Washington State Bar News
Vol. 40, No. 2, February 1986

Inside: Towards a Competent Reality

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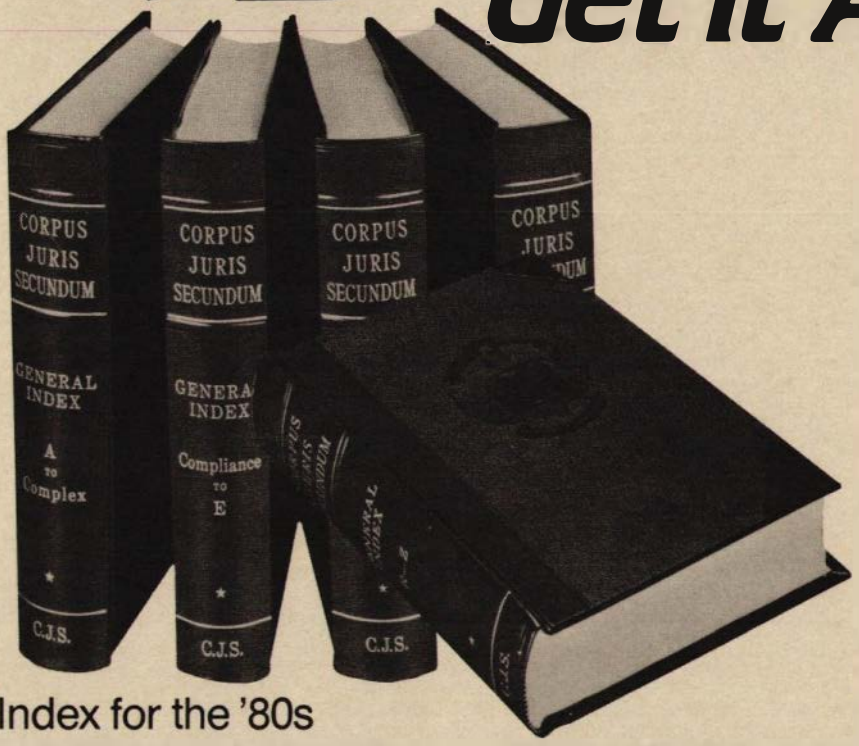

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WEST PUBLISHING COMPANY
50 W. Kellogg Blvd.
P.O. Box 64526 • St. Paul, MN 55164-0526

CJS *Where You Get It All*

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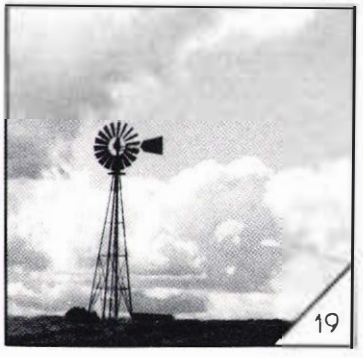
FEATURES



IN THE NEWS

DEPARTMENTS

ART CREDITS

COVER: "Relics of the past on the Waterville Plateau" by Wenatchee photographer **W. R. Gilbaugh.** Another of Gilbaugh's photos heads Waterville attorney Michael Tabler's "Towards a Competent Reality," p. 19.

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

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R. WAYNE WILSON, *Director of Public Affairs*

Printed by United Graphics, Seattle

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

LETTERS

Turnabout is Fair Play

Editor:

With reference to "After Sale Rights for Visual Artists" in the November *Bar News*, the discussion of *Droite De Suite*—the right of an artist to share in the monetary rewards of subsequent profitable sales/exhibitions—discusses only one of three possible sale scenarios.

Of course, the art work may be sold by the original purchaser for substantially more than the artist received, but in at least a portion (I believe a substantial majority) of such subsequent sales, the original purchaser receives less than he paid the artist for the work of art. The logical extension of the *Droite de Suite* policy in such a case is for the artist to reimburse the original purchaser for a portion of his "loss", the artist obviously having received too much upon the original sale.

The article advises artists to include economic rights clauses in their contracts; if the artist insists on such language, I would advise purchasers to include the "reverse economic rights" clause as well.

My sense of fair play is offended by the notion that artists should be singled out as a class of businessmen who are guaranteed to benefit from another's wise investment, while at the same time being insulated from liability if precisely the same sale turns out to be a bad investment.

I rather doubt that most artists demanding the economic rights clauses would be very receptive to this proposal. It seems to me to be a classic case of wanting to have your cake and eat it too.

STEVE MAY
Dallas, Texas

Congrats!

Editor:

Congratulations on the November issue of the *Bar News* and to its guest editor, Gregg Rodgers. It's wonderful! I took the time to xerox a couple of the articles to send to my artist friends and clients.

You are doing a great job.

ELIZABETH K. SELLECK
Seattle

Authors

Editor:

I was somewhat surprised at the incomplete reporting in the story captioned "U.S. Supreme Court Fetes Appellate Handbook Project" in the October 1985 *Bar News*.

A cursory examination would reveal that page iii of the Washington Appellate Practice Handbook lists the Committee Members and **Authors** as follows:

"Hon. Charles Horowitz, Co-Chairperson
Malcolm L. Edwards, Co-Chairperson
Hon. Robert F. Utter
Hon. Dale M. Green
Hon. Vernon R. Pearson
Hon. Herbert A. Swanson
Hon. Mark H. Adams
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Harvey H. Chamberlin
Joan Smith Lawrence
Arthur D. McGarry
Prof. Lewis H. Orland
Karl B. Tegland
Gregg Tinker
Charles K. Wiggins."

I assume that the U.S. Supreme Court "feted" the **main volume** as well as the 1985 supplement.

LEWIS H. ORLAND
Spokane

Credit Where Credit is Due

Editor:

The article on deferred prosecution by Wesley G. Hohlbein in the December *Bar News* reminds me for the "umpteenth time" of the need to clarify the setting of the decision in *State ex rel, Schillberg vs. Cascade District Court*, 94 W. 2d 772, 621 P.2d 115. That case is a triumph for D.W.I. defense lawyers no more than it is for any other lawyer involved in drug rehabilitation, mental illness treatment, or the promotion of the individual's search to be free from forces beyond his or her control.

What it is is a triumph over the unrestrained exercise of governmental power over human frailty and suffering. I speak from personal knowledge; I wrote the decisional brief in that case. Look closely at *Schillberg: State ex rel McNeil vs. Northeast District Court* was the consolidated case that supplied the constitutional issues and briefs that decided *Schillberg*, and which resulted in a successful remand of *McNeil*. But let us give credit where credit is really due: the credit for this legal thinking is due to a marvelous, tough, compassionate former law professor at the University of Puget Sound and former Dean of the University of Washington Law School, George Neff Stevens, the "Neffer" as he was (quietly but) fondly known.

Professor Stevens taught first year procedural law students that jurisdiction was the power to hear and determine the case or controversy before it, and that once vested in the court, the court had all the judicial power of the Constitution at its disposal. He also taught about separation of powers and some other familiar, but basic (too basic and unimportant?) concepts of constitutional law. We did not know how important these simple premises were. This is the importance of *Schillberg*.

Schillberg was an unapplaudable man who had been involved in D.W.I. offenses in two different towns in Snohomish County. When he received a second offense during the deferred prosecution period of his previous offense, the prosecuting attorney sought conviction and the defense attorney sought a second deferred prosecution so as to not "wreck" the first one. It was granted in Cascade District Court and the State appealed. In the meantime, after *Schillberg* was lost at the Superior Court and Court of Appeals levels, *McNeil* was "heard" in Northeast District Court, appealed to King County Superior Court and summarily disposed of, and directly appealed to the Supreme Court and consolidated with *Schillberg*.

The *McNeil* brief was a simple one: once the citation or complaint was filed with the court, all the judicial power of the court was invoked, and any "consent [to deferred prosecution] by the prosecuting attorney" was unconstitutional. This simple issue had not been

COLUMBIA CENTER QUIZ #2

Do you have the career potential to make the move to The Columbia Center? Take this quiz and find out.

1. What do you consider the secret of your success?
- ☐ a. Good looks.
- ☐ b. Tenacity.
- ☐ c. Good fortune.

2. What thrills you the most?
- ☐ a. Your bank account.
- ☐ b. Your stock splits and goes up 15 points.
- ☐ c. Great conversation.

3. Why does your mate say you're working too hard?
- ☐ a. You haven't had a vacation in three years.
- ☐ b. You don't even come home for the weekend without your attaché case.
- ☐ c. You're starting to hide work around the house.

4. If you'd had $10,000 to invest during the last century...
- ☐ a. You'd buy $10,000 shares in American Velocipede.
- ☐ b. You'd buy Denny's 5 acres at 1st and Pike, even though you knew he was overcharging.
- ☐ c. You'd lend the money to carbuilder Stanley for his Steamer.

5. What did you want to be when you grew up?
- ☐ a. A policeman.
- ☐ b. Chairman of the board.
- ☐ c. President of the United States.

6. What do you want to do next?
- ☐ a. Spend a day with President Reagan.
- ☐ b. Go public.
- ☐ c. Climb Mt. Rainier.

7. Imagine you're a runner. Why would you enter a 10K race?
- ☐ a. To get in shape.
- ☐ b. To win.
- ☐ c. To finish.

8. Which goal had you set for initial success?
- ☐ a. B.M.O.C. (Big Man On Campus)
- ☐ b. C.E.O.
- ☐ c. M.B.A.

9. What do you do for a good time?
- ☐ a. Play volleyball.
- ☐ b. Restructure my portfolio.
- ☐ c. Get together with a few friends and talk shop.

10. What time of day do you do your best work?
- ☐ a. Early in the morning.
- ☐ b. Just before the Market opens.
- ☐ c. After 10PM.

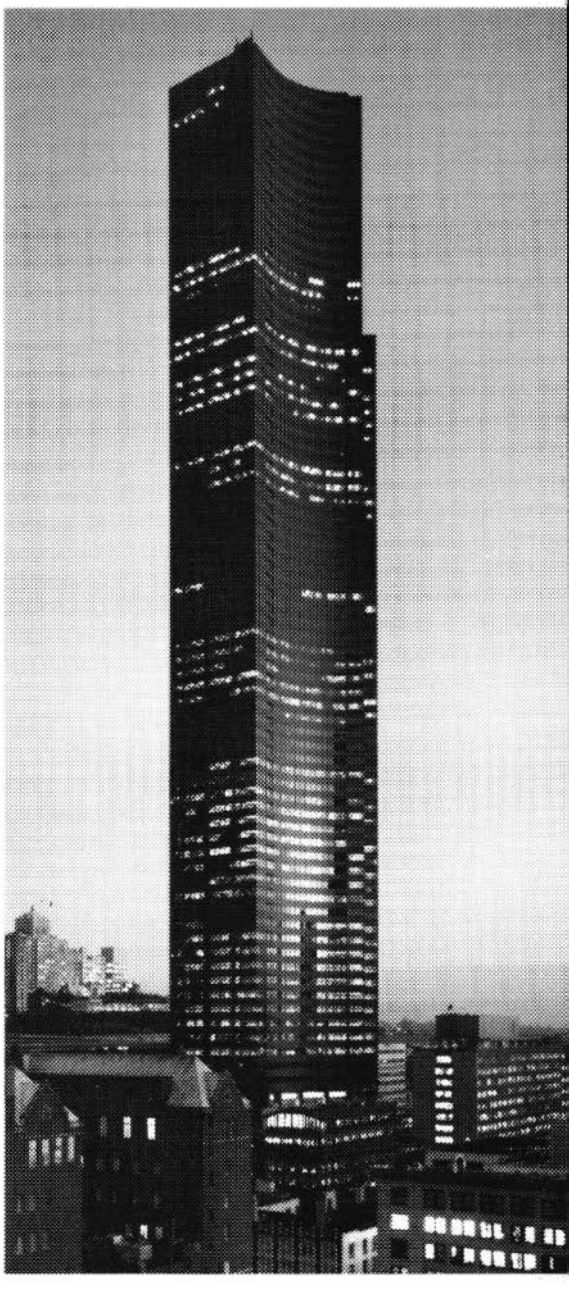
11. When do you intend to stop working?
- ☐ a. I'll stop for a martini at three.
- ☐ b. Never.
- ☐ c. I'll retire at 65 and grow sweet potatoes.

12. Do you like your career so well you'd do it for free?
- ☐ a. Not a chance.
- ☐ b. I'd do it if I had to pay for the privilege. It's exciting.
- ☐ c. I'd have to think about that.

13. How much income is enough?
- ☐ a. Money isn't important to me.
- ☐ b. Less than I want; more than I need.
- ☐ c. Enough to live comfortably.

14. If you had it to do all over again, would you?
- ☐ a. I'll get back to you.
- ☐ b. Absolutely. And I'd start sooner, push harder and risk more.
- ☐ c. Not a chance.

15. What does your current office location say about you?
- ☐ a. You're off the beaten track; you're just pleased if the business can find its way to your door.
- ☐ b. You're ready to take your place with the cream of Seattle's business community.
- ☐ c. You're still working in your hippie loft. Roots are important.



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76 Stories of Pure Prestige

raised by *Schillberg* and was so ludicrous in *McNeil* as to be dismissed summarily in the lower courts.

Let us finally give credit where credit was due: thank you, "Neffer", for your patience, insight, scare tactics, and deep concern for people who just happened to want to be lawyers; one of whom finally had learned the importance of your lessons, long after your teaching.

DAVID P. MICKELSON
Bellevue

Editorial Comment

Editor:

Your editorial comment in the December issue captured so much of what I feel about the criminal justice system and its effect on me. To single out the phrases that were particularly meaningful would practically necessitate a reprint of the entire article.

A great piece of work that I will refer back to again and again.

DOUGLAS L. COWAN
Bellevue

Title Insurance Premiums

Editor:

During the last two years I have corresponded with the Office of the Insurance Commissioner regarding title insurance company surcharges for insuring title to real estate in situations where there is a lack of probate.

Traditionally title insurance companies have been willing to insure such titles, on request of an attorney, with appropriate documentation, indemnification and additional risk premium. Additional risk premiums went as high as 200%.

Due to competitive factors induced in part by inquiries from interested persons, the insurance commissioner's office informed me, some companies are no longer charging surcharges. Chicago Title and Ticor Title are reported not to currently have a surcharge. Transamerica reportedly has reduced its surcharge. The other title insurance carriers reportedly continue to have surcharges of 100% within 6 years of death and 50% when death was between 6 and 10 years previous.

Particularly in situations where property is passing to the surviving spouse, attorneys may now want to consider a lack of probate clearance through a title insurance company as a possible alternate to a probate.

THOMAS M. BLAKE
Seattle

. . .And More Guardianship

Editor:

This is in response to David P. Mickelson's letter regarding his search for a suitable person to act as guardian or trustee where there are no appropriate family or friends to fill that role. My practice concentrates on the area of guardianships and, in particular, in providing actual guardian services. I work with a registered nurse; and to-

gether, we perform guardianship administration at a fee of $30.00 per hour in the King County area.

I recognized the need for this type of service about the same time I had a second baby and wanted to reduce my trial work. Acting as a guardian and motherhood are quite compatible.

KATHLEEN H. MOORE
Seattle

Sharing

Editor:

Just finished your December Editor's Page.

Thanks for sharing your inside thoughts. I enjoyed it very much—a quiet elegance.

JOHN REDENBAUGH
Seattle

Commendations

Editor:

I have just finished reading the November issue of the *Bar News*, and while I am not particularly interested in "Arts and the Law", I did find interest in the activities of the Board of Governors.

I wish to commend Governors Reisler, White, and Bracelin for voting against the proposal of the Washington Association of Prosecuting Attorneys which would allow judges to consider the "dangerousness" of a defendant in setting bail. I further commend the new Bar president, Patrick Comfort, for voting against the proposal, thereby causing a tie.

I also commend President Comfort for his role in scheduling board meetings in the state of Washington. These actions by the new president demonstrate that the Bar Association will be in aggressive leadership for the upcoming year.

MICHAEL J. TURNER
Tacoma

Board of Governors Elections Due

Lawyers residing in the Second, Fourth and Seventh Congressional Districts please note:

Members of the Board of Governors of the State Bar to represent those Districts, for three-year terms ending in 1989, are due to be elected this year. Expiring in September, 1986 are the current Board terms of Ted D. Zylstra (Second District), Donald H. Bond (Fourth District) and Elizabeth J. Bracelin (Seventh District).

Article III of the Association By-Laws provides that any Active member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of Governor from the District in which he or she resides upon petition signed by at least twenty but not more than thirty Active members also residing in the District.

Nominating petitions may be obtained from the Bar Office, 505 Madison Street, Seattle, WA 98104. The petitions must be filed with the Executive Director at the Bar Office by 5:00 p.m. on Wednesday, April 30, 1986.

BOOK REVIEWS

Divorce in Washington: A Humane Approach

reviewed by **Richard C. Fitterer**

Lowell Halverson and John Kydd have written a unique book. It contains useful forms, but that isn't new. The explanation of the legal and emotional trauma the client is going through is what makes this book special. Depending on time spent with clients, and when, this may be their initial concept of the process, or may reinforce what they have been told.

Divorce in Washington reaches many areas the attorney might not cover in an initial conference and answers many questions which would otherwise necessitate phone calls, confusion, additional billing and sometimes hostility. It points out and explains what may be perceived as inequities in the system. The section on custody speaks to the threats of custody fight and the familiar situation it calls "Prince Charming" or "Disneyland Daddy". There are also up-to-date sections on cohabitation and mediation and an extensive listing of various domestic relation resources.

One problem with *Divorce* is that the reader must be fairly sophisticated to digest its message. That is not a criticism. Block print with pictures would *not* work. For that reason, the book should be read by any Washington practitioner who deals with domestic matters.

Loss of sensitivity and cynicism creep in to protect us from dealing with the bad things that happen to people. This book gives us an opportunity to recall some of what we may have lost . . . and to use that in dealing with our clients. Those clients literate enough can go through the book themselves, saving us both time, while our understanding of the contents allows us to better assist those who, for whatever reason, cannot go through it themselves.

This is one of those books that should be in your library, but not just on the shelf. It should be read (and reread occasionally) and made available for use by clients.

* * * * *

***Divorce in Washington** is available from Pacific Family Institute Press, Hoge Building, Seattle WA 98104 for $10.95 or $12.50 including postage and handling.*

*Admitted to the Washington Bar in 1976, **Richard C. Fitterer** is a sole practitioner in Moses Lake, Washington.*

Injured at work: A Guide for Washington Workers

reviewed by **James E. Sedney**

Most lawyers eschew workers' compensation cases. One reason, of course, is that injured workers seldom pay the fees corporate clients do. Industrial insurance law is also arcane and exceedingly dry.

Law which even lawyers find obscure, when combined with the Washington Department of Labor and Industries' Byzantine bureaucracy, renders the workers' compensation system all but unintelligible to many injured workers. But persons disabled by work injuries depend on this no-fault insurance system for treatment expenses and partial replacement of income, and they deserve to understand how it works. That premise animates an excellent new book, *Injured at Work: A Guide for Washington Workers*.

Published in mid-1985 by the University of Washington Press, *Injured at Work* is written by Ted Dzielak and Lynn Greiner, members of the Workers' Rights Project of the Seattle chapter of the National Lawyers Guild. The Seattle attorneys researched their subject and drew on the experience of many other practitioners. The compact paperback should benefit workers' advocates and providers of medical and vocational rehabilitation services.

The book features a logical, detailed table of contents and an index for quick access to desired information. Illustrations and large type make it quite readable. Appendices include sample forms, useful addresses, a brief bibliography and current benefit schedules.

Injured's spare style does not sacrifice factual or legal accuracy. The book's only potential for misleading readers concerns the vocational rehabilitation benefits available through industrial insurance. Like many other Washington practitioners, the authors were confounded when the legislative and gubernatorial axes fell last spring on the comprehensive vocational rehabilitation law enacted only three years earlier. Criticism of the vocational rehabilitation program's expense and spotty management by the Department of Labor and Industries prompted the repeal of the entire statute. Fortunately, the book anticipated some change in the law and warns readers to consult counsel, especially concerning vocational rehabilitation questions.

Injured is not of the "estate-planning-and-corporate-mergers-made-easy" *genre*. It cultivates no antipathy toward lawyers. On the contrary: it takes considerable pains to recommend instances when the reader should seek competent legal advice.

Injured leaves no confusion about its authors' loyalties: their book is a tool for injured workers to obtain all available benefits. But advocacy here never becomes polemical. This book is a giant step toward demystifying industrial insurance for those who depend on it.

* * * * *

***Injured at Work** retails for $8.95. Bulk orders (25 or more) are available at a 33⅓% discount from the National Lawyers Guild, 1205 Smith Tower, Seattle, WA 98104.*

*Admitted to practice in 1974, **James E. Sedney** is an associate with the Kirkland firm of Davidson, Czeisler, Kilpatric & Garner, P.S. His practice emphasizes workers' compensation and criminal defense. Sedney represented the Washington Department of Labor and Industries as an Assistant Attorney General for several years.*

A Sexy Italian What??

Innocently enough, on an otherwise unaugust August afternoon, it began. As I was showing my mother one of my favorite buildings, I spontaneously asked a colleague if she knew of any office space. Did she?!! She did her famous mime act, pointed west, Mom and I took a gander, I liked what I saw, and the rest is history.

Thus did I acquire a law office and become the first entrepreneur in my family in three generations.

The mime and I now share an inside wall, views of Mt. Rainier and the Kingdome, plenty of eye-rolling, and (sometimes) a receptionist. And because our first and last names sound remotely similar, we also share messages from confused clients.

No matter that I'd practiced law for years: Starting my own office was special. And, wow, was it fun to be my own boss! (Great for the libido, too.)

I have now weathered these universal rites of passage to solo practice:

• **Fantasy to reality.** I did *not* want a law office which looked like one—heavy oak furniture with the creative passions of Shelley's Rule. I had an image of what my 15′ × 9′ space would look like: Simple furniture not to compete with the view. Separate zones for the functions of conferring and drafting. Italian design and laminates. No desk.

For three months, I scoured 35 furniture stores, laying a foundation for my next career: interior design. Invading that profession, however, carries its own hazards, as I learned after several hours in what I thought was the "for the trade only" Seattle Design Center, hard by industrial south Seattle. The hapless salesman, like dozens of those before him, listened to my "vision of a sexy Italian living room" for a law office. Yes, he said, I was in a "for the trade only" design building, but not the one I thought. The Design Center was half a mile away.

• **Too good to be true?** The printer I selected offered a great location near home *and* prices much lower than downtown. A very patient guy, he let me whale away on his typewriter for hours as I agonized over the myriad possibilities. (206) or 206/? Name in all caps or upper and lower case? *Ad nauseum.*

I eventually ordered the usual stuff: business cards, pleading paper, letterhead, and envelopes. When it came back, the business cards were off center, the letterhead had an extra comma, and the envelopes neglected to identify me as a member of the legal profession. Only the pleading paper was as ordered.

The printer eyed the goofs. "Please," he begged, "take your business elsewhere. I'll give you back your money." I stayed with him, and he lost plenty of money on that job.

• **It takes all kinds.** After being a Public Defender for many years, I wondered if paying clients would be any different. My first two failed to show for their appointments. Client One said, "Oh, I thought it was for next week"—this after I'd schlepped to the Seattle Center to reenact the incident which had led to his retaining me. And Client Two? "Oh, I got busy and was gonna call ya."

Client Three, however, reaffirmed my faith in serendipity. Not only had he grown up in East Greenbush, the town in upstate New York where my sister lives, he also had taught at my high school in Cold Spring Harbor, 175 miles away. And he made all his appointments. On time. And paid. On time.

• **You can't tell a book by its cover.** A Public Defender and I were chatting one day at jail as we waited to be buzzed through the electric doors. "Looks like quite a trial notebook," he said with a glance toward the weighty looseleaf under my arm. I smiled. Actually, it was the form book from a friend's general civil practice firm.

• **"Unknown at this address."** The Post Office, thinking my unfurnished office was vacant, returned my first fees to the sender. This experience taught me the advantage of making sure my office looked inhabited. The clutter now rules out the possibility of such intervention by Uncle Sam.

• **$$$$$.** A gift from my parents constituted the initial deposit in my general account. Thereafter, I made enough withdrawals to dry up the Columbia. On the day of my first "very own" deposit, I was so excited that I left my wallet at the bank.

• **The free plant:** What could be nicer for a new office than a five-foot-tall *Dieffenbachia*? (Beware of *Bar News* production managers cleaning out their offices.) The *Dieffenbachia* ain't called "dumb cane" for nothin'. It weathered a hairy trip hanging out the back of my car. It survived being caught in the elevator door. It took over my office in two seconds and was adopted out in less than a day.

I've settled in. Napped there once. With a friend's help, painted the molding harmonious gray. Realized the furniture fantasy. Laminates. White and gray. For Grayson, natch.

I've learned something. I define the space; the space doesn't define me. Come visit 605 Pioneer Building. You can't miss it. The paperwhite narcissus will knock you dead.

Carole Grayson

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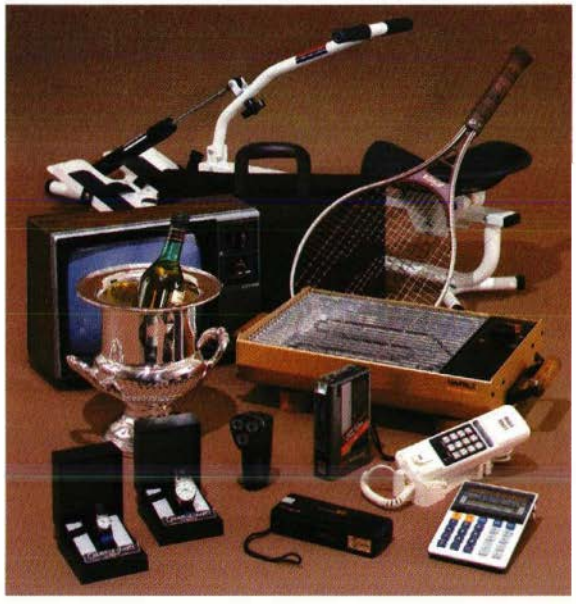
†Some remote locations might require an additional day.



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Avoiding Fee Disputes

Recently a non-attorney friend of mine (I have several) mentioned that she had just finished service on an arbitration panel of the Association's Fee Arbitration Board. It was the fourth time she had served in that capacity. She had been appointed to the Fee Arbitration Board during my term on the Board of Governors upon my recommendation, and I was naturally interested in her evaluation of the fee arbitration procedures of our Association from a lay person's perspective.

She explained that her experience on the several panels on which she had served was interesting and educational. She believed the procedures were efficient, fair and effective. So far, so good! However, she lamented that the fee dispute which had been presented to each panel arose basically out of the same type of claim. The lawyer involved had failed to communicate with the client in a meaningful fashion, if at all, about the nature of the fee and the extent of service provided.

"Why," she asked, "can't your Association educate your members to discuss fees fully and frankly with clients, and why don't you encourage lawyers to keep clients informed of the nature of the services being rendered on that client's behalf".

Are the assumptions which underlie her questions correct? Do lawyers in the state of Washington communicate properly with clients about fees in a timely manner—candidly and early in the representation? Obviously many do, and they enjoy the benefits of the excellent client-lawyer relationship which this practice fosters, not the least of which is the avoidance of fee disputes. But many lawyers do not. Failure to communicate properly about fees is the core of ninety-five percent of the fee disputes which are brought before the Fee Arbitration Board on client petitions.

Bar staff advises the most common complaints in fee disputes are:

1) No written fee agreements;

2) No information on billing statements;

3) Refusal on the part of the attorney to itemize and/or to discuss the billing;

4) Increasing the hourly fees and not informing the client (basically a *continuing* communication problem);

5) No monthly billing statements. (In some cases the clients have received bills one or two years after completion of the case.)

Whether the fee agreement must be in writing depends upon the circumstances of the representation. However, the basis for or rate of the fee must be communicated to the client in any event (See RPC 1.5). When such communication is lacking, or when communication breaks down during the course of representation, the lawyer is inviting trouble with his or her client relationship. The subsequent, almost inevitable, dispute is bothersome and time consuming to the lawyer and painful, frankly, to our Association as well. The lawyer who becomes involved in a fee dispute with a client because of improper office procedures does a disservice to the public relations effort of our Association in the long run.

Of more immediate concern may be the psychological impact that accompanies a fee dispute. A recent California study of malpractice cases indicated that in almost every instance, when an attorney sued a former client for a fee, the client counterclaimed for malpractice. Other malpractice claims commenced against attorneys were believed to have arisen directly out of client initiated fee disputes as well. The lesson to be learned is two-fold: First, establish office procedures to avoid the fee dispute in the first place; and second, *N E V E R*, yes I said *N E V E R*, sue a client for a fee unless you are reconciled to the prospect of a counterclaim alleging malpractice.

The Fee Arbitration Board was established in 1974 as an alternative dispute resolution procedure to ameliorate these problems. We applaud the 138 attorneys and 101 non-attorneys currently serving on the Board and the splendid work they do on a voluntary basis. However, we wish there were not such a great need for their service.

I am suggesting that we as attorneys take stock of ourselves. We can sharpen our communication skills and make a conscious effort to do our part to lighten the workload of the Fee Arbitration Board. There will always be fee disputes of certain kinds, but none should be generated by reason of our failure to make an effort to communicate with our clients. In the long run, we will all be better off and, again, we will have better served our long-range goal of providing quality legal service to the public of Washington.

Bob Comfort

Notes From the Academy

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

Criminal Law And Procedure. Interpreting a U.S. Supreme Court case, Washington supreme court held unconstitutional roadblock stop of automobile made without reasonable suspicion or probable cause. It further invalidated Washington statutes purporting to authorize such stops. **State v. Marchand**, 104 Wn.2d 434 (9/12/85).—

G. R. Nock

Evidence. In a major decision, state supreme court held: *(1)*: When hearsay is offered against criminal defendant under exception for statements by co-conspirator, (a) judge, not jury, must make initial determination of whether conspiracy existed and whether defendant was part of that conspiracy; (b) prosecution has burden of establishing these foundational requirements by preponderance of evidence; (c) in determining existence or nonexistence of these foundational requirements, judge may consider evidence that is otherwise inadmissible; (d) judge is under no obligation to balance probative value against prejudicial effect under ER 403 in absence of request to do so; and (e) hearsay that satisfies this exception to hearsay rule may nevertheless be objectionable on the basis that it violates defendant's right to confront witnesses. *2*: Violation of defendant's constitutional right by improperly admitting evidence may be so insignificant as to be harmless. In determining whether violation is harmless, appellate court will no longer inquire into whether inadmissible evidence could have contributed to fact finder's determination of guilt, but will instead inquire into whether evidence that was properly admitted was so overwhelming that it necessarily leads to finding of guilt. Latter test is preferable because it allows appellate court to avoid reversal on merely technical or academic grounds, while insuring that conviction will be reversed when there is any reasonable possibility that fact finder had to use inadmissible evidence to reach guilty verdict. **State v. Guloy**, 104 Wn.2d 412 (9/5/85).—

K. B. Tegland

Local Government. Jointly operated county-city water department need not establish that property charged for operation of department is "specially benefitted" before it bills property owners for operational costs. Charges are not special assessments triggering constitutional provision conditioning assessments on property's being specially benefitted, but are imposed under police power of operating entities. Charges are fees, not taxes. **Teter v. Clark County**, 104 Wn.2d 227 (8/8/85).—

J. M. Vaché

Planning and Zoning. (*Case 1.*) Owner, applying for subdivision approval, proposed lots that complied with zoning's minimum lot size. It was arbitrary and capricious for town to deny on ground that irregular shape was contrary to public interest. **Carlson v. Town of Beaux Arts Village**, 41 Wn. App. 402, 704 P.2d 663 (8/7/85).

(*Case 2.*) City should not have approved subdivision plat without application signed by person who had notified city she claimed title to part of the land by adverse possession. RCW 58.17.165 requires certificate of dedication to be signed by all persons with "ownership interest," which claimant would be if she established her adverse possession title. Caution dictated that city should hold up plat approval once it had notice of her claim. **Halverson v. City of Bellevue**, 41 Wn. App. 457, 704 P.2d 1233 (8/12/85).—

W. B. Stoebuck

Real Property. Consumer Protection Act, RCW 19.86, was not violated where builder-vendor of new homes misrepresented in sale of one home that buyer would be provided with 10-year plan of prepaid home repairs. This act, being an isolated incident, did not have potential for repetition and thus did not affect public interest. **Jackson v. Harkey**, 41 Wn. App. 472, 704 P.2d 687 (8/12/85).—

W. B. Stoebuck

THE NEW RULES OF PROFESSIONAL CONDUCT PART II

by **Kurt Bulmer**

This is the second in a series of articles on the new Rules of Professional Conduct (RPC). Part I, which appeared in the October 1985 *Bar News*, covered background material and Rules 1.1 - 1.5. This article will cover Rules 1.6 - 2.3. The RPC can be found in the September 1985 *Bar News*, and most court rules sets are in the *Official Rules of Court – 1985-1986*, provided as part of the advance sheet service of the *Washington Reports*.

Rule 1.6 - Confidentiality

The confidentiality rule is essentially unchanged from the prior rule in Washington.

Section (a) prohibits the attorney from revealing client "confidences or secrets" without the client's consent except for disclosure impliedly authorized for carrying out the representation. Confidences are information covered by the attorney-client privilege. A secret is other information, gained in the professional relationship, which the client has requested be kept secret or which would embarrass or be detrimental to the client if disclosed, whether or not the client requested it be kept secret.

Section (b) provides that an attorney "may" reveal confidences or secrets in certain circumstances. The most controversial of these exceptions permits the attorney to reveal information to prevent the client from committing a crime. The "may" standard leaves up to the attorney's conscience and best judgment whether the nature of the crime is such that the attorney is willing to divulge what would otherwise be confidential or secret information. If the crime has already been committed, it is not permissible to reveal any information without client consent.

The rule also permits confidences or secrets to be revealed in fee disputes, in a criminal or civil defense of the attorney and in responding to allegations made about the attorney's conduct. Confidences or secrets "may" also be revealed pursuant to court order.

All exceptions to the strong prohibition against revealing confidences or secrets are permissive. Whether or not to disclose must be considered under the specific circumstances of each situation. The confidentiality rule is an important part of a number of other RPC rules. How the rule is interpreted can have significant impact on the client and upon the potential civil and criminal liability of the attorney. Because Washington's version differs from the ABA version, Washington attorneys practicing elsewhere should make certain they know the provisions of the confidentiality rule of the other jurisdictions in which they then practice.

Rule 1.7 - Conflict of Interest - General

At least 40% of the RPC involve conflicts of interest. The rules attempt to prohibit conflicts and strongly discourage attorneys from getting into situations that could lead to conflicts. Exceptions to the rules are sometimes provided, but extremely difficult to meet, at best.

Many attorneys feel they know a conflict of interest "when they see one." This simply is not accurate. Many successful malpractice cases, particularly those involving significant amounts of funds, are based upon an attorney's failure to recognize a conflict of interest situation.

Even if you do nothing else in connection with the new rules, at least read the provisions of RPC 1.7 through 1.13. You can avoid grief by understanding these rules and recognizing that even the hint of a conflict must be dealt with in a clear and defensible manner. This is true even if it means greater cost to clients, even if it means inefficiency in handling a matter and even if it means a significant personal and financial sacrifice on your

part. If the conflict is arguable, it will probably be interpreted against you in any subsequent proceeding based upon your conduct. The edicts of Rule 1.7 are simple: If two clients have interests directly adverse to one another *or* if representation of a client "may" be materially limited because of another client, a third party's interest or the attorney's interest, then a conflict exists. If the attorney is aware of the adverse interest or materially limiting factor before taking on the matter for a client, the attorney cannot take the client. If the adverse interest or materially limiting factor develops after taking on the client, the attorney must withdraw. If another client is involved, the attorney may well have to withdraw from representing that client as well. In considering whether or not to withdraw from representing both clients, be sure to review any potential for a violation of the confidences and secrets rule as well as the conflicts rule.

Exceptions to the general conflict rules are possible but require the attorney to draw "reasonable" conclusions about the effect the adverse interest or materially limiting factor will have on the representation. The exceptions also require written consent from all clients involved. Attorneys should avoid use of the exceptions since any dispute at a later date may be "proof" that the "reasonable conclusion" wasn't reasonable at all. If you want to rely upon the exceptions, at the very least have your clients get advice from independent counsel even if you have to foot the bill for this consultation.

Rule 1.8 - Conflict of Interest - Prohibited Transactions

This rule specifically sets out ten conflicts that otherwise fall within the scope of the general rules of 1.7.

Section (a) prohibits business transactions with a client or acquiring a pecuniary interest adverse to that of a client. An exception is provided if the transaction is fair and reasonable, if the client has an opportunity to get independent counsel and if the client consents. It is best, however, to avoid having transactions with a client. In any post-transaction dispute, it may be impossible to show the transaction was "fair and reasonable" since the burden rests entirely on the attorney to demonstrate this. If the deal is too good to pass up, then give up the client and send him or her to another attorney for representation.

Section (b) prohibits use of client information to the detriment of the client.

Section (c) is a new provision. It prohibits an attorney from preparing a document, other than for a relative, which gives the attorney a substantial gift. The rule is specifically aimed at testamentary gifts. Send a non-relative client who wants to name you in his or her will to independent counsel for preparation of the will. Don't draft the will and have it reviewed by somebody else. Don't have anything to do with preparing it. If you are the independent counsel, be sure that you will be

able to defend your independent status. Before concluding a case, an attorney cannot make an arrangement which gives the attorney literary or media rights based on accounts of the client's case. Section (d).

Continuing the previous rule in Washington (which is significantly different from the ABA rule), Section (c) of 1.8 prohibits giving financial assistance to a client. Providing advances for litigation expenses is permitted. The client must remain ultimately liable for the cost. (The Washington State Department of Revenue may require actual notice to experts, court reporters, etc. of the "agency" status of the attorney. (See the October 1985 *Bar News*, page 24.)

Insurance defense counsel should pay attention to Section (f). A non-client is generally not permitted to pay a client's fees, but with client consent and no interference with the attorney's independent judgment, such payments can be made. This is basically the old rule. However, a new wrinkle has been added: The rule specifically provides that the confidences and secrets of the client be protected from the non-client payor. Obviously the client can and generally will consent to such disclosure, but who must get that waiver? How should attorneys avoid problems when policies require disclosure of confidential information to obtain coverage? An attorney being paid by a non-client should be certain to get the written consent of the client before divulging any information to the non-client payor.

Section (g) requires full disclosure to, and the consent of, all clients in an aggregate settlement or agreement in a civil or criminal matter. This continues the old rule.

Section (h) reflects a change in concept: An attorney is now permitted to limit his or her malpractice liability by contracting with a client. However, before making any actual agreement, the client *must* have independent counsel. Any independent counsel who advises a client to accept such an agreement had better be prepared to stand in the shoes of the original attorney, since a client denied relief because of such a clause will surely seek it from the independent counsel who recommended it in the first place. In all but the most unusual of circumstances, limiting malpractice exposure by agreement with the client simply will not be possible. An additional provision of this section prohibits settling a malpractice claim with an unrepresented client or former client without giving written advice that the client ought to have separate counsel. This is a new requirement.

Attorneys who are related to each other are prohibited from appearing on opposite sides of a case without their clients' consent. This new prohibition applies to parents, children, siblings and spouses. Section (i). Finally, Section (j) prohibits acquiring a proprietary interest, other than an attorney's lien or contingency fee contract, in the cause of action or subject matter of the litigation. This represents no change from previous rules.

Rule 1.9 - Conflict of Interest - Former Client

This rule prohibits representing a new client if that person's interests are materially adverse to a former client *and* if the new client's case involves the same or substantially the same matter as the former client's. If consent of the other client is obtained, representation is possible. The rule also prohibits using a confidence or secret to the detriment of a former client. This provision may thus prevent an attorney from representing a new client even if the new matter is not the same as that of the former client's.

Rule 1.10 - Imputed Disqualification

If one lawyer in a firm is prohibited from representing a client, all lawyers in the firm are prohibited from representing that client. This imputed disqualification applies to 1.7 (general conflict rules), 1.8 (c) (preparing an instrument with a gift), 1.9 the (former client conflict) and 22 (serving as an intermediary).

The rule can be waived under the waiver rules of 1.7, which is to say it is very difficult, if not impossible, to get an effective waiver.

Rule 1.10 also deals with conflicts arising where an attorney has associated with a firm or has terminated an association with a firm. Where the attorney associates with a firm, there is a strong prohibition against any member of the new firm handling a matter in opposition to a former client of the joining attorney. There is no prohibition if the joining attorney does not have confidences or secrets of the former client. Given the broad definition of confidences or secrets, virtually anything the attorney knows

may serve to disqualify the attorney and new firm.

Where the attorney has left the firm, the old firm may represent the opposite side in matters the departing attorney starts to handle in his or her new position. This assumes the departing attorney did not work on the matter while with the old firm and obtained no confidences or secrets about the old firm's client while still with the firm.

Rule 1.11 - Successive Government and Private Employment

This rule makes special exceptions to the imputed disqualification rule of 1.10. Government attorneys who have moved to the private sector cannot represent someone on the other side of a matter the attorney worked on in his or her government capacity. The government can waive this disqualification. Even if the attorney is disqualified, the law firm is not if the attorney is screened from the case and the government is alerted to the situation. Section (a).

What if the attorney has obtained information about a person while the attorney was in government service? The attorney cannot use that information against that person when the attorney has moved into the private sector, says Section (6).

A private attorney who has moved into a public position is prohibited from "participating" in a matter that he or she handled as a private attorney, except where authorized by law. Section (c) also prohibits a government attorney from negotiating for private employment with a potential employer who is involved in a pending matter being handled by the attorney.

The final two sections of the rule broadly define "matter" and "confidential government information."

Rule 1.12 - Former Judge or Arbitrator

Rule 1.12 (a) prohibits a lawyer from representing a client on any matter that the lawyer has heard when acting in any judicial capacity. A new aspect of the rule expands this prohibition to include arbitrators.

Just as with government attorneys, judges or arbitrators cannot negotiate for employment with anyone who is presently appearing before them. Section (b).

If an attorney has been a judge or arbitrator and is prohibited from representing a client, his or her firm may nonetheless represent the client if the former judge or arbitrator is screened from the case and notice is given to the appropriate tribunal. Section (c).

An arbitrator who was part of a partisan multi-member panel can subsequently represent the party which appointed him or her. Section (d).

ABA Rule 1.13 - Organization as Client

The ABA version of Rule 1.13 (conflicts when an organization is the client) was convoluted and ambiguous and was not adopted in Washington. As a result, three of the rules have been renumbered. ABA 1.14,

1.15 and 1.16 exist in Washington as 1.13, 1.14 and 1.15, respectively. Remember this number difference when researching decisions in other jurisdictions.

Rule 1.13 - Client Under a Disability

For the first time, the rules recognize that a minor or mentally disabled or otherwise impaired person may not be in a position to make decisions about his or her case. The attorney is required to maintain as "normal" a client-lawyer relationship as possible but does not violate professional responsibility rules by seeking a guardian for the impaired client.

Rule 1.14 - Preserving Identity of Funds

The ABA version of the trust account rule was completely replaced with the existing Washington trust account rule—former CPR Rule 9. The trust account rule was thoroughly reviewed in connection with the Interest on Lawyer Trust Account (IOLTA) amendments and was left intact. The trust account rules will not be addressed here other than to remind attorneys that your IOLTA trust accounts must be in place at this time. If you or your firm has not done so—do so immediately.

Rule 1.15 - Declining or Terminating Representation

Section (a) *requires* withdrawal from representation of a client if continued representation will result in violating the law or the RPCs (this section is what forces withdrawal in a conflict situation) if the attorney's physical or mental condition impairs his or her ability to represent the client or if the attorney is discharged.

Section (b) *permits* withdrawal in those situations summarized in subsection (6), which permits withdrawal for any "good cause." Despite "good cause," an attorney must continue the representation if ordered to do so by a tribunal. Section (c).

An attorney who does withdraw must take reasonable steps to protect the client's best interests. Section (d).

Rule 2.1 - Advisor

This rule touches indirectly conflicts of interest. It requires the attorney to give independent and candid advice, which can include strictly legal considerations as well as those moral, economic, etc.

It is from the mandate that advice be "independent" that the many other conflict of interest rules are developed. The other rules are necessary because of the need to prohibit certain types of conduct and the desire to delineate specific types of situations. As a result, we have the complex conflict delineation scheme found throughout the rules.

Rule 2.2 - Intermediary

The introduction of the concept of "intermediary" permits what might otherwise be a conflict. To serve as an intermediary between two clients, an attorney must satisfy threshold requirements: complete disclosure to the clients of the implications of the joint representation; their written consent; a reasonable belief that the clients' interest can be served and a belief that the attorney can be impartial.

Since this is new territory, an attorney should carefully review the threshold requirements of the rule. There are at least nine discrete elements which must be addressed. Proceed with caution—the risk of having an "intermediary" situation turn on you with unpleasant results is high.

An attorney who determines to serve as an intermediary must carefully counsel each client so that the client can make an independent decision about his or her situation. Section (b).

At the slightest indication of dissatisfaction, the attorney serving as intermediary must withdraw and cannot represent either client. Section (c). The imputed disqualification of Rule 1.10 extends this prohibition to all members of the attorney's firm.

Rule 2.3 - Evaluation for Use by Third Persons

Rule 2.3 permits the attorney to undertake an evaluation of a client's matter for use by a third party. Such evaluation, particularly in securities law, may require the attorney to assume fiduciary responsibilities to the third party. Ordinarily, such an obligation to a third party would bring an attorney into conflict with his or her responsibilities to the client.

However, if the attorney is confident that the evaluation is compatible with "other aspects" of the relationship with the client, and if the client consents to the evaluation being made, it is permissible to provide the evaluation to the third party. Presumably the third party could pay for the evaluation pursuant to RPC 1.8(f).□

* * * * * *

Part III will discuss candor toward tribunals and opposing counsel, trial conduct and publicity, the attorney as witness and responsibilities of partners and associates.

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

ANNOUNCING

Judicial Evaluation of Lawyers

A voluntary program to increase lawyer competency

Through the joint efforts of members of a task force from the Washington State Bar Association, the Superior Court Judges' Association and the District and Municipal Court Judges' Association, a program has been established for trial judges to critique the performance of lawyers trying cases in their courtrooms. The purpose of this program is to increase lawyer competency.

This is strictly a voluntary program. No lawyer will be critiqued unless he or she requests the judge to do so. The program is also optional on the part of the judges. Some judges will be unable to participate because of time pressures or other reasons.

Any lawyer who wishes to have his or her trial performance critiqued by the trial judge should make the request to the judge in advance of the trial. (A request form and list of suggested evaluation guidelines are available from the Washington State Bar Association and many courthouses.)

A lawyer should inform opposing counsel of his or her request and obtain the permission of opposing counsel to meet privately with the judge after trial to hear the judge's critique. The Code of Professional Responsibility Committee has rendered an informal opinion that such a private meeting with the trial judge without the consent of opposing counsel would invite violation of DR-7-110. The judge in no case will discuss the merits of the case. He or she will simply evaluate performance in a given trial.

The form of the critique itself will be entirely up to the discretion of the trial judge. For most judges it will probably take the form of an informal oral discussion, wherein the judge points out the portions of the trial during which, in the opinion of the judge, the attorney performed well, and those areas where the judge believes the performance could be improved. Suggested guidelines include such areas as:

- Judicial Critique of Opening Statement;
- Judicial Critique of Closing Argument;
- Judicial Critique of Voir Dire; and
- Judicial Critique of Actual Trial.

The performance evaluation, whether oral or written, is strictly confidential between the judge and the lawyer assessed. Any written comments should be destroyed once the judge advises the lawyer of the assessment.

Adopted by

WASHINGTON STATE BAR ASSOCIATION
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Detail of "Spring Clouds over the Waterville Plateau" —W.R. Gilbaugh

Towards a Competent Reality

by **Michael R. Tabler**

Where is the Douglas County seat? What incorporated town in the state of Washington has the highest elevation? Where would you find a lawyer so presumptuous as to willingly address his peers on professional competency?

I'm sure most of you quickly recognized that the answer to all of the above questions is "Waterville".

Actually, I experienced more than a little trepidation when I was asked to write about my views on the competency issue. Why would some country lawyer be invited to comment on an issue as nebulous as competence?

On further thought, though, it occurred to me that all lawyers should be willing to share their concerns about this topic. After all, recurring incompetency affects the public's perception of the legal profession. It costs clients time and money. It contributes to court congestion and influences malpractice premiums. Professional competence, or the lack of it, touches every practicing lawyer.

There are several reasons why most of us find it difficult to deal with chronic incompetence, let alone write about it. For one thing, the notion of competence is rather subjective. It's hard to define. For another, recurring incompetence is hard to locate. It does not seem to discriminate against any particular group of lawyers. It can (and does) occur anywhere.

The toughest problem, perhaps, is that most of us are not anxious to confront a chronically incompetent lawyer with suggestions on how to correct his or her professional shortcomings. It's easier to confine our complaints and criticisms to secretaries and associates.

I recall the one occasion when I decided to speak to another lawyer about what I perceived to be a consistently incompetent professional effort. My decision was provoked by a particularly frivolous action filed against one of my clients. During the discovery process I was, admittedly, less than subtle in letting opposing counsel know that I felt his suit was factually weak and legally without merit.

After prevailing on summary judgment, I confronted the lawyer with my concerns about the inept nature of his performance. Other than an occasional, mild disagreement, my comments didn't provoke much of a response—not then, anyway.

About three weeks later, I was notified that a complaint had been filed with the Bar Association asking that I be disbarred for unethical and unprofessional conduct. You guessed it. The complaint was drafted and filed by the lawyer whose performance I had criticized.

The fact that the complaint was quickly dismissed didn't console me very much. I determined that it was more prudent to refrain from unsolicited criticism of a lawyer's performance than to risk professional reprisal.

On Being "Roe-sted"

Judges tend to be more effective than lawyers when commenting on an attorney's professional weaknesses. Several years ago I appeared before the Court of Appeals in Yakima. The late Willard J. Roe happened to be on the panel that day.

Judge Roe always demanded a competent, professional effort from all attorneys appearing in his courtroom. He didn't hesitate to let you know if

your performance didn't measure up to his standards.

As I took my seat in the courtroom, Roe was addressing a young lawyer who was representing a client in a criminal appeal. It was obviously the attorney's first appearance in the Court of Appeals. Judge Roe was lecturing the lawyer on the numerous inadequacies in the lawyer's appellate brief, including the lawyer's failure to comply with any of the provisions concerning proper format. If there was one thing that annoyed Judge Roe, it was lack of proper format. On top of everything else, said the judge, the lawyer had misspelled the word "heroin" throughout the entire appellate brief. There was a pause. The lawyer nervously studied the floor in front of the bench. After a moment, Judge Ray E. Munson slowly leaned forward in his chair and remarked, "What Judge Roe says about your brief is true. But at least you were on time for your oral argument today. And being on time is always worth something in this court."

As the young lawyer thankfully fled from the podium, it became my turn. I had appeared before Roe several times at the trial and appellate levels. I should have known that he was "on a roll" that day.

But I was confident. My record in the Court of Appeals was very good, and I knew that I would win this appeal easily. I was so confident that I turned to my friend and former law school classmate, Paul Hart, and smugly told him, "Watch this."

Judge Roe let me get about half way through my prepared remarks before he interrupted to ask questions about the findings of fact and conclusions of law which I had prepared at the trial level. His questions were directed to what he thought was a clear misstatement of proper burden of proof. I was caught completely off guard.

Rather than give a brief reply or simply admit that I didn't know the answer, I made the awful mistake of arguing with Judge Roe about the adequacy of my findings and conclusions. I quickly realized my mistake, but it was too late. At that point, I would have gladly traded my inept oral argument for a few misspelled words in my appellate brief.

When I began to feel like a pile of "ground round", I glanced at Judge Munson, hoping that he might rescue me as he had the lawyer in the previous case. But, like everyone else in the courtroom, he just smiled and enjoyed Roe's demonstration of effective oral advocacy. My friend, Paul Hart, fought back the urge to burst into hysterical laughter while I suffered my most humiliating beating since the time my mother used her broom to break up a fight between my brother and me during a hockey game when we were kids.

Judge Roe's message was clear. Had I done a more competent job preparing the findings of fact and conclusions of law, I would have eliminated any arguable basis for appeal. (By the way, I still managed to win.) Since that unpleasant experience, I have tried to be very careful in preparing findings and conclusions. I don't swing hockey sticks at my brother, either.

Most lawyers welcome any con-

structive criticism a judge may offer concerning their presentation of a case. The recently developed system for judges to offer a critique of a lawyer's performance on a voluntary basis promises to be one of the more effective ways to enhance lawyer competency.

Policing

Lawyers and judges are not expected to assume the primary responsibility for policing recurring incompetence. A disciplinary system has been developed for that purpose. For the lawyer who steals money from a trust account or commits a crime, the penalties imposed by the system can be severe.

It is not perfect, however. One instance where the system may have promoted incompetence, rather than discouraged it, appears to have been corrected. The old disciplinary rules purported to prohibit the sharing of contingent fees by lawyers not in the same firm. This created a potentially dangerous dilemma for many lawyers who, like me, do not possess the expertise and/or resources to handle a sophisticated contingent fee claim. Once such a claim was referred to another firm, the referring lawyer was not entitled to receive any portion of the fee which might be ultimately earned. This disciplinary rule, in a sense, encouraged lawyers to pursue large contingent fee matters rather than forego a potentially lucrative pay day.

This problem was apparently corrected by the recent adoption of RPC 1.5(e). The rule provides that contingent fees may be shared in proportion to the services provided or by agreement when both lawyers are jointly responsible for representation of the client. Kurt M. Bulmer, former WSBA General Counsel, wrote in the October 1985 *Bar News* that this new rule allows lawyers to negotiate any deal they wish between themselves as to the division of a reasonable fee—even if one lawyer does little or nothing on the case other than refer it. It is hoped that RPC 1.5(e) will encourage the proper referral of contingent fee claims and will discourage instances when a lawyer might be otherwise tempted to handle a claim which is beyond his professional and/or financial abilities.

Conclusion

Is the disciplinary system as effective as it should be in dealing with chronic incompetence? I don't know. Lawyers are aware that stern disciplinary measures, *viz.*, disbarment, can be imposed in instances where money is stolen from a trust fund or some crime is committed. But are those same penalties invoked against a lawyer who, by reason of his own chronic incompetence, botches a couple of six-figure personal injury suits? This concern was raised by the Bar Association Task Force on Lawyer Competency. We recommended that the disciplinary system be revised to enable it to deal more effectively with recurring incompetence.*

Recurring incompetence is confined to a small minority of the Bar. The problems created by their chronic incompetence have wide-ranging effects. The disciplinary system must be constantly reviewed and improved to provide consistent standards for lawyer competence and to develop appropriate penalties for those who do not measure up. If lawyer competence is not the subject of continued scrutiny by the Bar, we may see more advertisements like the one in North Central Washington newspaper which recently invited all persons concerned about ". . . unethical and unprofessional lawyers. . ." to organize for the purpose of proposing regulatory legislation. This prospect, by itself, should be adequate to prompt your interest in the Bar Association's efforts to deal effectively with issues concerning professional competency.□

*The establishment of an Admonition as a new disciplinary measure was specifically targeted to deal with recurring incompetence [see July *Bar News*, p. 21.]

Michael R. Tabler is a sole practitioner with offices in Waterville and Coulee City. He was a member of the WSBA task force on lawyer competence.

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Choosing a Treatment Facility

by **Julieanne Paulette**

Drug abuse is a compulsive and continuous flight from reality. As many lawyers discover in their practices, substance abuse reaches persons of all ages. Its dimensions are of no small moment.

Lawyers are sometimes caught in the middle of the problem. Professionally, they may recognize pressures from the court, prosecution, or probation office for the client to take action to cope with drug or alcohol abuse. Lawyers themselves may be engaging in the same destructive behaviors that they take pains to tell their clients to avoid.

Many agencies provide drug and alcohol treatment. Before making a commitment to any facility, be sure to research your options. Visit several facilities. Don't be afraid to ask many, many questions; as with anything else, there are "good" treatment facilities and "bad" ones. The underlying problems which cause a person to abuse drugs or alcohol are as unique as the individual, even if the symptoms are not.

Do *not* take other people's advice or recommendation as *the* answer. Here are some areas which should be explored with potential treatment facilities before you and your client make the final decision. This is, at best, a beginning, so don't be afraid to come up with your own questions.

1. What are all costs involved with treatment?
   a) Admission fee
   b) Treatment fee
   c) Medical fees
   d) Other
2. What is the composition of the staff?
   a) Number and sex
   b) Qualifications
   c) Drug abuse treatment experience
   d) Special expertise
   e) Staff turnover
3. What are the admission policies?
   a) Criteria for admission
   b) Rapidity of admission
   c) Assessment criteria for treatment length
   d) Medical requirements
   e) Clothing/personal belongings allowed
4. What therapies are used? (Some possibles):
   a) Individual
   b) Group
   c) Family
   d) Reality Therapy
   e) Gestalt Therapy
   f) AA/NA
   g) Other
5. What is the length of treatment?
   a) One, fixed program length
   b) Varied program lengths to suit individual needs
6. What are the sleeping quarters like?
   a) Number of beds
   b) Private or dormitory arrangement
   c) Men's or women's quarters
7. What foods are served?
   a) All foods
   b) Health foods
   c) Sugar or caffeine free
   d) Low-salt
   e) Meat free
   f) Other
8. What physical fitness facilities are there?*
   a) Gym/yard/courts/trails
   b) Frequency of access
   c) Scheduled programs *e.g.*, calisthenics, aerobics, basketball, swimming
   *Is exercise required?
9. What is the extent of the program rules?
   a) Major
   b) Minor
10. What disciplinary action is taken for rule infractions?
    a) Restriction on privileges
    b) Extra duties
    c) Therapeutic exercises
    d) Termination
11. Is the program state-certified?
    a) If yes, for how long
    b) If no, why not
12. What are the visitation policies?
    a) Days
    b) Hours
    c) Restrictions on visitors
13. What is the termination policy?
    a) Authorized vs. unauthorized termination
    b) Clothing
    c) Personal money/secured property

d) Re-entry
e) Financial refunds

14. What is the dining area like?
    a) Location
    b) Seating arrangements
    c) Meal calls/times
15. What bathroom facilities are there?
    a) Number for men/women
    b) Location
16. What is the individual treatment plan?
    a) When the plan is developed
    b) Who is involved
    c) Followup
17. What is the composition of the Board of Directors?
    a) How many
    b) Number of men/women
    c) Ethnic breakdown
    d) Board turnover
    e) Qualifications
18. Who is the program director/ executive director?
    a) Identification
    b) Number of years in position
    c) Qualifications
    d) Experience in drug/alcohol abuse field
    e) Special expertise

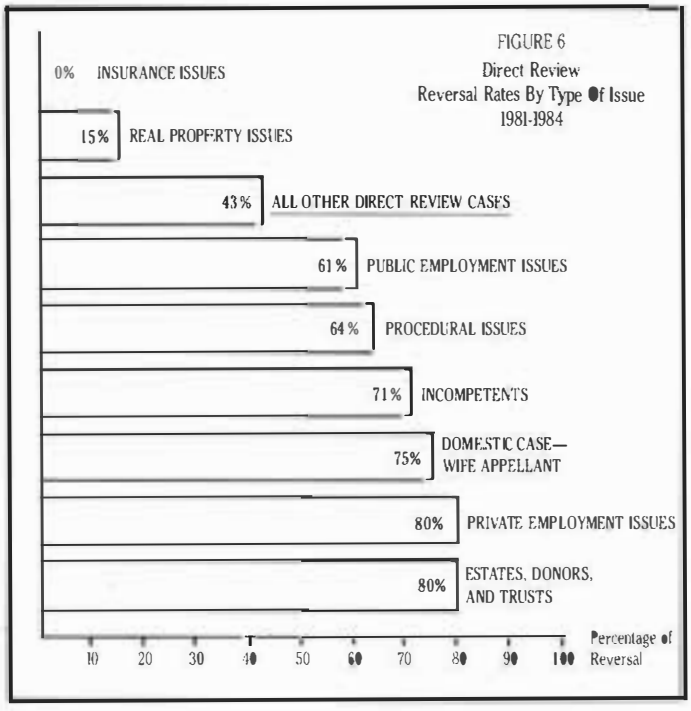
Treatment efforts are nil until one gets to the "cause" of the addiction or other problem. Treatment can identify the components of dysfunctional behavior. Clients may lack self-awareness, motivation or positive role models. They are often unable to give and receive love. They may not know how to deal with social, economic and family pressures.

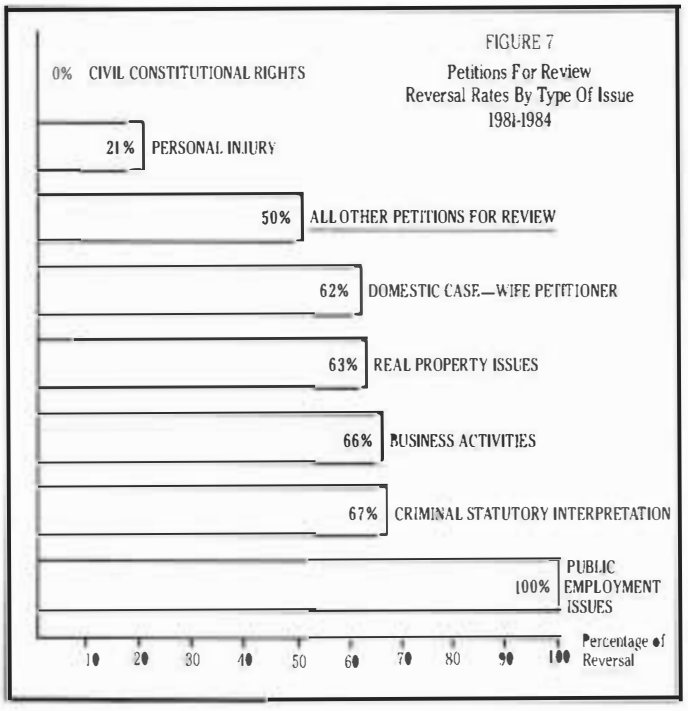
In the end, no matter what treatment program your client eventually chooses, one truth remains: By and large, the benefits your client receives from treatment are no more than the effort he or she is willing to invest.□

Julieanne Paulette *of Edmonds is assistant to the director of Conquest Center, a residential drug treatment program founded in 1970. State-certified, Conquest Center has two locations, one in King County and one in Snohomish County.*

What You Should Know
before seeking review
in the
Washington Supreme Court
Part II of II

by **Charles K. Wiggins**





Part I, which discussed the two routes to the Supreme Court; petitions for review versus direct review; reversal rates for criminal, domestic and civil cases and bench trials; jury trials and summary judgement appeared in the December 1985 Bar News.

Three Divisions Of the Court Of Appeals.

Up to this point, we have considered only the rate of reversal of trial court decisions. With respect to petitions for review, we should also consider the frequency with which the Court of Appeals itself is reversed. From 1981 through 1984, the Supreme Court reversed the Court of Appeals in 56% of all the petitions for review which it decided.

There is no significant difference in the frequency of reversal among the three divisions of the Court of Appeals. The reversal rate by division fluctuates from year to year and is not statistically significant.

Reversal Rates by Issue

The statistics presented above are based on broad classifications, which seem intuitively correct. One would expect to analyze criminal cases separately from civil cases, and summary judgments separately from jury trials. The statistical results may be surprising, but the classifications seem to be meaningful.

The rest of this article analyzes Supreme Court decisions by more unorthodox categories. Each decision was classified into one of 22 different issues. The classes were based on the type of party involved (such as criminal defendant, injured person, wife appealing from a dissolution decree), or on the substantive area of law (such as procedural issues, constitutional law, real property issues). Each case was placed in the class which seemed most appropriate. I then computed

the reversal rate for each class.

The reversal rates varied for different issues. Figures 6 and 7 show the issue for which the reversal rate varied significantly from the average reversal rate. Issues are not shown if the reversal rate for that issue did not vary significantly from the average reversal rate for all other civil cases.

On direct review, the cases least reversed involved insurance issues (coverage, premiums, and subrogation) and real property issues (conflicting claims to property, zoning or land use, landlord-tenant, and specific enforcement). The most frequently reversed cases on direct review involved estates, donors and trusts. Cases involving employment issues also had a high reversal rate: 61% for public employees and 80% for other employment issues. Figure 6 also reveals that the Supreme Court frequently reversed cases involving procedural issues (64%), incompetents (71%) and domestic cases in which the wife appealed (75%).

On petitions for review, cases were seldom reversed if they involved civil constitutional rights (zero percent) or personal injury (21%). In contrast to the low reversal rate for personal injury issues, cases were reversed 61% of the time if they involved other negligence issues (business and financial torts, products liability, professional malpractice, and property damages). Other classes of cases with high reversal rates were: public employment issues (100%), criminal statutory interpretation (67%), business activities, (*viz.* antitrust, consumer protection, franchises, securities, corporations, transportation, utilities) (66%), real property issues (63%), and wives petitioning for review in domestic cases (62%).

It is interesting to compare reversal rates on direct review with reversal rates on petitions for review. Cases involving public employees had a high reversal rate both on direct review (61%) and on petitions for review (100%). Similarly, the court frequently reversed domestic cases in which the wife appealed both on direct review (75%) and on petitions for review (62%). Cases involving real property were treated quite differently depending on the type of review. Real property cases were reversed only 15% of the time on direct review, but 63% of the time on petitions for review.

Significance of the Reversal Rates by Issue

Do the statistics in Figures 6 and 7 mean anything? The Supreme Court decides each appeal on the merits. Why would the Supreme Court reverse cases involving one particular issue more frequently than cases involving a different issue?

A combination of factors is probably responsible for the different reversal rates. Further research will help clarify those factors. Several possibilities follow.

Pure Chance: It is possible that the differences are accidental, and that the reversal rates in future years will be entirely different. The "chi square" test measures the probability that pure chance is responsible for variations in a particular factor among different groups. It indicates that there is less than one chance in one hundred that the different reversal rates by issue are caused by chance. Some reversal rates may be due solely to chance, but on the whole the differences are significant. Thus, we must look elsewhere to explain these differences.

Changes in the Law: This is a second factor which might influence reversal rates by issue. The court might take several years to work out the consequences of a change in the law, resulting in a temporary variation in the reversal rate for a particular issue. This factor appears to account for the reversal rates in domestic cases. On direct review, domestic cases in which the wife appealed were reversed 75% of the time, while cases in which the husband appealed were reversed only 28% of the time. Half of these cases involved the division of military pensions after *McCarty v. McCarty*, 453 U.S. 210, (1981). The husbands lost all of these appeals. As the dust settles after *McCarty*, the reversal rates may tend to equalize between husbands who appeal and wives who appeal.

Special Interest Groups: A third possible factor is the ability of some interest groups to defend their positions more effectively than unrelated individuals, either by carefully selecting the cases on which to seek review or by devoting more funds to their causes.

Judicial Attitudes: The most intriguing possibility is that subconscious attitudes towards different types of litigants may lead to different reversal rates on appeal. This possibility merits further study because investigation of Supreme Court decisions in a particular substantive area might reveal unarticulated attitudes which could help to predict decisions in that area.

The real property cases suggest possible underlying judicial attitudes. The court treats real property cases very differently on direct review than on petitions for review. Of the twenty cases decided on direct review, 60% were land use decisions, and all were decided in favor of the property owner. Most of the remaining eight cases were also decided in favor of the landowner.

Real property decisions on petitions for review followed a different pattern. Of the fifteen cases decided on

petitions for review, the Supreme Court reversed the Court of Appeals 80% of the time. The petitions do not disproportionately favor the property owner as do the cases on direct review.

The real property cases suggest that the court favors the property owner whenever presented with a novel issue (on direct review), but only accepts petitions for review when the court perceives the Court of Appeals' decision as erroneous. Analysis of the Court's decisions in other areas may reveal similar decision-making patterns.

Conclusion: What You Can Tell Your Client

We can now answer the hypothetical posed at the beginning of this article. Your client, the owner of a small automotive repair business, has asked about his chances on direct review in the Supreme Court in appealing an adverse summary judgment under the Consumer Protection Act. You can tell your client that the Supreme Court accepted about half of all civil cases filed directly in the Supreme Court. Those involving business activities do not have an especially high or low reversal rate on direct review, so you can advise the client that, if review is accepted, the chances of reversal by the Supreme Court are 43%. The fact that the case was decided on summary judgment makes no difference on direct review. Before seeking direct review, however, you should evaluate whether the appropriate grounds exist. Unless they do, the Supreme Court will probably transfer the case to the Court of Appeals.

If your case has already been decided by the Court of Appeals, you can tell your client that the Court only accepts about 14% of the petitions to review decisions of the Court of Appeals in civil cases. You can also tell your client that if the Supreme Court does accept review, the Court has typically reversed 66% of trial court decisions regarding business activities when those issues are presented on petitions for review. You can also point out that the chances of reversal are even slightly higher, since the Supreme Court is more likely to reverse on a petition for review when the case was decided on summary judgment. In any case, you should evaluate whether the case satisfies the considerations governing acceptance of review established by RAP 13.4(b). If it does not, review is unlikely in any event.

Prediction of the outcome on appeal is at best a hazardous endeavor. The outcome on appeal always depends upon the facts of the case, the strength of the legal issues, and the ability of counsel to present the facts and the law in an effective brief and oral argument. Despite the difficulty of predicting, clients need and deserve your best evaluation of the potential merit of their appeals. The data in this article can help you give your client a better informed opinion of the potential outcome of Supreme Court review.□

Charles K. Wiggins is a partner in the Seattle firm of Edwards & Barbieri, where 65-75% of his practice is in appellate courts.

LRE UPDATE

LRE Collaboration Yields New Resource for Schools

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

True or false? (1) It's illegal to sell marijuana but it's all right to give it away; (2) Juveniles may never be fingerprinted; (3) An ordinance is a law made by the U.S. Congress.

Such questions are being posed to high school students around the state by teachers who recently received updated editions of *You and the Law: A Secondary School Curriculum on Law and Justice in Washington State.* More than 1,000 copies of the 150-page resource notebook have been distributed, thanks to the joint efforts of three agencies.

Joining forces on revising, printing and distributing *You and the Law* were the State Bar, the Washington Council on Crime and Delinquency and the Office of the Superintendent of Public Instruction.

You and the Law was prepared to help secondary teachers inform students of their legal rights and obligations. Arranged in loose-leaf format, the curriculum includes sections on our legal system, criminal justice/juvenile justice and civil law. It contains a teaching guide, motivational activities, reproducible handouts for students, suggestions for supplementary materials and pre- and post-tests to evaluate student progress.

"I am *very* impressed with the revised edition," said one teacher who has been using the original edition for several years. "The students want to work on this material all year. Keep up the good work," she commented.

Originally produced in 1976 by the Washington Council on Crime and Delinquency, *You and the Law* was revised to reflect changes in state laws and to respond to suggestions by its early users. "Statewide input and support is imperative," observed **Larry Fehr,** executive director of WCCD, whose agency implemented the project. Numerous educational, legal and social service agencies helped produce the first edition, which was also supported by United Way funds.

Support during the revision process was provided by members of L.E.A.R.N., the Law-Related Education and Resource Network of Washington State, and members of the State Bar's LRE (Law-Related Education) Committee. Special assistance in reviewing the content was also provided by Bar members **Robert Boruchowitz** of the Public Defender's office and Robert Lasnik of the Office of the Prosecuting Attorney.

Funding to print the revised edition was granted by the State Bar. An initial distribution, coordinated by the Superintendent's office, provided two copies of *You and the Law* to each high school in the state. Participants in the Bar's MENTOR project, which pairs high schools and law firms, also received complimentary copies. Others who are involved in law-related education may request a copy (while supplies last) by writing to *You and the Law,* c/o WSBA, 505 Madison St., Seattle 98104.

As part of an ongoing effort, representatives from WSBA, WCCD and the SPI's office are now exploring the development of similar materials for intermediate (junior high) and elementary schools in Washington.

By the way, for those of you who took the sample test in the opening paragraph—each statement is false.

LRE Update is a regular column featuring news and notes of law-related education (LRE) activities. The authors welcome your comments.

WASHINGTON STATE BAR **NEWSLINE**

The Board's Work

by **Carole Grayson**

Olympia, January 17-18, 1986

Present: All Governors and President Comfort. Also present: Herbert Weiland (Superior Ct. Judges Assn.), Gerry Alexander (Ct. of Appeals Judges Assn.), John Ruhl (SKCBA Young Lawyers), John Gray (Govt. Lawyers), Rebecca Baker (Dist. Ct. Judges Assn.), Richard Barbieri (SKCBA Bd. of Trustees), Patrick Sutherland (Wa. Assn. of Prosecuting Attys.), Robert Farrell (WSBA Counsel), John Michalik (WSBA Exec. Dir.).

COURT REFORM The Governors voted:

- 10-0 to sponsor ABLE, the Appelate Backlog Elimination Project, with a one-year sunset provision. [See "Board's Work", Jan.'86 Bar News p.10.]
- 9-1 (Ed Lane dissenting) to oppose any new transaction fees.
- 10-0 to support creation and implementation of the Office of State Public Defender (§§ 501-506 of SB 4498). Al Lyon of the Criminal Law Section, Wa. Defender Assn., and director of the Snohomish Co. Public Defender Assn., and Thurston Co. Prosecutor Pat Sutherland spoke in favor of the proposal. An amendment calling for a Public Defender, prosecutor and judge to develop the plan failed to get a second. Joked Ted Zylstra, it would have "put the fox in the hen house."
- 8-2 to oppose amending RCW 2.06.030 to give the courts authority over domestic relations appeals and appeals from judgments of $10,000 or less. The section is "arbitrary", said Don Bond, whose motion prevailed. "It's an offensive thing to say to one class that what you have isn't important." Roy Moceri and Lane dissented.
- 10-0 to oppose amending RCW 2.08.080, which would eliminate concurrent jurisdiction of the Superior and District Courts.

TORT REFORM Proposals to limit attorney fees and noneconomic damage awards have the "potential to blow up the Association," Bar lobbyist John Fattorini told the Governors, who voted 10-0 to send a letter to Insurance Commissioner Dick Marquardt supporting his committee as it studies the issues. Chaired by retired King Co. Superior Ct. Judge Fran Holman, it includes Richard Roddis, Mary Ann Ottinger and Robert Keating of Seattle; Bertel Johnson of Tacoma; Bob Whaley of Spokane and Duane Lund of Kirkland.

LIENS A motion to support an amendment to the mechanics lien law to make the common address insufficient failed 2-8. Said Lane for the majority, "I don't see that we're benefiting anyone but the title companies by requiring a legal description." Angelo Petruss and Zylstra dissented.

PROCESS SERVERS Mick Walsh of the Wa. St. Process Servers Assn. sought support for a bill permitting voluntary "certification" of process servers. The Governors generally approved of the concept but felt the bill lacked training, testing or experience standards. They deadlocked at 5-5 on an amendment allowing process servers, "whether or not certified", to perform their duties on private property and on Sundays or court holidays. [See Oct. '85 Bar News "How Is Justice To Be Served?" p. 18.]

WHEN IS 5% ENOUGH BUT 43.36% INSUFFICIENT? The Referendum sponsored by Howard Todd of Seattle, which would have subjected court rules changes affecting the practice of law to membership vote, fell 844 votes short of "validation." 5,512 members, or 43.36%, voted. Bar By-laws require 50% of active members to vote to "validate" results. The Bar is tabulating the results.

The Governors sidestepped a proposal to increase the referendum signature requirement of Art. VII, §8 from 250 active members to 10% of the Bar. Instead, they voted 10-0 to have President Comfort appoint a committee to study WSBA resolution and referendum processes. Steve Reisler and Elizabeth Bracelin called for the appointment of lawyers already involved in the processes to assure a diversity of viewpoints.

SKCBA trustee Richard Barbieri noted that 5,500 members voting on a referendum do not make it "valid", yet 100 or 200 lawyers voting on a resolution at the Annual Meeting is enough to get it before the Governors.

JULY 1985 BAR EXAM Originally, 68% passed the essay section, 54% the ethics and 47% overall. On appeal, 14/44 passed the essay section and 116/150 the ethics. Final stats: 567/812 (70%) passed the essay section, 556/809 (68%) the ethics and 497/865 (57%) overall. 86 appellants became eligible for admission.

LEGAL AID The Governors approved 9-0 (Moceri absent) the Legal Aid Committee's resolution opposing a Legal Services Corporation proposal to prohibit LSC progams from contracting with attorneys who have been employed by an LSC program within the past two years. The regulation "would inappropriately restrict the availability of experienced lawyers in the provision of legal services to the poor," said the resolution.

PUBLIC PROCUREMENT, PRIVATE CONSTRUCTION After a presentation by Donald Davidson of Seattle, the Governors unanimously approved in principle a new Bar section, Public Procurement and Private Construction. The group appears before the Board in July for final formal approval.

DISPUTE RESOLUTION The Governors voted 9-1 (Zylstra dissenting) to rename the Arbitration Committee the Dispute Resolution Committee and to expand its By-laws. The old name was "parochial", said committee chair Dick Manning of Seattle. "Other systems of dispute resolution are recognized by court rule." By-laws now include the study and evaluation of "arbitration systems, mediation systems, negotiation and conciliation systems and any other dispute resolution process."

UPCOMING MEETINGS FEB 14-15 (TACOMA, Sheraton), MAR 21-22 (YAKIMA, Thunderbird), APR 18-19 (VANCOUVER, WA, Inn at the Quay).

CLE CLEARINGHOUSE

ADVANCE ALERT! How The Small Law Firm Can Compete Effectively

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

Make plans now to make the most of a rare opportunity—the chance to attend a law office management seminar featuring nationally recognized speakers and co-sponsored by the ABA's Section of Economics of Law Practice and our own Law Office Economics and Management Section! "How The Small Law Firm Can Compete Effectively" will be presented in Seattle at the Westin Hotel on Wednesday evening, April 30 from 6:00 - 9:00 p.m.

Registrants will receive practical tips from three exceptional leaders in the area of law office management—**Jay G. Foonberg** (Beverly Hills, CA), **J. Harris Morgan** (Greenville, TX) and **Rick Rodgers** (Buies Creek, NC).

Foonberg, author of *How To Start And Build A Law Practice*, will address "Marketing By Small Firms." Morgan, past chair of the Economics of Law Practice Section and the author of many articles and publications on law office management, will speak about the "Six Systems." Rodgers, a *National Law Journal* columnist, who has been a consultant to Fortune 500 companies, will comment on "The Use Of Computers By Small Firms."

Registration for this special program is limited. Door registrations will be accepted on a space-available basis only.

The seminar is approved by the Washington State Board of Continuing Legal Education for 3.00 hours of credit. For more information, please contact program coordinator Louise Thomas, WSBA, 505 Madison Street, Seattle, WA 98104 or telephone (206) 622-6021.

And don't forget. . . .

"Land Use Damages and Remedies—Theories, Proof, and Strategic Considerations," will be presented at two sites during February: Thursday, February 20, (Spokane—Cavanaugh's Inn at the Park) and Friday, February 21 (Seattle—Madison Hotel).

The program deals with such issues as which types of governmental restrictions amount to a "taking" under the Fifth Amendment, how mandatory development conditions affect parties, and what damage theories should be claimed. Faculty members assembled by Program Chair **Patricia K. Schafer** (Deputy Prosecuting Attorney, Kitsap County) include **Elaine L. Spencer** (Bogle & Gates, Seattle), Prof. **William B. Stoebuck,** University of Washington School of Law, Seattle), **J. Richard Aramburu** and **Jeffrey M. Eustis** (Seattle). **Robert D. Tobin** (Deputy Prosecuting Attorney, Thurston County), **Larry C. Martin** (Ogden, Ogden & Murphy, Seattle), **John Montgomery** (Feltman, Gebhardt, Eymann, Jones & Montgomery, Spokane), **Thomas H. Wolfendale,** (Ferguson & Burdell, Seattle), **Peter J. Eglick** (Seattle), **John E. Keegan** (Cohen, Keegan & Goeltz, Seattle) and **Amy L. Kosterlitz** (Buck & Gordon, Seattle).

For further information, please contact Colette Cao, Program Coordinator, WSBA, 505 Madison Street, Seattle, WA 98104 or telephone (206) 622-6021.

Approved CLE Courses

WASHINGTON STATE BAR ASSOCIATION

Chapter 11 Workshop
7.00 credits **$135.00**

FEB 7	Spokane (Cavanaugh's Inn At The Park)
FEB 14	Seattle (Westin Hotel)

Land Use Damages and Remedies
7.00 credits **$120.00**

FEB 20	Spokane (Cavanaugh's Inn At The Park)
FEB 21	Seattle (Madison Hotel)

New Perspectives in Paternity and Child Support Litigation
4.00 credits **$75.00**

MAR 6	Yakima (Convention Center)
MAR 7	Seattle (Westin Hotel)

Videotaped Presentations:

MAR 20	Spokane (Ridpath Hotel)
MAR 27	Bellingham (Holiday Inn)
APR 3	Bremerton (Bayview Inn)
APR 4	Olympia (Westwater Inn)

SEATTLE-KING REPORT

by **JAMES L. VARNELL**

Honors. **David W. Soukup** was honored by the National Committee for Prevention of Child Abuse for his leading role in establishing (in King County) the nation's first volunteer guardian ad litem program. **Richard M. Rawson** was recently elected chairman of the WSBA International Law and Practice Section. **Suzanne Koestner** was a member of the U.S. Department of Commerce delegation that visited China recently.

Office Moves. **James L. Magee** has joined Graham & Dunn, and is the newly-elected chairman of the WSBA Antitrust Section. **Patrick W. Dunn** has joined Riddell, Williams, Bullitt and Walkinshaw. **Jeffrey J. Miller** has joined Seed and Berry, who have moved to the Columbia Center. **Kim Snyder** has been promoted to supervisor of tax at Touche Ross, and **Mark Tueffers** has joined its tax department.

Kevin J. Henderson has joined Skipper's, Inc. as real estate counsel. Reed, McClure, Moceri, Thonn & Moriarty announces that **Barbara J. Britt, Charles A. Robinson, Mary McIntyre-Cecil, Karin L. Nyrop, Joseph P. McCarthy** and **Kathryn L. Feldman** have become associates of the firm. **Kellis M. Hinkson** has become an associate with Siderius, Lonergan and Crowley. **Larry Jackson** has opened an office in Bellevue. Revelle, Ries & McDermott, P.S. and Nelson and McCarthy, P.S. have merged under the name of Nelson, Revelle, McCarthy, Ries, McDermott and Hawkins, P.S. **Peter L. Maier** has become a principal in Armstrong and Alsdorf, P.C. **Steven C. Gilyeart** has joined Dempcy and Braley, P.S. as a principal. **Margaret E. McCartney** has opened her office in the First Interstate Center.

Wes C. Uhlman has moved to West Harrison Building. **Delbert J. Bernard, Joan H. Pauly** and **Bruce A. Kaser** have formed the firm of Barnard, Pauly and Kaser, P.S. **G. Lawrence Salkield** has opened his practice in the Seattle-First National Bank Building. **Dore Svei** has been appointed director of structured settlements with Compensation Programs, Inc. Ferguson and Burdell has opened a Bellevue office. Bogel and Gates has opened an office in Olympia.

Resolutions for 1986. This correspondent would appreciate readers of this column doing what they can to ensure that the following New Year's resolutions are maintained:

Bill Leedom: To make no more closing arguments to a jury with his fly open;

Pat LePley: To settle at least one case in 1986 for more than the amount of special damages;

Tom McElmeel: To never challenge a foursome of Bob Kuvara, Paul Houser, Bill Levinson and Phil Biege to a "skins game" when his foursome includes Judith Eiler, Darrell Phillipson and Pete Curran;

Judges **Don Howard** and **Jack Scholfield:** To each donate at least one hour of their time to demonstrate to fellow jurist E.T. Leverette how to avoid sand traps at Enumclaw;

Mike Duggan: To not wear the same 1970's double-knit suit to court for more than three consecutive days; and

Marc Slonim: To quote French and Shakespeare only in briefs submitted to appellate, and not trial, courts.

EAST KING COUNTY REPORT

by **DOUGLAS W. HARRIS**

William N. Snell has become associated with Oseran, Hahn, Kelley & Spring, (and now, Maimon), P.S. Snell was formerly Chief Hearing Examiner for the City of Seattle and in private practice there. Welcome to the Eastside!

The annual East King County Bar Association Christmas "Banquet" (hors d'oeuvres and no host bar) was held December 19 at the BAC. **Stephen Hanson** and **Diane Lander-Vanderbeek** were elected new trustees. New Vice President is **Mary Gaudio** and new president is **Christopher Frost.**

Effective sometime before this column went to press, the new address for **Sandy Erickson** and **Mary Anne Barkshire** is: 10801 Main Street, Suite 204, Bellevue, WA 98004, (206) 455-1414.

Finally, on the financial scene, EKCBA Treasurer **Ray Dunlap** filed his December report showing that the EKCBA is still solvent and Ray is doing a good job in protecting the Board from itself. There was no mention of a Swiss Bank Account. Keep those cards and letters coming!

SKAGIT COUNTY REPORT

by **WM. H. NIELSEN**

Parties and get togethers lead off the news from Skagit County as might be expected. **Ken Evans** of McIntosh, Lewis, Evans and Nielsen recently won a bet from his partners because he was able to obtain 66% of the entire bar association at a gathering at a local restaurant for an evening of congeniality and fellowship. Prominent in attendance were Superior Court Judges **Walter Deierlein, Jr.,** and **Harry Follman** of Skagit County and Judge **Howard Patrick** of Island County. Also in attendance were Superior Court Commissioner **Gilbert Mullen** and District Court Judges **Larry Moller** and **Eugene Anderson.** The judges put on a mini CLE on sartorial splendor, but no credits were applied for or granted. Your author had a pleasant discussion with **Judge Anderson** after the presentation about an opposing viewpoint.

Peg Cahill of Peg Cahill, our resident sky diver, recently acquired a square parachute (her first) and a new husband (not her first). So far no one in the county has seen either one.

The newest addition to Skagit County is a recent graduate of the University of Washington, **Susan Ward,** who is in Paul Luvera's office. Susan is apparently one of the few who know the ethics of the legal profession. Also in Paul's office is **John Kamb, Jr.,** who recently married and honeymooned in Italy.

SPOKANE COUNTY

by **JUDY J. FOSTER**

Raymond R. Tanksley was sworn in as the most recent District Court Judge for Spokane County in an investiture attended by many of the district court judges and staff members. Tanksley replaces the Honorable **James Murphy,** who was elected to the Superior Court bench in November.

Legal Services of Spokane County recently announced the appointment of a new executive director. **Leroy Shuster,** an attorney from Lincoln, Nebraska took over the duties as director on December 30, 1985. Shuster was in private practice as well as being associated with legal services programs in Nebraska before moving to his appointment in Spokane. We all welcome Shuster and would like to give a big thanks to **Norman McNulty,** who has acted as director for Legal Services for the past year.

The Spokane Bar Association is pleased to report that nearly half of the eligible attorneys in the Bar Association have signed up to do pro bono referrals through the Bar's recently instituted pro bono program. Since it was started in September of 1985 (through the grant received from Legal Foundation of Washington IOLTA funds), 325 of the approximately 650 eligible attorneys within the county have signed up to volunteer their services to low income individuals who qualify for free legal services. ALL of those who have taken cases are to be commended. And, if for some reason you have not signed up and wish to do so, *please* contact the Spokane Bar Association Office. We still need more sign-ups, particularly in the area of domestic relations. Remember, we have agreed to not make more than two referrals a year to each attorney who has volunteered his or her services. In order to continue with that policy, more sign-ups are requested.

On The Move!! **Lora Lee Stover** recently joined the firm of Dawson & Mead. **Tari Eitzen** is now sharing office space with **James Gillespie. Connie Mableson** has joined the Phoenix, Arizona law firm of Streich, Lang, Weeks & Cardon. Former bailiff for the Honorable **Harold D. Clarke** of Spokane County Superior Court, **Karen Sayre,** has joined Underwood, Campbell, Brock & Cerutti in Spokane.

Heard Around "The Bar" - The Young Lawyers Section of the Spokane Bar Association is planning to co-sponsor with the Spokane Bar Association for Legal Education a workshop on financial planning for professionals and their spouses. The program is planned for mid- to late February. If you have not received information on this informative workshop, please contact the Spokane Bar Association office for more information: (509) 456-6032 or SBA, P.O. Box 470, Spokane, WA 99260.

In Closing - We are still looking for interesting topics for this "Around the State" portion of the *Bar News. Please* drop us a note or give us a call if you have something you would like to share. We would like fun and entertaining tid-bits about your fellow attorneys or something of interest that has happened in your office. Let us know.

WALLA WALLA COUNTY

John P. Junke, Sr. has become a member of McAdams, Ponti and Junke in Walla Walla. He has been associated with the firm previously known as McAdams and Ponti since February 1982.

YAKIMA COUNTY REPORT

by **MARK D. WATSON**

Richard R. Johnson, formerly a partner in Prediletto, Halpin, Cannon, Johnson & Scharnikow, P.S. has now joined the law firm of Velikanje, Morre & Shore, Inc., P.S. as an associate. He began his law career with the Attorney General's office in Spokane in 1976 and moved to the Prediletto firm in 1978.

Joseph Hampton has recently joined the firm of Thorner, Almon, Kennedy & Gano, P.S. as an associate. He graduated from the University of Washington in the spring of 1985.

David H. Putney has opened up an office as a sole practitioner. He was formerly a partner in Elofson, Vincent, Hurst, Crossland, Menke & Putney.

A new program to provide free legal assistance to poor people seeking an uncontested divorce and those in need of assistance with domestic violence laws has been unveiled. The domestic Legal Aid Program, funded by a $5,000 grant from Burlington Northern, set up shop in the Yakima YWCA.

DISCIPLINE

Disbarred

Tacoma attorney **William V. Vetter** (admitted 9/20/68) was disbarred by the Washington State Supreme Court on December 5, 1985. The court affirmed the Disciplinary Board's recommendation that Vetter be disbarred for knowingly acting in violation of court orders; misappropriating client funds to his own use; aiding his client in misappropriating estate funds; making a false statement in a sworn affidavit; filing false and misleading reports with the court; making false and misleading statements to the Bar Association investigator; improperly handling trust funds by commingling personal monies with client monies on numerous occasions and attempting to conceal his improper conduct.

Tacoma attorney **Thomas M. Baker, Jr.,** (admitted 2/20/62) was ordered disbarred by the State Supreme Court on October 21, 1985. The Supreme Court's order was based upon a hearing officer's decision, as modified by the Disciplinary Board, that Baker had violated DR 5-101(A) by writing a will for a client in which Baker was named as the sole beneficiary and executor; violated DR 9-102(B)(3) by his failure to account for client funds in his possession; violated DR 9-102(A) by his failure to deposit funds received on behalf of an estate into a trust account; and violated RLD 8.2 by his failure to advise an adverse party of his suspension from the practice of law. Baker was also ordered to receive four Reprimands for the above-described conduct. He did not appeal the decision of the Disciplinary Board.

Suspended

Seattle attorney **Malcolm S. McLeod** (admitted 8/26/50) was suspended from the practice of law for a period of 90 days commencing December 12, 1985 by order of the Supreme Court. The suspension was based upon McLeod's conduct in depositing $4,000 of client funds into a certificate of deposit in the names of McLeod and his client, jointly with right of survivorship; in failing to properly account to his client for her funds and in adding additional language to a hold harmless agreement after it had been signed by his client and offering that document as evidence in a disciplinary proceeding.

Reprimanded

Vancouver attorney **Randall L. Stewart** (admitted 10/25/72) has been ordered by the Disciplinary Board to receive a Reprimand for failure to cooperate with a disciplinary investigation, failure to appear for a deposition for which he had been subpoenaed, and failure to file an answer to a formal complaint. The action was taken pursuant to stipulation.

Censured

Attorney **David R. Nevitt,** of Kolonia, Ponape Caroline Islands, formerly of South Bend, Washington (admitted 6/1/77) has been ordered by the Disciplinary Board to receive a Censure for failure to cooperate with a disciplinary investigation.

Kirkland attorney **Jack A. Ginsberg** (admitted 10/18/73) has been ordered by the Disciplinary Board to receive a Censure for failure to cooperate with a disciplinary investigation and failure to file an answer to formal complaint. The action was taken pursuant to stipulation.

IN MEMORIAM

Walla Walla attorney **William D. McCool** (admitted 11/2/79) was ordered by the Disciplinary Board to receive a Censure for failure to maintain complete records of client trust funds and failure to maintain all client funds in a trust account. In addition, McCool was ordered to receive a Reprimand for entering into a loan transaction with a client without full disclosure to his client, without advising the client to seek independent counsel and without providing the client with any documentation or security regarding the loan. McCool was also placed on probation for a period of two years on the condition that he properly maintain his trust accounts and on the condition that his trust account may be audited during the period of probation at the discretion of bar counsel. The action was taken pursuant to stipulation.

Frederick C. Peterson, 76, died October 28, 1985. A graduate of the University of Washington and its Law School, Peterson practiced law in Seattle from 1938 until his retirement in 1983. The Hoquiam native was noted for his power boat navigational abilities and won several West Coast and international predicted log races while representing the Seattle Yacht

Club. Remembrances to the Seattle Yacht Club Foundation Historical Fund, 1807 E. Hamlin Street, Seattle WA 98112.

Danica Kay Dodd, 32, died December 2, 1985 of an aneurysm to the aorta. The Tacoma native graduated from the University of Washington in 1975 and Willamette University School of Law in 1977. In 1979, she left private practice in Vancouver to become an assistant attorney general in that city. Also a member of the Oregon Bar, Dodd was past president of the Clark County chapter of Washington Women Lawyers and a member of the Clark County Planning Commission. Remembrances to the Clark County Child Abuse Council (of which Dodd was a former president), c/o Barbara Johnson, 604 W. Evergreen Blvd., Vancouver, WA 98660.

Charles R. Denney, 85, the former Snohomish County Superior Court judge after whom the county youth center in Everett is named, died November 4, 1985. Denney's parents moved to Snohomish in the 1880s, and his father John became Superior Court judge for Snohomish and Kitsap counties at the time of statehood in 1889. The Everett native obtained his law degree in 1923 from the University of Washington. He was appointed to the Superior Court bench in 1939 to replace Lloyd Black, whose father had succeeded Denney's father in the same position. Denney retired in 1965 after 26 years on the bench. He served as pro-tem judge in the Court of Appeals and the King and Snohomish County Superior Courts until 1982.

Alexander James O'Connor, 96, who practiced law for 65 years, died July 7, 1985 in Wenatchee. Left fatherless in grade school, the Kentucky native lived with a brother in Vienna, Austria and graduated from the University of Michigan Law School in 1909 at the age of 20. He was first licensed to practice law in Kentucky. That license included an oath that he not engage in dueling. After six months of practice in Seattle, he traveled by riverboat from Wenatchee to Brewster, practiced there six years and 11 years in Okanogan. The water law expert practiced in Wenatchee from 1927-1974, and retained one client, the Wenatchee Reclamation District, until 1978. O'Connor is the only Wenatchee attorney to serve as president (1946-1947) of the integrated State Bar (although Frank Reeves was president about 1910). O'Connor conducted his last jury trial—which he won—at the age of 84. When he retired in 1974 at the age of 85, he told a *Wenatchee World* reporter about a suit he had settled in his office:

Seems a Brewster man, whom O'Connor didn't like much anyway, wanted to sue another fellow for $1.75, due for seven meals for workers cutting ice out of the river. "I said, 'Ben, it would cost at least $10 to take the case to court.' 'Suppose you give me $8.25 and we'll just forget the whole thing,' said Ben." Recalled O'Connor, "That ended that."

Charles A. Goldmark, Seattle lawyer and president of the Legal Foundation of Washington, died January 9. A memorial will appear in the March 1986 *Bar News.*

Project Suggestions: Criminal Law Section

The Criminal Law Section newsletter recently contained a survey requesting input on projects (i.e., new legislation) section members would like the executive board to undertake. If you did not complete the survey or have a suggested project, please contact one of the following executive board officers:

Chair, **Rosemary P. Bordlemay,** 2300 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121, (206) 448-4000; *Past Chair:* **Bob Boruchowitz,** 202 Smith Tower, Seattle, WA 98104, (206) 447-3923; *Chair-Elect:* **Bob Wayne,** 408 Pioneer Building, 600 First Avenue, Seattle, WA 98104, (206) 682-5615; *Secretary/Treasurer:* **Dave Collins,** 420 New England Building, 219 First Avenue S., Seattle, WA 98104, (206) 464-1932.

To join the section, please contact Dave Collins. If you have an article or comment for the Criminal Law Section newsletter, please contact Bob Boruchowitz.

Input Solicited for New Task Force on Young Lawyers

A special Task Force on Young Lawyers has been formed by the WSBA Board of Governors. The Task Force, chaired by Governor Elizabeth J. Bracelin, was created to review State Bar services provided to young lawyers and to explore ways to improve those services or develop additional ones.

"Our intent is to give our undivided attention to our younger WSBA members," said Bracelin, "and to assure that our State Bar is doing everything possible to respond to and serve their unique professional needs."

"One of the first objectives of the Task Force will be to listen to the comments and requests of our younger Bar members," Bracelin said. "Their input will be a key factor in any recommendations we develop. We ask any interested individuals or young lawyer organizations in Washington to forward their comments to the Task Force for our consideration. There will be opportunities for interested persons to appear before the Task Force to discuss young lawyer needs and to propose State Bar programs," Bracelin said.

For further information, or to submit comments or request an appearance before the Task Force, address your inquiries to the Board of Governors Task Force on Young Lawyers, Washington State Bar Association, 505 Madison Street, Seattle, WA 98104.

NOTICES

NOTICES ADVERTISING

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

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

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

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

PROFESSIONAL

Bertha B. Fitzer, LL.M., announces her availability for referral, consultation or association on appellate arguments and briefs.

Bertha B. Fitzer
1101 Fawcett, Suite 350
Tacoma, WA 98402
Telephone (206) 627-4740

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

Douglass A. North
Hennings, Maitman, Weber & Reed
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Seattle, Washington 98104
Telephone (206)624-6271

George Cleve Haynes
William H. Fligeltaub

announce their availability for referrals in criminal cases, including appeals. Please see VI Martindale-Hubbell 638B - 639B.

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705 Second Avenue
Seattle, WA 98104
Telephone (206) 623-1590

Leslie Stomsvik

formerly clerk and staff attorney for the Washington Court of Appeals

announces his availability for consultation or referral of all phases of appellate litigation in both State and Federal courts.

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Tacoma WA 98466
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Telephone (206)622-2200

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

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

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

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OCTOBER 1, 1985

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LYNNE E. GRAYBEAL
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takes pleasure in announcing that
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former member of the faculty at the University of Washington School of Law and author of treatises on evidence and procedural law has joined our firm as an associate with an emphasis on appellate practice and procedures and is available for consultation or referral on appellate and evidence matters.

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For Sale – Two sets law books. Complete United States Code Annotated – $850.00. Complete Corpus Juris Secundum – $2,500. Both sets have current pocket parts. Call (206) 575-5065.

For sale: Wn. Digest (current through 1984) – $750.00, plus shipping, tax. Wn. App. Reports Vol. 1-9, Wn.2d Vol. 1-82, Wests's Wn. Reptr. 513 P.2d-657 P.2d. (48 volumes) - $15.00/volume, plus shipping, tax. CJ (72 volumes) and Am. Jur. for best offer. All in good condition. (509) 635-1551.

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POSITION WANTED

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The judges of King County Superior Court are now accepting applications for the position of Family Law Court Commissioner. Attorneys interested in applying for this position should obtain an application from Superior Court Administrator, Robert A. Cannon, E929 King County Courthouse, or call (206) 583-4615.

The successful applicant must be a U.S. citizen, an elector of King County and be admitted to practice law in the State of Washington. The salary for this position is $57,000 annually, with full county medical, dental, vision, and retirement benefits.

Requests for applications must be postmarked by March 1, 1986.

Exciting opportunity for associate with 2-3 years of litigation experience. Excellent academic background required. Send resumé to Hight & Green, 3230 First Interstate Center, Seattle, WA 98104. Confidentiality assured.

Associate Justice, Supreme Court of the Republic of Palau. The Judicial Nominating Commission of this Pacific-island nation, currently a Trust Territory of the United States, will be reviewing resumés for an Associate Justice position with its Supreme Court. Minimum five years' experience. Send resumé to Chief Justice Mamoru Nakamura, Republic of Palau Supreme Court, P.O. Box 248, Koror, Republic of Palau 96940.

District Court Administrator, Pierce County, WA, Salary: $40,579-$54,782 (min/max) Closing Date: February 28, 1986. Applicants should obtain a full job description and application form from the Pierce County Personnel Department, 734 County City Building, Tacoma, WA 98402. Job Service Line: (206) 591-7466. Pierce County is an equal opportunity employer.

Cone, Fraser, Gilreath & Korte, a well-established central Washington firm, offers an exceptional opportunity to a newly admitted attorney (or to an attorney with up to four years' experience). A strong academic background and a willingness to develop skills in several fields of practice before establishing a specialty are requisites. Writing sample and resumé to Managing Partner, P.O. Box 499, Ellensburg, WA 98926.

A national health care corporation is seeking an Associate Counsel to draft and finalize legal documents; handle real estate closings; participate in bond and other financings and assist Corporate Counsel with legal work. Require Law Degree; Washington State Bar membership; 1-3 years' real estate and finance experience. Send resumé to Personnel Department, Caller Service 2264, Tacoma, WA 98401-2264.

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