bank fees from their earnings, a policy that the trustees are considering extending indefinitely. Several banks which are using computer programs to administer their IOLTA accounts currently *do* take any bank fees not covered by the interest earned out of the trust principal. These banks have chosen not to bill the foundation for excess fees. The foundation is negotiating with them to end this practice. Attorneys may put their own funds in the trust account sufficient to pay any anticipated bank charges. DR 9-102(A)(1).

**MYTH:** If I work in another state, I am not subject to IOLTA.

**REALITY:** If your practice in any particular case is pursuant to your Washington license, you are subject to all parts of the Washington Code of Professional Responsibility with respect to that case. Practice under another state's license to practice is governed by that state's rules.

Close contact with directors of IOLTA programs in other states teaches me that questions will continue to arise about IOLTA. We will answer your questions. If we don't know the answer, we will obtain information from the appropriate source. All questions concerning ethical issues are referred to Washington State Bar counsel. We will continue to work closely with financial institutions to assist them in establishing IOLTA accounts. We will monitor bank charges and negotiate reasonable fees for these accounts. Several successful negotiations have already taken place.

Let the foundation know how we're doing. And how you're doing. Contact us at (206)624-2536, or at 505 Madison Street, Suite 217, Seattle, WA 98104. □

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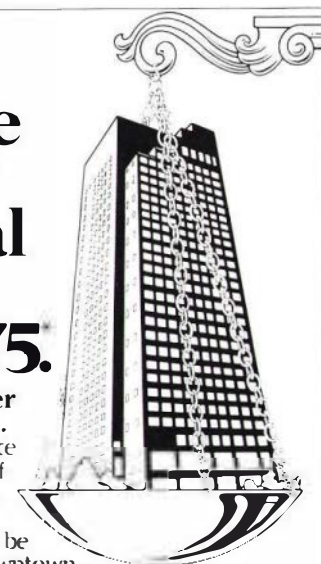
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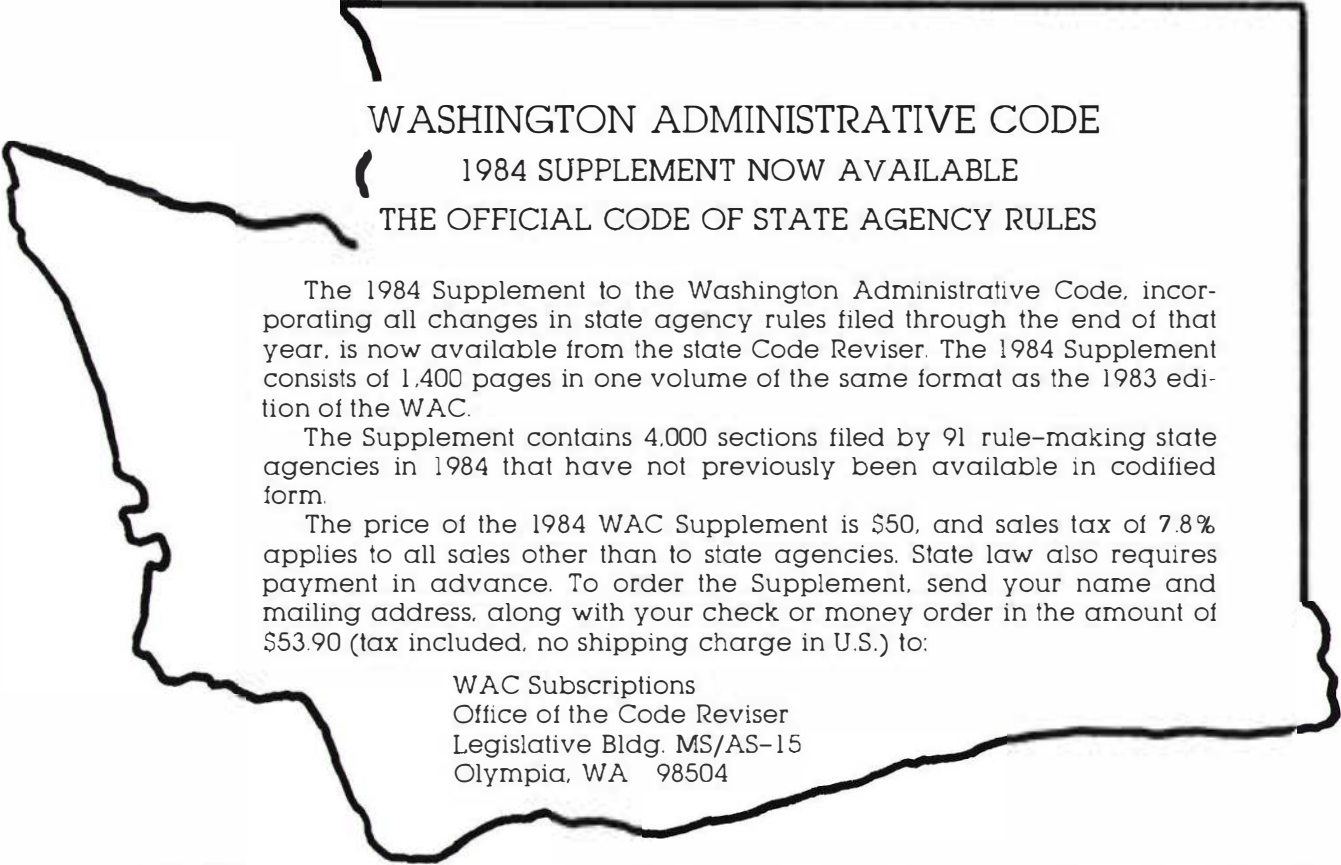
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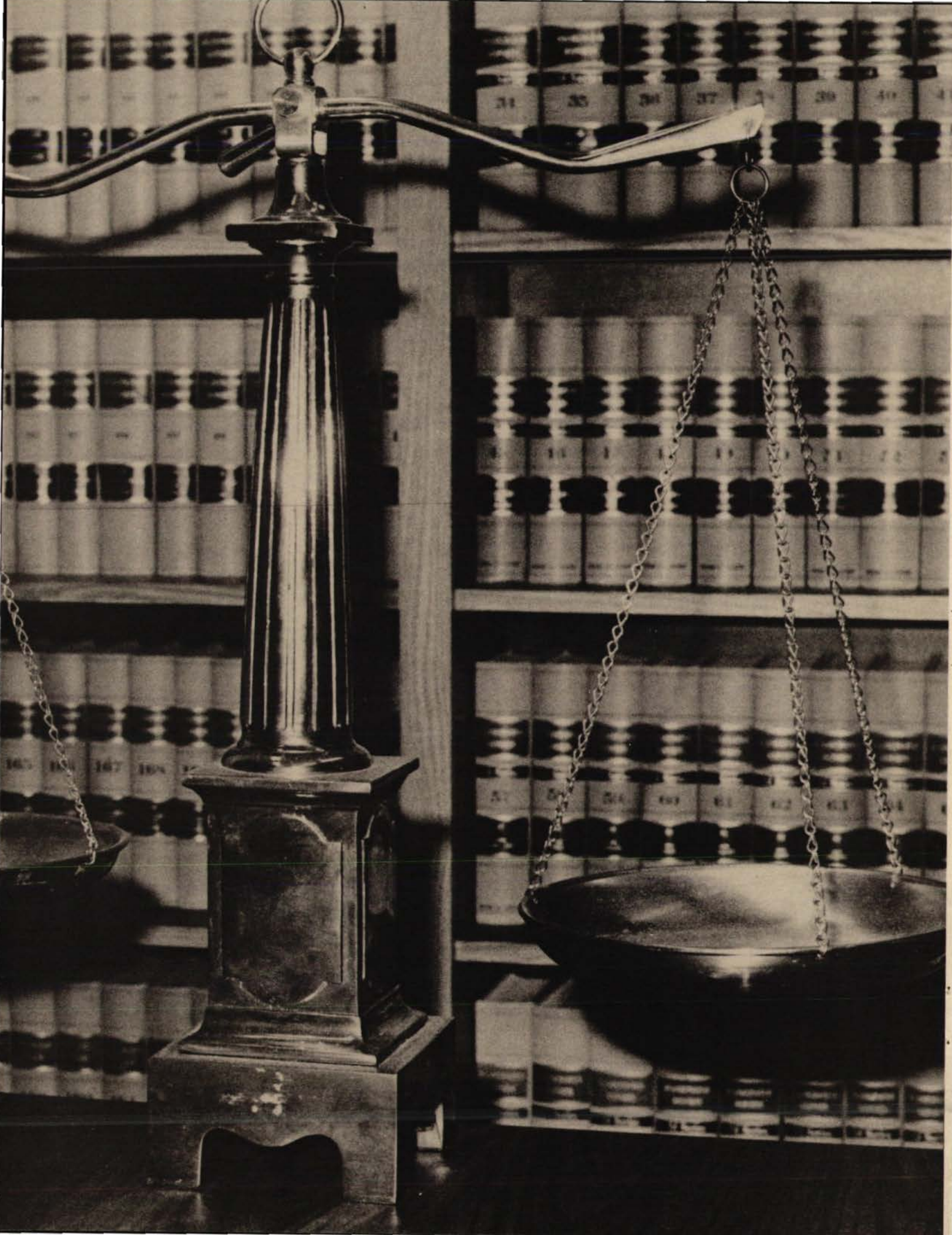


# 1985 Annual Report

## Washington State Bar Association



**PULL-OUT SECTION**



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# 1985 Annual Report



## Washington State Bar Association

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It is my pleasure to report to you on the activities of your State Bar Association. State Bar Presidents have traditionally given such reports at the Association's Annual Business Meeting; however, many lawyers are unable to attend annual meetings and, in order to keep the total State Bar membership apprised of the Association's activities, this form of written Annual Report was begun several years ago. I am continuing in that "new" tradition.

While pleased to make this Report, I also have to admit to a certain frustration—a frustration caused by the fact that the activities of the Washington State Bar Association are so numerous, diverse and sweeping. I can only touch upon a very few within the confines of this Report. With that caveat, I present the following for your information.

by F. Lee Campbell



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One of the principal concerns of the Board of Governors and an area of significant emphasis during the 1984-1985 year involves professionalism. As I have referred to this in several of my monthly columns in the *Bar News* and also during meetings of the Board of Governors with local Bar associations around the state, I will not discuss this subject at length in this report. It has been my goal, and that of the Board of Governors, to make this a year during which every lawyer practicing in this state is emphatically reminded that he or she is a member of a time-honored and respected profession—one which requires very special education, training, skill and hard work—and one which demands strict adherence to basic principles of proper conduct by its members.

During the past few years an atmosphere of commercialism has entered the law practice. Many lawyers now seem to feel and act more like businesspeople than professionals. This has unfortunately made serious inroads into the traditional standards and values of the legal profession. Cooperation and courtesy between lawyers is not

**Professionalism**

what it was several years ago. Client relationships have apparently suffered, as evidenced by the growing frequency of complaints made against lawyers on the basis of neglect and failure to communicate. There have been occasional instances involving lawyer advertising in a manner which some (or many) consider undignified or overly commercial. Comments regarding lawyers indicating disrespect for judges and the courts are now heard more frequently than in the past. Resistance to unfair criticism of judges and our legal system appears to be on the decline. All of this has had a very obvious poor effect upon the public image of the lawyer and our profession as a whole.

Through frequent reference to the historic and traditional standards of lawyer conduct—including honesty, courtesy, cooperation, promptness, dignity and devotion to the interests of clients—it is my hope, and that of the Board of Governors, that the lawyers of this state will develop a permanent consciousness of their extremely important role in our society and the importance of conducting themselves with dignity and as true professionals in their everyday dealings with their clients, their fellow lawyers and the public. From what I have heard to date from many lawyers around the state, we are making progress. We still have a long way to go, but I am confident that every bit of the effort involved will ultimately prove worthwhile.

---

## Association Finances

Strong. Solid. Those words, better than any others, describe the continuing financial position of the Washington State Bar Association. This Report includes the financial statements for fiscal 1983 and 1984, as prepared by our independent auditors. Those financial statements are basically self-explanatory.

This is an active and constantly growing Bar Association and the question of what the future may bring in terms of added activities and responsibilities is something that cannot be answered with complete certainty. I can, however, and with some confidence, report to you that on the basis of the present picture and the existing circumstances an increase in State Bar Association dues is not on the immediate horizon.

---

## Litigation

It is difficult to recall any twelve-month period in recent memory when the practice of law has not been significantly affected by court decisions at the state or federal level. The past year has been no exception, and I would like to briefly highlight three extremely important decisions handed down by our State Supreme Court. The State Bar Association participated as an amicus in each of these cases.

The first is *Short & Cressman v. Demopolis*, Wn.2d 691 P.2d 163 (1984), where the basic question presented to the Court was whether lawyers may be subject to liability under the Washington Consumer Protection Act (CPA). Holding that certain "entrepreneurial" aspects of the practice of law fall within the "trade or commerce" definition of the CPA, the Court explained that the business aspects of the legal profession (such as how the price of legal services is determined,

billed, and collected and the way a law firm obtains, retains and dismisses clients) are legitimate concerns of the public which are properly subject to the CPA. On the other hand, the Court was careful to distinguish a series of claims in the instant case involving allegations that the firm in question had been negligent in failing to gather essential facts, had failed to pursue certain claims in the underlying lawsuit, had failed to file a judgment in a timely manner and, eventually, had filed a defective judgment. These sort of claims are not, said the Court, chiefly concerned with the entrepreneurial aspects of legal practice but, rather, concern the actual practice of law and, being directed to the competency of and strategy employed by lawyers, amount to allegations of negligence or malpractice which are exempt from the CPA. Finally, and addressing a point raised in the Bar Association's brief, the Court held that application of the CPA to the entrepreneurial aspects of the legal profession does not constitute an unconstitutional legislative invasion of the jurisdiction and inherent power of the court to regulate the practice of law.

The decision in the *Demopolis* case establishes guidelines and distinctions, although it may well require time and further refinements before we have a complete handle on the full panoply of items which may constitute the "entrepreneurial" aspects of the legal profession.

The question of what is the practice of law was of great importance in the *Demopolis* case and, albeit in a different context, in *Cultum v. Heritage House Realtors, Inc.*, 103 Wn.2d 623 (1985). At issue in the *Cultum* case was whether the completion by a real estate salesperson of a lawyer-prepared form earnest money agreement constitutes unauthorized practice of law. Observing that there are sound and practical reasons why some activities which fall within the broad definition of "the practice of law" should not be unauthorized simply because they are done by laypersons, the Court held that while the completion of form earnest money agreements might be commonly understood as "the practice of law," it was in the public interest to permit licensed real estate brokers or licensed salespersons to complete such lawyer prepared standard form agreements *provided* that, in doing so, they comply with the standard of care demanded of an attorney.

The practical needs and interests of the public formed the basis of the Court's decision in *Cultum* and, equally so, were the touchstones of the State Bar's brief in that case. In that brief we urged, in the public interest, that (1) *licensed* brokers and salespersons be allowed to (2) complete *standard form, lawyer-prepared* earnest money agreements provided (3) that in doing so they be held, again for the protection of the public, to the same standard of care required of an attorney in performing a similar function.

A third case of major import is *Walthew, Warner, Keefe, Arron, Costello and Thompson v. Department of Revenue*, 103 Wn.2d 183, 691 P.2d 559 (1984). In that case the Court affirmed a trial court determination that a law firm is not required to pay the state business and occupation tax on client reimbursements for payments made by the firm to court reporters, physicians and process servers. The Court concluded that the definition of "gross income" under RCW 82.04.080 does not include client reimbursements to lawyers, on advances made to third party providers, when the lawyer is acting as agent for

the client and the client remains ultimately liable for the payment. While holding that such "pass-through payments" are not taxable as compensation under the B & O tax, the Court was careful to distinguish a lawyer's *general overhead costs*, noting that, even though reimbursable, they are not pass-through costs because the lawyer assumes either primary or secondary liability to those types of providers.

It should be noted that as I write this Report members of the State Bar's Tax Section are working with the Department of Revenue on a proposed Excise Tax Bulletin designed to establish the division, in light of *Walthew, Warner*, between those reimbursements made by clients to their lawyers which are subject to the B & O tax and those which are not.

These three decisions have a major effect upon the practice of law in this state. I urge you to go beyond my thumbnail sketches and read each case carefully.

---

## Interest on Lawyer Trust Accounts (IOLTA)

On March 1, 1985, the IOLTA Plan, as embodied in Amended CPR DR 9-102, went into effect in Washington. As of March 1, all lawyers and law firms in the state of Washington who receive and hold client funds in trust must be in compliance with CPR DR 9-102 as amended. Information on the IOLTA program was sent to all members of the State Bar early in January and early indications are that initial procedures are working well.

The IOLTA story is a long one, and parts of it have been told by former Presidents Steere and Redman in the 1983 and 1984 editions of this Annual Report. Administration of the IOLTA program is now in the hands of The Legal Foundation of Washington. The Foundation's staff and Board are ready to answer any questions you may have and to deal with any specific problems which may arise. You can reach the Foundation office at (206)624-2536. We will all be watching this program with interest, and we will look forward to the Foundation issuing its own Annual Reports in the coming years.

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## Long Range Planning

Like any other vital organization, the State Bar Association must be concerned not only with the here and now, but also with the future. To deal only with the problems and challenges of today without regard to those of tomorrow—that is, without anticipating change—would be akin to driving a car without steering.

While the Board of Governors has engaged in planning for the future on a continuous basis for many years, we are now approaching the culmination of a truly sweeping look at the future direction for the Association. In mid-1984 we appointed a special, twenty-six member Long Range Planning Task Force, chaired by former State Bar President Brad Jones. This Task Force was charged with examining the structure and function of the Association as well as its relations and services to both its members and the public.

The membership of the Task Force is representative of all segments of the Bar—young lawyers and "more experienced" practi-

tioners; private practitioners, corporate attorneys and government lawyers; lawyers from all geographic areas of the state; lawyers from large, urban firms and solo practitioners from various parts of the state; women attorneys and men attorneys; law school deans and professors and, all in all, a diversity never before seen on an Association Task Force. Also included are members of the judiciary—including trial court judges, a Justice of the State Supreme Court, and a Judge of the U. S. Ninth Circuit Court of Appeals.

I have seen some of the interim work-product of the various subcommittees of this Task Force, and I am greatly impressed with the effort and dedication involved. The final Report of the Task Force will be presented to the Board of Governors this summer in the form of a series of recommendations and proposals. The highlights of that report will be communicated to you in future issues of the *Bar News*.

RPC? Yes, RPC—an acronym for the proposed Rules of Professional Conduct now pending, upon the recommendation of the Board of Governors, before the State Supreme Court. If adopted by the Court these Rules would replace existing Code of Professional Responsibility (CPR).

**RPC**

The RPC are based upon the ABA's Model Rules of Professional Conduct. You will recall that the ABA adopted these Model Rules in the summer of 1983 and after years of study and analysis by the well-known Kutak Commission. Following the ABA action, then State Bar President Paul Steere appointed a Special Task Force, chaired by Seattle attorney (and former State Bar President) Dick Riddell, to study the potential adoption of the Model Rules in Washington. The Task Force study, including a series of public hearings around the state, continued for over a year—culminating with a report to the Board of Governors in the fall of 1984. The Task Force recommendations included several significant variations from the ABA Model Rules—and the Board of Governors itself made further modifications before submitting the final RPC proposal to the Supreme Court in January of this year. The Court, in turn, published the Rules for comments, with that comment period having closed on April 30th.

The RPC, if approved by the Court, will provide a solid set of professional conduct rules for the lawyers of Washington. With Court approval we will, of course, provide broad distribution of the RPC to all members of the Washington State Bar Association.

Public education in the law, our system of dispute resolution, and the role of lawyers in our society is an important obligation and undertaking for both individual lawyers and the organized bar. Within the State Bar Association we are fortunate to have a strong and growing program in law-related education, and I would like to report on two of our many activities in this area.

**Law-Related  
Education**

One of these is the MENTOR Project—discussed at length in my President's column in the March, 1985, issue of the *Bar News*. MENTOR brings together a high school class and a law firm in a close relationship through which members of the law firm participate in

classroom work and also direct students through visits to the firm offices and to both state and federal courts. The MENTOR Project is now being conducted in five pilot areas: Seattle, Spokane, Tacoma, Yakima and Wenatchee. We are nearing the end of these projects and the outstanding reception and reports received to date bode well for expansion of the Project in 1985-1986.

Another law-related education project you will be hearing more about in the future is "Today's Constitution and You." along with the Washington Commission for the Humanities and the Metrocenter YMCA of Seattle, the State Bar Association has been one of the early and prime sponsors of this project. The overall goals of the project include those of providing students and adults with a better understanding of the United States Constitution, in preparation for the bicentennial of that document in 1987. To date the numerous sub-projects under the "Today's Constitution and You" banner have included the development of a high school curriculum on the Constitution; presentation of community programs and forums; visits by lawyers to classrooms across the state; and the well-known "Exercise Your Constitution" voter registration drive among high school students. "Today's Constitution and You" has been recognized by the ABA as the most advanced bicentennial project in the nation, and it is serving as the model for many states which are just beginning to get parallel projects underway. The Washington State Bar Association remains strongly committed—in terms of dollars, attorney time and overall support—to the success of this Project as we move toward 1987.

---

## Lawyer Referral Service

I would like to report to you on the State Bar Association's Lawyer Referral Service (LRS). Annual Reports of this sort tend to focus on current projects and concerns—with a resulting tendency to ignore the ongoing and established programs which form the core of our activities and services. LRS is one of those programs, and a few words on its operation—for its own sake and as illustrative of our ongoing efforts—are appropriate.

LRS is a service designed to help persons who need legal assistance but do not know a lawyer. Persons calling the Service are referred to a lawyer appropriate to the geographical location and the problem involved. The basic service provided is that of matching client and lawyer. A reasonable fee of \$15 is charged for an initial half hour consultation. The fee is remitted to the State Bar to help support the cost of LRS.

While LRS is a statewide service, it does not cover four major population areas: separate lawyer referral services, operated by local bar associations, serve residents of King, Lewis, Pierce and Spokane counties.

Despite the exclusion of those counties with separate services, the numbers involved in our State Bar LRS are almost unbelievable. In an *average* month we make over 900 referrals—and some months involve as many as 1,200 or more. Each of these referrals represents a call into the Bar Office on our toll-free LRS line, a matching of the client and his or her problem to an appropriate lawyer, and the processing of the necessary and inevitable paperwork to set up the initial appointment.

The 900 referrals, of course, do not represent our total LRS business—for every one of those calls we have another that does not result in a referral, either because there is really no legal problem involved or because the problem that does exist can be handled administratively by referral to a state or private agency (such as DSHS, *etc.*).

**STATE BAR STAFF DISTRIBUTION  
— APRIL 1, 1985**

LEGAL DEPARTMENT	13
CONTINUING LEGAL EDUCATION	9
GENERAL SERVICES	8
PUBLIC AFFAIRS	5
ADMISSIONS	3
LEGISLATIVE	2
AUDITS & ACCOUNTS	2
LAWYER REFERRAL	1

NOTE: Staff distribution is by area of primary activity—some staff work in more than one major area or department.

Our LRS is now a computerized operation from start to finish, and this computerization is what enables a single staff person to handle all of these calls efficiently and on a Monday-Friday basis. Among other functions, the computer accesses attorneys by location and area of practice, distributes referrals on a rotational basis to attorneys who are on the LRS panel to ensure equal participation and access, and even prints the final referral forms. This computerized system, by the way, was developed from scratch by the Bar Staff, and we are currently making it available, at cost, to other bar associations across the country.

As a public service, LRS is a great success and something we should all be proud of as one of our strong, ongoing activities. It is also something in which we all have an opportunity to participate. Approximately 340 lawyers are now serving on the LRS panel, and we can always use more. The State Bar requires a \$25 per year fee for membership on the panel and, as a protection for the public, the

lawyer must present proof that he or she is covered by malpractice insurance. For further information contact the State Bar Office—or if you practice in King, Lewis, Pierce or Spokane county contact the local bar association in that county with regard to "signing up" for its service.

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## Final Thoughts

I was admitted to practice and became a member of this Bar Association in 1950—when there were perhaps 2,500 lawyers in the state of Washington. Today, 35 years later, the Washington State Bar Association has nearly 13,000 active members. The growth in numbers has been accompanied by an even greater increase in the programs and activities of the Association. John Michalik, our Executive Director, tells me that we have in excess of 60 major programs and activities in process at all times—and many of those, such as the Convention, CLE and our various Sections, have literally scores of sub-programs and sub-activities. I have been able to touch upon only a very few of those programs, activities, and developments in this Report, but I hope I have given you a bit of the flavor of where we are and where we are going.

In the 35 years that I have been a lawyer, this Bar Association has been served by a series of outstanding Presidents—their names ring out as a Who's Who of the legal profession in this state, and their accomplishments in service to both the Bar and the public present an unrivaled record. It is the proudest honor and achievement of my professional career to have joined their company and to have been given the opportunity to serve as President of the Washington State Bar Association.



F. Lee Campbell,  
President

# 1983-1984 Audit of the Washington State Bar Association

VON HARTEN & COMPANY  
CERTIFIED PUBLIC ACCOUNTANTS  
1411 FOURTH AVENUE BUILDING  
SEATTLE, WASHINGTON 98101  
(206) 682-2266

To the Board of Governors of the  
Washington State Bar Association

We have examined the statement of assets, liabilities and fund balances of the Washington State Bar Association as of September 30, 1984 and 1983 and the related statements of revenue and expenses, changes in fund balances, and changes in financial position for the years then ended. Our examinations were made in accordance with generally accepted auditing standards and, accordingly, included such tests of the accounting records and such other auditing procedures as we considered necessary in the circumstances.

In our opinion, the aforementioned financial statements present fairly the financial position of the Washington State Bar Association at September 30, 1984 and 1983, and the results of its operations, changes in its fund balances, and changes in its financial position for the years then ended, in conformity with generally accepted accounting principles applied on a consistent basis.

December 12, 1984

*Von Harten & Company*

**Washington State  
Bar Association  
Statement of Assets,  
Liabilities and  
Fund Balances  
September 30,  
1984 and 1983**

	<u>1984</u>	<u>1983</u>
<b>Assets</b>		
Cash		
Checking accounts	\$ 102,181	\$ 121,246
Savings accounts	1,585,298	1,302,482
Accounts receivable	60,106	56,411
Office supplies	23,460	25,217
Deferred costs and prepaid expenses	86,679	70,167
Furniture, equipment and leasehold improvements (Notes 1b and 2)	<u>154,694</u>	<u>110,416</u>
Total assets	<u>\$2,012,418</u>	<u>\$1,685,939</u>
 <b>Liabilities and Fund Balances</b>		
Liabilities and deferred revenues		
Accounts payable	\$ 425,955	\$ 385,915
Deferred revenue (Note 1c)	576,134	568,234
Equipment contracts payable (Note 3)	2,218	8,314
Deferred compensation (Note 6)	<u>344,686</u>	<u>360,696</u>
Total liabilities	1,348,993	1,323,159
Commitments and contingent liabilities (Notes 4 and 5)	—	—
Fund balances (Note 1a)	<u>663,425</u>	<u>362,780</u>
Total liabilities and fund balances	<u>\$2,012,418</u>	<u>\$1,685,939</u>

The accompanying notes are an integral part of these financial statements.

**Washington State  
Bar Association  
Statement of  
Revenues and  
Expenses  
Years Ended  
September 30,  
1984 and 1983**

	1984	1983
Revenues:		
Membership dues	\$1,868,523	\$1,750,298
Continuing legal education	992,083	871,345
Bar examination fees	323,625	302,700
Bar News	249,794	246,413
Convention	186,326	183,530
Interest earned	161,221	103,951
Legislative donations	36	6,162
Sections	123,383	157,607
Lawyer referral services	71,938	56,530
Other	60,976	37,575
	4,037,905	3,716,111
Expenses: (also see expenses by activity)		
Salaries	1,047,108	917,247
Payroll taxes and benefits	231,984	193,622
Rent and utilities	163,271	163,523
Postage, printing and office expense	254,116	233,468
Public relations and support activities	204,072	170,734
Miscellaneous	45,927	46,688
Depreciation and amortization	27,241	23,515
Direct activity expenses:		
Continuing legal education	666,582	610,573
Bar examination and admissions	222,409	157,716
Convention	230,967	177,633
Discipline	76,937	43,770
Bar News	223,745	205,176
Committees	58,686	39,883
Legislative	31,856	49,400
Sections	136,365	126,455
Client's security claims	89,687	32,231
Lawyer referral service	26,307	26,976
	3,737,260	3,218,610
Total expenses from operations		
Excess (Deficiency) of Revenues Over Expenses:		
General fund	366,728	469,224
Legislative fund	(1,105)	(2,874)
Section fund	1,076	40,619
Client's security fund	(66,054)	(9,468)
	\$ 300,645	\$ 497,501

The accompanying notes are an integral part of these financial statements.

**Washington State  
Bar Association  
Statement of  
Changes in  
Financial Position  
Years Ended  
September 30,  
1984 and 1983**

	<u>1984</u>	<u>1983</u>
Factors increasing cash		
Operations:		
Excess of revenues over expenses	\$ 300,645	\$ 497,501
Add non-cash items		
Depreciation and amortization	<u>27,241</u>	<u>23,515</u>
	327,886	521,016
Increase in:		
Deferred revenue	7,900	38,323
Accounts payable	40,040	—
Decrease in:		
Accounts receivable	—	15,752
Deferred costs and prepaid expenses	—	849
Office supplies	<u>1,757</u>	<u>—</u>
	<u>377,583</u>	<u>575,940</u>
Factors decreasing cash		
Increase in:		
Office supplies	—	55
Deferred costs and prepaid expenses	16,512	—
Accounts receivable	3,695	—
Furniture, equipment and leasehold additions	71,519	32,457
Decrease in:		
Accounts payable	—	64,749
Equipment contracts payable	6,096	6,633
Deferred compensation	<u>16,010</u>	<u>14,630</u>
	<u>113,832</u>	<u>118,524</u>
Increase in cash	263,751	457,416
Cash balance, beginning of year	<u>1,423,728</u>	<u>966,312</u>
Cash balance, end of year	<u>\$1,687,479</u>	<u>\$1,423,728</u>

The accompanying notes are an integral part of these financial statements.

	<u>1984</u>	<u>1983</u>
Revenue-Producing Activities:		
Continuing legal education	\$ 968,979	\$ 873,911
Bar examinations and admissions	413,648	321,519
Bar News	317,752	292,074
Convention	230,967	177,633
Sections	181,471	169,759
Legislative	142,374	148,504
Lawyer referral services	89,601	89,872
Other Activities:		
Discipline	583,160	495,650
Committees	123,919	100,124
Membership mailings and special projects	74,736	71,109
Public affairs	108,609	109,179
Conferences and meetings	138,523	97,822
Miscellaneous activities	137,452	114,866
Lawyer trust account audits	106,619	91,792
Legal intern and lawyer placement	29,763	32,565
Client's security claims	89,687	32,231
Total expenses from operations	<u>\$3,737,260</u>	<u>\$3,218,610</u>

**Note:** Each of the above accounts includes a pro-rata allocation of administrative and overhead expenses as shown on the statement of revenue and expenses.

## 1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

- a. Assets and liabilities, and revenues and expenses are recognized on the accrual basis of accounting.
- b. Furniture, equipment and leasehold improvements are stated at cost, less accumulated depreciation, computed on the straight-line method. Furniture and equipment are depreciated over their estimated useful lives of five to ten years and leasehold improvements are amortized over a ten-year life.
- c. Dues are recorded by the Bar Association as revenue in the applicable membership period. Seminar registration fees are recorded as revenue in the period in which the seminar is held. Accordingly, unearned dues and seminar fees are included as deferred revenue in the financial statements.
- d. The Legislative Fund is required to be maintained as a separate accounting entity. However, the purpose for maintaining all other funds as separate entities is for internal accounting purposes only.

## Washington State Bar Association Notes to Financial Statements September 30, 1984

## 2. FURNITURE, EQUIPMENT AND LEASEHOLD IMPROVEMENTS

The following presents the amounts of furniture, equipment and leasehold improvements at September 30, 1984 and 1983:

	<u>1984</u>	<u>1983</u>
Furniture and equipment	\$248,322	\$181,352
Leasehold improvements	<u>92,022</u>	<u>88,523</u>
	340,344	269,875
Less accumulated depreciation	<u>185,650</u>	<u>159,459</u>
	<u>\$154,694</u>	<u>\$110,416</u>

Depreciation expense was \$26,746 and \$23,020 for the years ended September 30, 1984 and 1983, respectively.

## 3. EQUIPMENT CONTRACTS PAYABLE

The equipment contracts payable are summarized as follows:

	<u>1984</u>	<u>1983</u>
Contracts payable to Xerox Corporation in monthly installments of \$145.67 including interest at 11%. The contract is secured by the underlying equipment.	\$ —	\$ 287
Contract payable to Xerox Corporation in monthly installments of \$116.72 including interest at 16%. The contract is secured by the underlying equipment.	116	1,386
Contract payable to Xerox Corporation in monthly installments of \$435.94 including interest at 15%. The contract is secured by the underlying equipment.	<u>2,102</u>	<u>6,641</u>
	<u>\$ 2,218</u>	<u>\$ 8,314</u>

## 4. LEASE COMMITMENTS

The Bar Association leases office space under a non-cancellable lease until June 30, 1987. The minimum rental commitments under the present lease are summarized at right:

	<b>Year Ended September 30</b>
1985	116,153
1986	116,153
1987	87,115

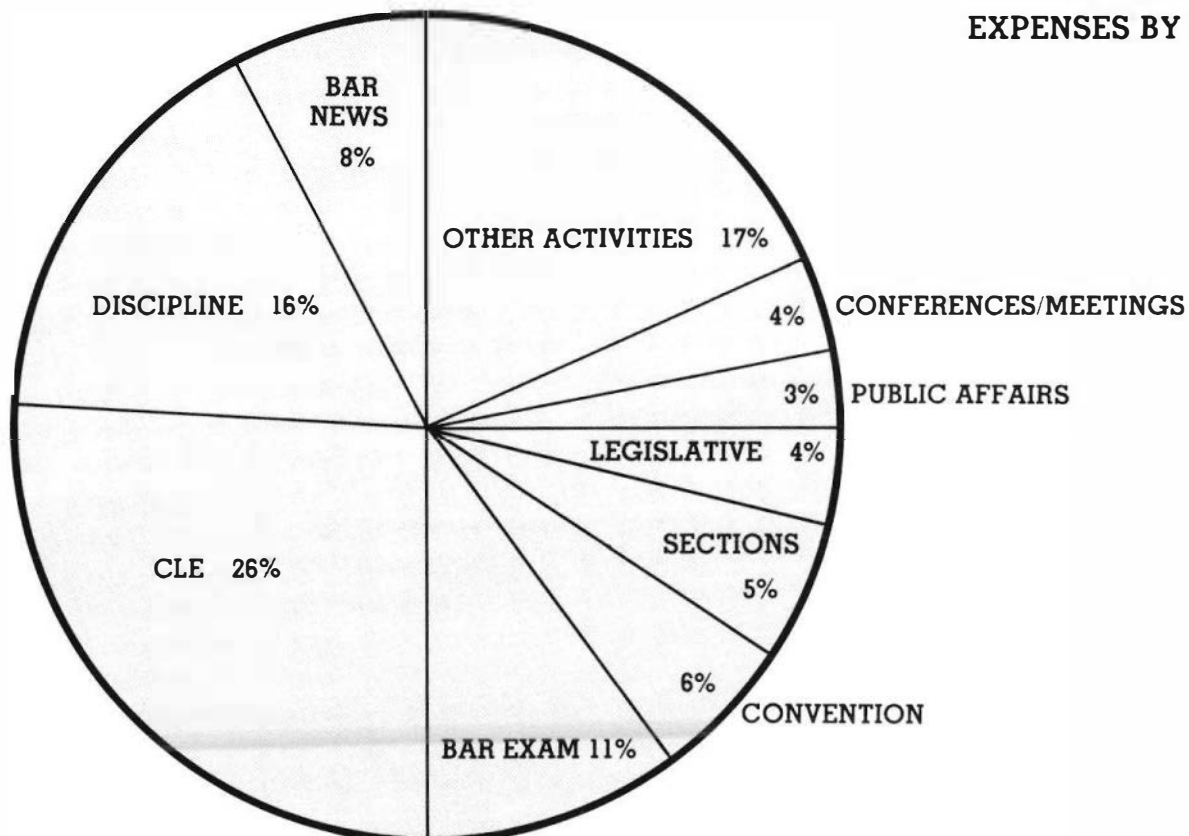
During the years ended September 30, 1984 and 1983, the Bar Association sub-leased a portion of its office space which resulted in a reduction of net rental expenses of \$20,778 and \$20,574, respectively.

## 5. CLIENT'S SECURITY FUND

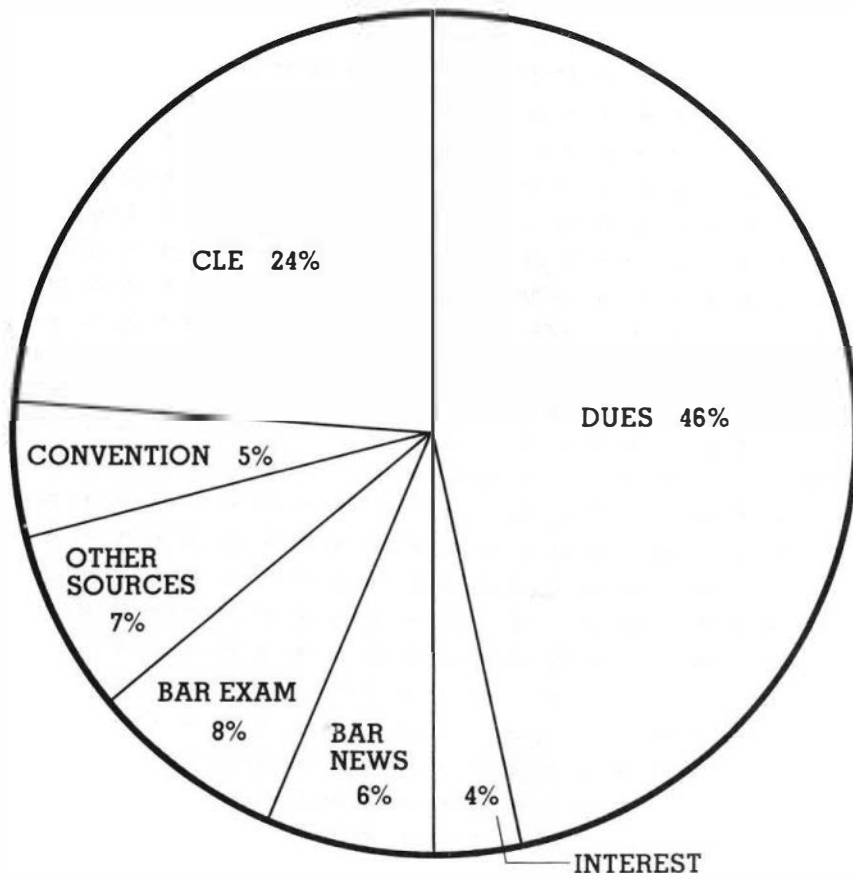
It is the estimate of management that, with current restrictions, conditions and limitations pertaining to various claims presently filed, the Bar Association's total exposure to the Client's Security Fund does not exceed \$165,000.

## 6. DEFERRED COMPENSATION

Effective January 16, 1978, the Bar Association entered into an Employment and Deferred Compensation Agreement with its then Executive Director, G. Edward Friar. This agreement was, by mutual consent, amended on September 10, 1979, and again on September 5, 1980. The agreement requires monthly payments as a general obligation of the Bar Association upon termination of the employment of the said Executive Director. The vesting requirements of this agreement and its amendments were met on December 31, 1980, and December 31, 1981, respectively. Mr. Friar retired as Executive Director on December 31, 1981. The estimated balance due under the agreement and its amendments has been computed on a present value basis using actuarially determined life expectancy tables and interest rates and is reflected as a liability of the Bar Association in the financial statements. The total amount to be paid to the former Executive Director will depend upon his actual life span.



**REVENUE SOURCES  
FISCAL 1984**





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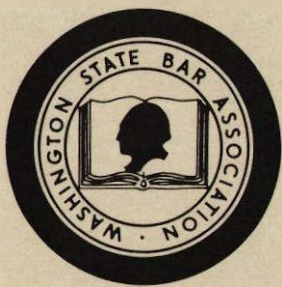
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Continuing Legal Education  
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Legal Department  
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General Information  
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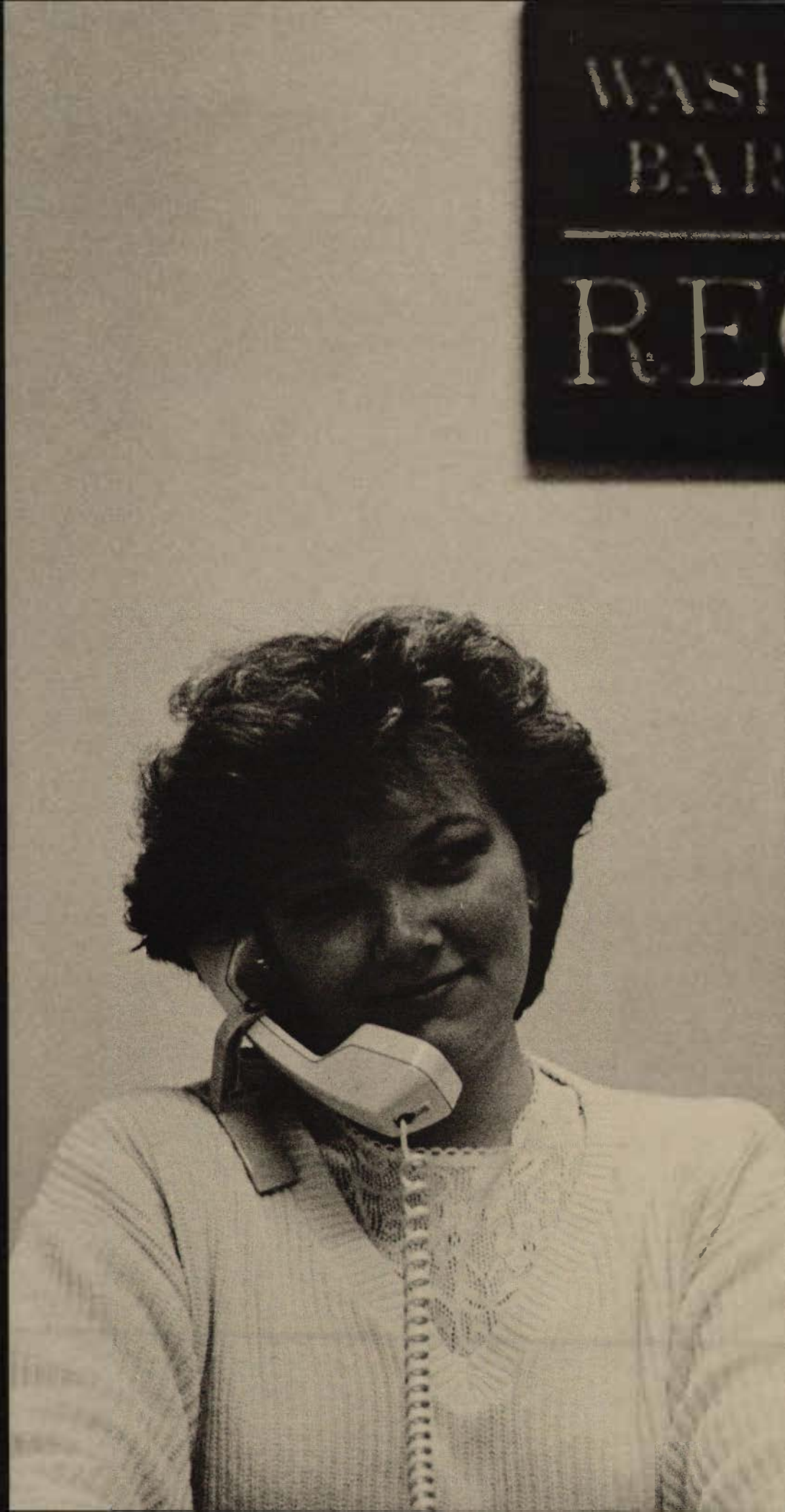


## Washington State Bar Association

505 Madison Street  
Seattle, Washington 98104

May 1985

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THE WSBA PUBLIC AFFAIRS DEPARTMENT



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# WASHINGTON STATE BAR NEWSLINE

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## The Board's Work



by Carole Grayson

VICTORIA, B.C., APRIL 19-20, 1985 . . . . Present: Governors except Mocerri (on 4/19) and Gibbs. Also present: Lloyd Bever (Superior Ct. Judges Assn.), Dale Green (Court of Appeal Judges Assn.), John Price (Dean, Univ. of Washington Law School), Fredric Tausend (Dean, Univ. of Puget Sound Law School), Richard Thompson (District Court Judges Assn.), Kelly Corr (SKCBA), Claire Cordon (WSBA Young Lawyers), Mary Alice Theiler (SKCBA Lawyers), James Watt (Government Lawyers), Patricia Schlosser (Washington Women Lawyers).

### COMFORT-ABLE MAN

After hearing the report of the Presidential Search Committee, the Board of Governors unanimously selected Patrick C. Comfort of Fircrest president of WSBA. Comfort, the first Tacoma-area president in more than 25 years, succeeds F. Lee Campbell at the end of his term this September.

### PRESIDENT'S REPORT

IOLTA has already generated more than \$132,000. Governor Petruss was appointed by President Campbell to represent the Board on a committee established by Chief Justice Dolliver of the Washington State Supreme Court to focus on public perception of the judiciary.

### EXECUTIVE DIRECTOR'S REPORT

Since October 1, 1984, Client Security Fund revenue has been \$106,150.92 and disbursements \$33,901.73. The revenue has been mostly due to repayments to the fund, said Executive Director Michalik. The June Board meeting, originally scheduled to be held at Roche Harbor, has been moved to Ocean Shores.

### LAW SCHOOL

Mike Green of Seattle, chairman of the Law School Liaison Committee, addressed the activities of his 20-person committee. He spoke in favor of a proposal by Claire Cordon of the WSBA Young Lawyers Section to appoint a member of her section as an ex officio member of the committee.

Deans Price of the University of Washington Law School and Tausend of the University of Puget Sound Law School said they look to evidence of character among applicants, although neither school has a policy of precluding access to a legal education due to criminal convictions, bankruptcies, emotional history, etc. They urge law students to contact WSBA well in advance of the Bar exam which they hope to take. "It is not automatic that you can sit for the Bar exam just because you were allowed to finish law school," said Executive Director Michalik. The final responsibility to learn the requirements for admission to the Bar is on the applicant, said Governor Bond.

Some 10-15 per cent of their law students do not intend to practice law. Governor Zylstra was concerned "if a state school spent money on someone not intending to practice. Law schools should exist to make lawyers out of people." Perhaps 1/4-1/3 of the UPS students have careers at the time they enter UPS law school, said Tausend, and many apply the legal training they receive to these careers.

Deans Price and Tausend felt that some students have unrealistic economic expectations upon graduation. They called on the leadership of the Bar to help change such misperceptions. The deans praised Bar efforts to bridge the gap and urged a mentor-type program with law students. They also discussed their efforts to teach professionalism to their students.

The entering class at UPS averages a 3.3 GPA and scores in the top 1/4 in the LSAT. At UW, the GPA averages 3.6 and LSAT over 91 per cent. The entering class at UW is the same size as when Henry Jackson entered in 1932.

#### LIMITED PRACTICE

The Board moved for Justice Pearson of the Washington State Supreme Court to inform the Limited Practices Board to follow APR 12(b)(2) (viii). The regulation requires the Limited Practices Board to approve standard forms for closing officers to use in services authorized by APR 12. No other changes in APR 12 were made.

#### BRITISH COLUMBIA

Governor Delay reported on his recent attendance at the BC Law Society as part of an informal exchange program with our neighbor to the north. Annual dues for lawyers are rising from \$415 to \$510 (although dues are suspended for 200 unemployed young lawyers). Mandatory malpractice coverage currently costs each lawyer \$821 per year. Next year, this will rise to \$2500 per lawyer. The Law Society has a \$3 million budget. British Columbia has 5500 lawyers in a population of 2.5 million.

#### JUDICIAL CONDUCT

The Board of Governors approved Canon 5(C)(8) of the Code of Judicial Conduct. The amendment reads "Subject to the limitations and requirements of CJC 6, a judge may accept compensation and reimbursement of expenses for the solemnization of marriages, performed outside of regular court hours, pursuant to RCW 26.04.050."

#### HI-TECH CLE

Presently, a videotaped presentation without a live speaker will not receive CLE credit. The Board of Governors revised Regulation 104(f) to APR 11 so that CLE credit for "video, motion picture or sound tape presentations may be approved provided a teacher or moderator is in attendance at each presentation to comment thereon, and answer questions, or conduct the discussion." The amendment allows "quality programming to become more available to local bar associations," said T. Noble Foster, executive secretary of the Washington State Board of Continuing Legal Education. Correspondence work, self-study, or video viewing at home or in the office continues not to be eligible for CLE credit.

#### ENVIRONMENTAL AND LAND USE

Donald E. Marcy of Seattle, of the Environmental and Land Use Section of WSBA, spoke in support of incorporating the section's newsletter into the Northwest Land Use Review, a commercial bi-monthly publication. The newsletter would appear as an insert in the magazine. No money would move from the journal to the section, nor would the Bar be involved in the journal's advertising revenue. The Board approved the following motion by a vote of 6-3:

1. The Environmental and Land Use Section newsletter may be incorporated into the Northwest Land Use Review for a trial basis of one year or any shorter time as the Board may direct;

2. Each issue of the Northwest Land Use Review shall include a disclaimer indicating that neither the section nor the Bar endorse the editorial policy or articles included in the magazine. The arrangement is not a joint venture between the Northwest Land Use Review and the section in any way.

3. The first issue to be published under this arrangement will be forwarded to the Board for its review.

Governors Lane, Zylstra, and Vhugen voted against the proposal. Lane felt that it might appear that the magazine was being distributed under the auspices of the Bar or that the Bar was endorsing the editorial policy of the magazine. Zylstra, "opposed in principle," was against the Bar "being involved in a joint venture over which it has no control." Vhugen wondered the arrangement might jeopardize the Bar's tax status.

#### OTHER WORK:

● NONLAWYERS--A Yakima program, Law School for Nonlawyers, has received a \$1000 grant from the American Bar Association, said Claire Cordon of the WSBA Young Lawyers Section.

● 1990--The 1990 Annual Bar Convention will be held in Spokane. Future conventions: Seattle (1985), Honolulu (1986), Vancouver BC (1987 and 1988), Whistler BC (1989), San Diego CA (1991).

● STATUTE LAW COMMITTEE--William H. Ellis of Seattle and Thomas C. Warren of Wenatchee were re-appointed to the Statute Law Committee by the Board of Governors.

## Specialization Survey Results

The January, 1985, issue of the *Washington State Bar News* contained a special two-part section on the Specialization question:

1) a complete printing of the full text of the Umbrella Plan of Specialization as proposed to the Board of Governors, and

2) a questionnaire to be completed by members of the State Bar, to assist the Board of Governors in their decision.

The questionnaire requested responses to a series of questions, some involving general information, and others seeking specific comment on the minimum standards and features of the "Umbrella Plan." The final part of the questionnaire sought additional comments, which were forwarded verbatim to the Board of Governors.

### GENERAL INFORMATION

A total of 718 completed questionnaires were received, an approximate 6% return.

The first seven questions asked for general information about the respondent and his or her views on specialization in general (as distinguished from the Umbrella Plan in particular). Responses to these questions are summarized below. (Totals vary because some respondents did not answer every question.)

Question 1 asked *how many years the respondent had been engaged in the practice of law*. In tabulation, responses to this question were grouped into two categories: those admitted 5 years or less, and those in practice for more than 5 years. **167 had practiced for 5 years or less, 519 had practiced for more than 5 years.**

Question 2 presented various alternatives to the question of the respondent's *type of practice* (more than one box could be checked). The results: **government employee—99; corporate employee—33; private practice—531; solo practitioner—62; firm practice—536.**

Question 3 asked the respondent for a general description of the *type of community* in which he or she practiced. Categories were broad, and the results were: **urban—449; suburb of city—75; small town—198; rural—24.**

A typical respondent profile (based on raw data only and therefore potentially skewed) emerges: he or she has been in practice for more than 5 years, and is currently in private practice in an urban setting. However, in terms of membership distribution, the responses were generally representative of all of the categories set forth in the questionnaire.

Question 4 and 5 were designed to gauge the respondent's familiarity with the proposed "Umbrella Plan." Question 4 asked *if the respondent had read the plan*: of 713 responses, **696 said they had read it, 17 said they had not read it.** (Nearly all respondents answered this question.) Question 5 asked *if the respondent had heard the plan discussed at a local bar association meeting or elsewhere*: **261 had heard the plan discussed at a local bar meeting, 430 had not. 292 had heard the plan discussed elsewhere, 270 had not.**

Question 6 asked *If a specialization plan were adopted, would you be interested in becoming a certified specialist?* **414 said yes, 239 no.**

Question 7 asked, *Do you generally favor any form of certification of specialists?* Nearly all respondents answered this question: **196 yes, 504 no.**

(It might be implied that while many respondents would disfavor specialization as such, they would seek certification should specialization become a fact.)

### THE UMBRELLA PLAN

Unlike Questions 1-7, Question 8 focused specifically upon the proposed Umbrella Plan (as printed with the



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questionnaire), asking for comment on the minimum standards set forth in the plan. In tabulation, responses to the five parts of Question 8 were grouped according to years of practice (see Question 1). The results were as follows:

8a. *Would five years of practice before application be: about right, too long, or too short?*

In practice:	about right	too long	too short
5 years or less	71	85	6
More than 5 years	271	93	77
<b>TOTAL RESPONSE</b>	<b>342</b>	<b>178</b>	<b>83</b>

8b. *Would substantial involvement measured by 30% of a full-time practice be: about right, too much, or too little?*

In practice:	about right	too much	too little
5 years or less	69	54	33
More than 5 years	193	127	113
<b>TOTAL RESPONSE</b>	<b>262</b>	<b>181</b>	<b>146</b>

8c. *Do you favor Peer Review?*

In practice:	yes	no
5 years or less	84	82
More than 5 years	256	206
<b>TOTAL RESPONSE</b>	<b>340</b>	<b>288</b>

8d. *Do you favor Written Examinations?*

In practice:	yes	no
5 years or less	104	63
More than 5 years	235	221
<b>TOTAL RESPONSE</b>	<b>339</b>	<b>284</b>

*If yes (to 8d.), do you favor the waiver of written examinations under stringent standards?*

In practice:	yes	no
5 years or less	24	78
More than 5 years	74	162
<b>TOTAL RESPONSE</b>	<b>98</b>	<b>240</b>

8e. *Would five years before recertification be: about right, too long, or too short?*

In practice:	about right	too long	too short
5 years or less	90	29	29
More than 5 years	275	29	108
<b>TOTAL RESPONSE</b>	<b>365</b>	<b>58</b>	<b>137</b>



Notes from the Academy

Edited by William B. Stoebuck  
Professor, UW School of Law

**Creditor and Debtor.** (1) Restitution requirement as condition of probation was proper although defendant's possible tort liability for amounts to be paid had been discharged in bankruptcy case filed before sentencing. Imposition of sentence is continuation of a criminal action within meaning of Bankruptcy Act §362 (filing bankruptcy petition does not operate as stay) and is not enjoined by §52-4(a)(2) of Bankruptcy Act (providing that discharge operates as injunction against attempts to recover discharged debt as personal liability of debtor). *State v. Eyre*, 39 Wn. App. 141 (12/11/84).

(2) Automatic stay provisions of §362 of Bankruptcy Act apply to listing and valuation of personal property by King County for personal property tax purposes. County's acts result in creation and perfection of tax liens in specific property listed. Perfection does not relate back to an earlier date so as to be within protection of Bankruptcy Act §546(b). Necessary retroactivity is not supplied by RCW 84.60.010, which makes tax liens prior to all other obligations and charges against property. Assuming *arguendo* that listing and valuation process is passive process that does not conflict with purposes of automatic stay, creation of tax lien after bankruptcy filing would be post-bankruptcy transfer voidable under Bankruptcy Act §549. *Quigley v. General Elec. Co. (In re Electric City, Inc.)*, 43 Bankr. 336 (Bankr. W. D. Wash. 1984).

—M. D. Rombauer

**Criminal Law and Procedure.** (1) Omission of relevant information in affidavit, absent bad faith or recklessness, does not necessarily invalidate warrant. Search warrant, issued on affidavit reciting identification of marijuana from aerial surveillance, upheld despite failure to mention airplane's altitude of 3,400 feet, 3½ times normal surveillance altitude. *State v. Cord*, 103 Wn. 2d 361, 696 P.2d 81 (1/10/85).

(2) (a) Absent exigent circumstances, warrantless arrest of suspect standing in his doorway is unlawful. (b) Neither arrestee nor third party may resist arrest, be it lawful or unlawful, absent danger of serious injury to arrestee. *State v. Holeman*, 103 Wn. 2d 426, 693 P.2d 89 (1/10/85).

(3) Entering church with intent to commit crime, even though church is open for worship and prayer, is "unlawful" entry under burglary statute. [NOTE: Decision could be cited for proposition that entering store during business hours solely with intent to shoplift is burglary.] *State v. McDaniels*, 39 Wn. App. 236, 692 P.2d 894 (12/19/84).

—G. R. Nock

**Evidence.** Indecent liberties: Trial court erred in admitting complaints of 4½- and 5-year-old victims through

hearsay testimony of adult relatives: (a) hearsay exception for abuse complaints (RCW 9A.44.120), although constitutional on its face, is inapplicable unless state establishes that child is unavailable as witness and that child's statements are reliable; (b) requirements of unavailability and reliability are of constitutional magnitude and must be satisfied in order to satisfy defendant's Sixth Amendment right to confrontation; and (c) defendant's right to confrontation was violated because state made no showing that children were unavailable as witnesses, and because several factors suggested that children's statements were untrustworthy. *State v. Ryan*, 103 Wn. 2d 165, 691 P.2d 197 (12/6/84).

—K. B. Tegland

**Guardian and Ward.** (1) Under RCW 11.92.040(3) guardian must obtain judicial approval of extraordinary, irreversible medical treatment that would seriously affect incompetent ward's bodily integrity. Court must first determine what incompetent ward's choice would be if she were competent and understood all relevant circumstances and then weigh against ward's imputed choice any countervailing state interests such as preservation of life. *In re Ingram*, 102 Wn. 2d 827 (11/11/84).

(2) In case of incompetent person with no available family, life support systems may be removed according to following procedures (modifying dicta in *In re Colyer*, 99 Wn. 2d 114, 660 P.2d 738 [1983]): (a) Upon appropriate application, general guardian must be appointed; appointment of guardian ad litem is governed by RCW 11.88.090. (b) If treating physicians and prognosis committee are unanimous that life-sustaining efforts should be withheld or withdrawn and guardian concurs, judicial approval is not required. (c) Conflicts within or between hospital, prognosis committee, attending physician, or guardian should be resolved by trial court. *In re Hamlin*, 102 Wn. 2d 810 (11/1/84).

—R. L. Settle

**Real Property.** (1) Seattle floating homes ordinance: (a) provision that landlord might evict tenant only if landlord desired moorage site for his own home was unconstitutional "taking"; and (b) anti-retaliatory-eviction provision, as interpreted, was constitutional. *Lee v. Sawage*, 38 Wn. App. 699, 689 P.2d 404 (9/24/84).

(2) Judicial review of conditions city imposed on plat approval was limited to whether conditions were constitutional and not arbitrary or capricious. *Miller v. City of Port Angeles*, 38 Wn. App. 904, 691 P.2d 229 (11/19/84).

—W. B. Stoebuck

**Torts.** Plaintiff who cannot identify specific manufacturer of drug diethylstilbestrol (DES) that he ingested may nevertheless recover from DES manufacturers according to "novel market-share alternate liability" theory. *Martin v. Abbot Laboratories*, 102 Wn. 2d 581 (10/4/84).

—R. L. Settle



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FOR THE WESTERN DISTRICT OF WASHINGTON

In re )  
REQUIRING INCLUSION OF PETITIONER'S ) GENERAL ORDER  
AFFIDAVIT WITH PETITIONS FOR RELIEF )  
UNDER TITLE 11, UNITED STATES CODE ) NO. 1

To insure compliance with Section 109(f) of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law 98-353 (effective October 8, 1984).

IT IS HEREBY ORDERED that every individual petitioner shall submit with the petition for relief under Title 11, United States Code, at the time of filing, an affidavit in the attached form, signed under penalty of perjury, certifying that she has not had a case pending under Title 11 which has been dismissed within the pre-ceding 180 days for the reasons set forth in 11 U.S.C. 108(f).

DATED: February 12, 1985.

SIDNEY C. VOLINN, Bankruptcy Judge  
KENNETH S. TREADWELL, Bankruptcy Judge  
ROBERT W. SKIDMORE, Bankruptcy Judge  
SAMUEL J. STEINER, Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

In re )  
Debtor(s). ) NO.  
PETITIONER'S AFFIDAVIT

Petitioner has not had a case pending under Title 11 at any time in the preceding 180 days where:

- 1) The case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case;
- 2) The petitioner requested and obtained a voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by Section 362 of Title 11.

Under penalty of perjury, I declare I have read this statement and to the best of my knowledge and belief it is true.

DATED: \_\_\_\_\_

Signature of Petitioner  
Signature of Joint Petitioner

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

In re )  
ORDER DIRECTING COMPLIANCE WITH ) GENERAL ORDER  
SECTION 521 OF TITLE 11, )  
UNITED STATES CODE ) NO. 2

To insure compliance with Section 521 of the Bankruptcy Amendments and Federal Judgeship Act of 1984, Public Law 98-353 (effective October 8, 1984).

IT IS HEREBY ORDERED that every individual Chapter 7 debtor whose schedule of assets and liabilities includes consumer debts as defined by the Code and which are secured by property of the estate, shall serve a copy of the required Statement of Intent on the Trustee and each secured creditor affected thereby. The original of the Statement of Intent, together with an original certificate of service, shall be timely filed with the Clerk of the Bankruptcy Court.

DATED: February 12, 1985.

SIDNEY C. VOLINN, Bankruptcy Judge  
KENNETH S. TREADWELL, Bankruptcy Judge  
ROBERT W. SKIDMORE, Bankruptcy Judge  
SAMUEL J. STEINER, Bankruptcy Judge



## Around the State

### Pierce County

by ROBERT W. MARSDEN

Jack G. Rosenow is the newly elected president of the Tacoma-Pierce County Bar Association for 1985-86. Vice president is Monte Hester. Keith M. Black, the new secretary-treasurer, will serve through 1986-87. Newly elected to the Association's Board of Trustees are Grant L. Anderson, John M. Ennis and K. Michael Jennings, who join Craig S. Adams, Frank B. Ladenburg and Sam Pemberton on the Board.

Stephen G. Sheehy has joined Adams and Degel as an associate. Nancy Norton has joined Eisenhower, Carlson, Newlands, Reha, Henriot and Quinn. Patricia P. Skinar has opened her own law office in downtown Tacoma.

Curman Sebree recently relocated, along with Beverly Johnson. They share office space in Tacoma. Kathryn Gerhardt left the Pierce County Prosecuting Attorney's office to become legal counsel for the Tacoma Police Department in the City Attorney's office. Valla Wagner joined the law firm of Schweinler, Lowenberg and Lopez. She replaces Kathie Weibel, who is now with Boeing-BMAC.

Father and son Don and Hugh McGavick have formed a new firm, McGavick and McGavick, and have announced that Paula Tuckfield has been hired as an associate. Robyn Thorson has transferred from one Attorney General's office (Thurston County) to another (Pierce County).

### Seattle-King County

Edward N. Lange of Davis, Wright, Todd, Riese & Jones in Seattle has been appointed to a three-year term on the Consumer Advisory Council of the Federal Reserve System's Board of Governors.

Preston, Thorgrimson, Ellis & Holman announces that Alan H. Kane has joined the firm as a partner. Kane will head the firm's estate planning and probate department.

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**Donovan R. Flora** has become a principal in the Seattle firm of Longfelder, Tinker, Kidman & Flora, Inc., P.S.

**David A. Steiner** has become associated with Hansen & Ferguson, 18106-140th Ave. N.E., Woodinville, 98072, telephone (206) 483-8333.

### **Young Lawyers Seek Candidates**

Young Lawyers Section (YLS) members residing in the Sixth and Eighth Congressional Districts and in King County:

Seats on the Board of Trustees of the Young Lawyers Section for these areas are up for election. Terms, which last three years, will begin at the end of the annual meeting in September, 1985.

Elections are open only to those who will be eligible for YLS membership for the entire three-year term. Candidates must be section members, and must submit candidacy statements by June 1, 1985, to Chuck Snyder, 204 North Commercial, Bellingham, WA 98225, telephone (206)733-8191.

### **Attorney/CPAs Elect Officers**

The Washington Chapter of Attorney/Certified Public Accountants has elected the following officers: president—Rodney J. Waldbaum, vice-president—Frederick Rupert, secretary—James Rigos, and treasurer—Joseph L. Brotherton.

### **Federal Appellate Practice Seminar**

A step-by-step approach to the appellate process in the Ninth Circuit will be presented by the Federal Bar Association on May 24, 1985. Judges Betty Fletcher and John C. Coughenour, as well as Clerk Phillip B. Winberry, will be featured.

The seminar includes whether to take an appeal, preserving the records, sending up the record on appeal, and arguing motions and preparing briefs for a Ninth Circuit appeal.

### **Antitrust Handbook**

The Washington Antitrust Law Developments Handbook, prepared by the Antitrust Section of the Washington State Bar Association, summarizes caselaw developments under Washington's antitrust laws, RCW 19.86. It features chapters on restraints of trade, monopolization, mergers and acquisitions, price discrimination, unfair methods of competition, exemptions from antitrust coverage and regulated industries, enforcement by the Attorney General, antitrust class actions, and private antitrust suits.

To purchase the handbook, send \$25 to Marcia Caldwell, Washington State Bar Association, 505 Madison Street, Seattle, WA 98104.

### **Lawyers Auxiliary Invites Members**

The American Lawyers Auxiliary invites lawyers and their spouses to become members. The ALA is a non-profit ABA-related organization founded in 1958 for charitable educational purposes. Its state and local affiliates sponsor law-related educational projects and work to heighten public awareness of the ethics of the legal profession.

If you are interested in membership or program information, contact the ALA at 750 N. Lake Shore Drive, Chicago, IL 60611, or call (312) 988-6387.

### **IN MEMORIAM**

**George Wilmont Roberts**, 91, died February 1 in Walla Walla, where he was born. He received a law degree from the University of Washington in 1916 and spent two years in the service. His entire career he maintained his law office on the seventh floor of the Baker Building in Walla Walla.

**Llewellyn S. Jordon**, retired partner of Jordon and Adair in Seattle, died February 12 at age 76. He was admitted to the Washington Bar in 1932.

## A Tribute to Theodore D. Peterson

WSTLA past president Theodore D. Peterson of Pasco died February 17 in San Diego, at age 65.

The only son of a Norwegian immigrant railroad worker and a Palouse farm girl, "Pete" grew up in the tiny town of Pasco on the Columbia River. As a lifeguard and distance swimmer, he grew to an imposing six feet and 235 pounds, so broad in the chest and shoulders as to require a size 50 suit coat. In 1937, he went off to take a degree in English literature at the University of Washington, hoping to be a writer because stuttering severely affected his speech. After serving in Italy in World War II, he completed law school on the GI Bill at Gonzaga University in Spokane.

Peterson returned to his home town as a lawyer in 1948. He loved to recall that his high school sweetheart and wife Dorothy, who worked with him throughout his (and her) career,

earned more as a legal secretary than he did as a young associate. He started his own private practice with the late Ivan and Florence Merrick, one of the first female lawyers in our state.

He was proud of having kept up the general practice of law in a small town until his retirement in 1977 from Peterson, Taylor, Day and Shea. He did it all: divorces, criminal defense, wills, L & I, commercial.

Peterson made his mark as a trial lawyer and as a personal injury specialist. He burst on the scene in 1952 with a \$120,000 wrongful death jury verdict in Walla Walla, the largest award in the state at the time and perhaps still the largest death award in Walla Walla County. He was a founder of NACCA in Washington (WSTLA's predecessor), its fourth president (1956-1957), an early member of ATLA, and was initiated into the International Academy of Trial Lawyers in 1958, his first year of eligibility.

Peterson tried cases all over the western United States, from Texas to

Alaska. He helped to pioneer the use and creative expansion of demonstrative evidence in Washington (cf. *Snyder v. General Electric*, 47 Wn.2d 60 [1955]). He made law in the Washington supreme court more than a dozen times and in the U.S. Supreme Court once.

Peterson was always very supportive with his time, talent and money. He felt that there was absolutely nothing better to be than a trial lawyer.

He once lectured on "Torts, as Seen Through the Bottom of a Cocktail Glass." At the 1983 WSTLA annual convention in his home town of Pasco, "The Lion of the Desert" showed us why he was the inspiration for that year's theme.

Remembrances may be sent to the Washington State Trial Lawyers Foundation.

---

*This special tribute was submitted by Jan Eric Peterson, Seattle attorney with Peterson, Braccini, Young, Putra & Fletcher, Inc., P.S., and Theodore Dave Peterson's son.*

### Bar Review Associates of Washington —Our 23rd Year—

Bar Review Associates of Washington (BRAW) offers a Washington-based, concentrated review and refresher course for the Washington State Bar Examination. The course to prepare for the Summer 1985 Examination starts June 17 and runs thru July 24, Mon. thru Fri., 6:30 p.m. to 9:30 p.m.

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### PRSA Pat-on-the-Back for WSBA Pamphlets

WSBA's Citizen Rights Series of consumer information pamphlets has received a 1984 Totem Award from the Public Relations Society of America/Puget Sound Chapter as the top entry in its category. "Community Relations by Non-Profit Organizations."

Entries in the annual competition were judged by a panel of public relations professionals on criteria for planning, execution and results, with winners recognized at PRSA's awards banquet held April 15. PRSA is a professional society of public relations practitioners with more than 12,000 members, including nearly 200 in the local chapter.

The Citizen Rights pamphlet program was a priority project of the Bar's Public Affairs Department during 1984. Six titles were published last year as part of the ongoing public service project; more than 60,000 copies are in circulation.

### Legal Foundation Update

The Board of Trustees of the Legal Foundation of Washington, which distributes funds from interest on lawyer trust accounts (IOLTA) for law-related charitable and educational purposes, is developing criteria to be used in considering grant proposals.

Your suggestions are invited by the Grants Committee, Legal Foundation of Washington, 505 Madison, Suite 217, Seattle, WA 98104.

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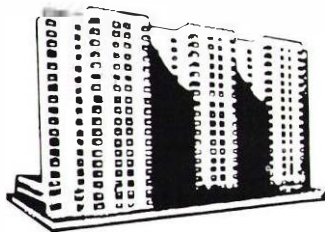
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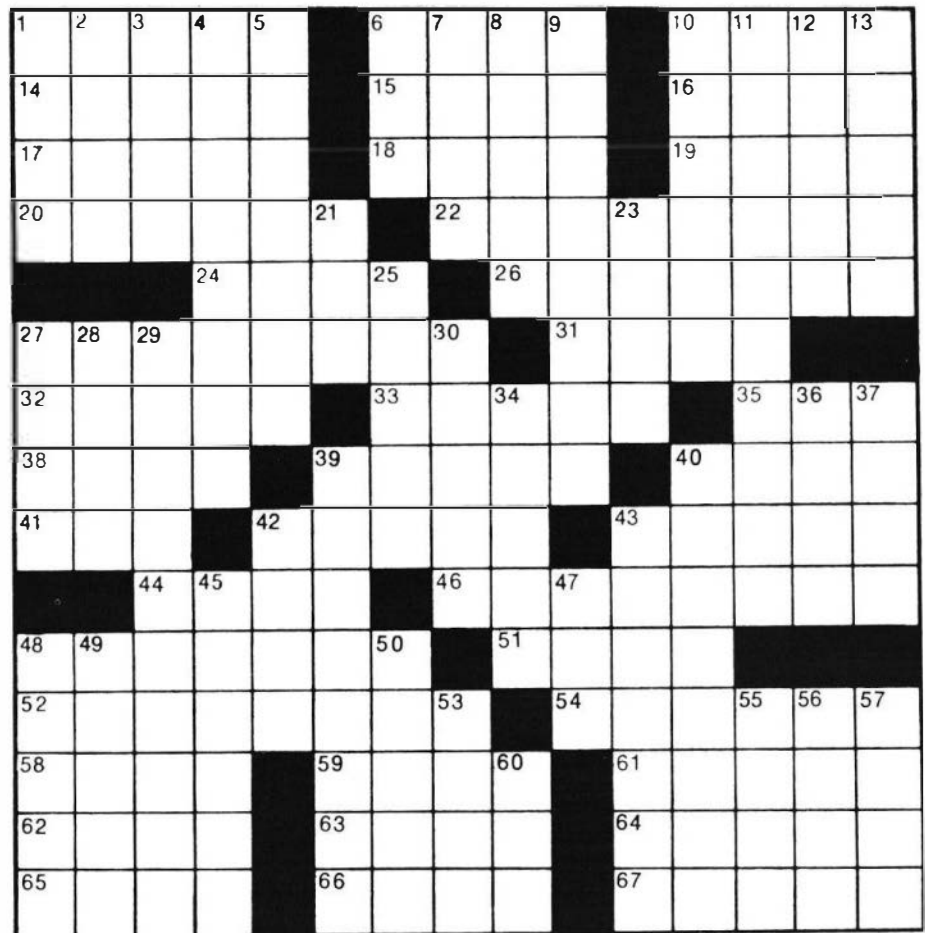


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# Legal Ups and Downs

by John Gloekler



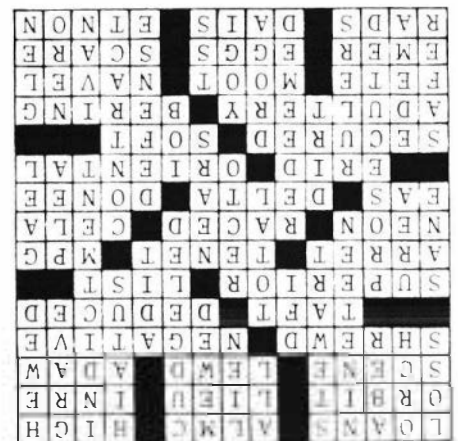
## Across

1. "Amortized" and "collateral" are types
6. Annual publication of useful information (abbr)
10. Intoxicated
14. Circular path
15. Place (French)
16. Introductory phrase used in judicial proceedings without adversaries
17. Place where a crime occurred
18. Immoral conduct
19. Subdue
20. Astute
22. Rebuttal evidence: \_\_\_\_\_ evidence
24. Only U.S. President to become Chief Justice of the U.S.
26. Arrived at a conclusion based on premises
27. Vis major: \_\_\_\_\_ force
31. Docket
32. Court decree
33. Principle
35. Measure of automotive efficiency
38. Chemical element
39. Ran swiftly
40. Prison cell (Portuguese)
41. Estimated air speed (abbr)
42. Detail found in a fingerprint
43. Receiver of a gift
44. A southern constellation (abbr)
46. Eastern
48. Debt backed by collateral
51. Hashish and marijuana: \_\_\_\_\_ drugs
52. Grounds for divorce
54. North Pacific sea
58. Celebrate
59. Court of academic exercise
61. Central point
62. Sudden occurrence necessitating immediate action (abbr)
63. Breakfast food
64. Frighten
65. Units of absorbed dose
66. Speaker's platform
67. Latin phrase equivalent to "absque hoc"

## Down

1. Assets of an insurance company set aside for payment of claims. \_\_\_\_\_ reserve
2. Orchestra (abbr)
3. But (German)
4. U.S. Constitutional amendment number forbidding sex discrimination in voting
5. U.S. Supreme Court Justice serving from 1959-1981
6. Wholly
7. Encumbrance on property
8. Made a cat sound
9. Beat with a club
10. Gap in a manuscript
11. Charge by a grand jury
12. Weighty
13. Conformed
21. Disease-free intervals (abbr)
23. Entrance
25. Physical inability to perform any occupational activity. \_\_\_\_\_ disability
27. Capable of distinguishing right from wrong
28. Bodily fluid component
29. Instituted legal proceedings against someone
30. Writ of right: Breve de \_\_\_\_\_
34. Comes close to
36. Delendant's response
37. Celtic
39. Reclaimed
40. "Commutative" is a type
42. Low quality marijuana: \_\_\_\_\_ grass

43. "Pretermitted" is a type
45. Czars and emperors
47. Input-output box (data processing abbr)
48. More secure
49. Swelling
50. Drug (Spanish)
53. Hindu ascetic
55. Terrible czar
56. Terrible emperor
57. Valley
60. Toxic shock syndrome (abbr)



## DISCIPLINE

### Suspended

Vancouver attorney **Randolph L. Johnson** has been suspended from the practice of law pending final disposition of the disciplinary proceedings against him for an Oregon felony conviction for second degree assault.

### Reprimanded

Kent attorney **John S. Astle** has been reprimanded pursuant to a stipulation for discipline. In one case, Astle transferred \$430 of a client's funds from his trust account to his general account at a time when he had earned only \$97.50 of the amount. This violated RLD 1.1(i) and DR 9-102(A). In another case, he disbursed \$2,438.76 from his trust account to a client when the client had only \$2,185.26 in trust, the difference being drawn in part on the funds of other clients in Astle's trust account. This violated RLD

1.1(i) and DR 9-102(B)(3). Astle stipulated to a two-year period of probation requiring \$402.50 in restitution, \$200.00 in costs, and review of his trust account records two times during probation by a person approved by the Bar.

Bellevue attorney **James C. Hole** has been reprimanded for failing to cooperate with the Bar's investigation of a complaint against him, in violation of RLD 2.8. Hole received two letters from the Bar requesting information, but did not respond, due to what he testified was "mental paralysis" and "burnout."

### Censured

Spokane attorneys **John O. McLendon**, **W. Russell Van Camp**, and **Adrian J. Voermans, Jr.**, have each been ordered to receive a Letter of Censure pursuant to a stipulation for discipline. The discipline arose out of a personal injury action in which McLendon represented the guardian of the injured party and Van Camp ini-

tially acted as guardian *ad litem* for the injured party, but later became one of the attorneys for the guardian. Voermans was later appointed as guardian *ad litem* for the injured party.

Van Camp's discipline was based on a finding of excessive fees; conduct prejudicial to the administration of justice; impermissibly advancing funds to a client; and presenting matters to a court without notice to opposing counsel.

McLendon stipulated to discipline based on excessive fees; engaging in conduct prejudicial to the administration of justice, condoning impermissible advances to a client; and presenting matters to a court without notice to opposing counsel.

Voermans stipulated to discipline based on neglect of his role as guardian *ad litem* and potential conflict of interest.

McLendon and Van Camp will each make restitution in the amount of \$29,000 to the person and estate of the injured party.

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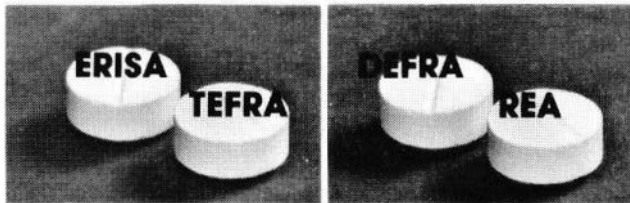
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