Washington State Bar News
Vol. 41, No. 9, September 1987

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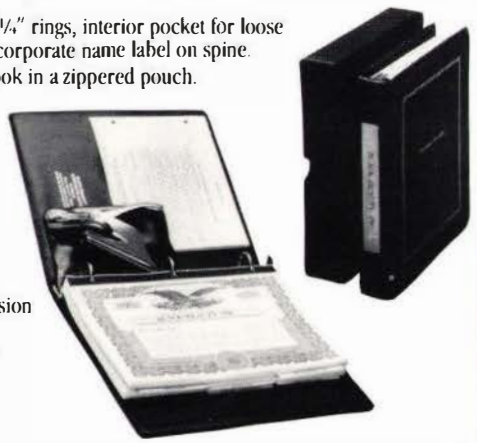

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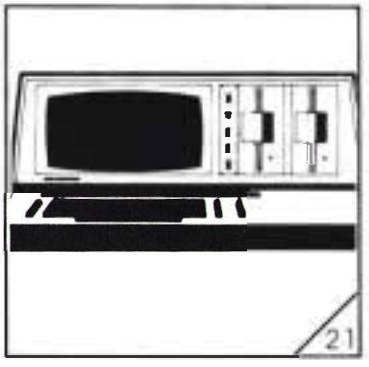

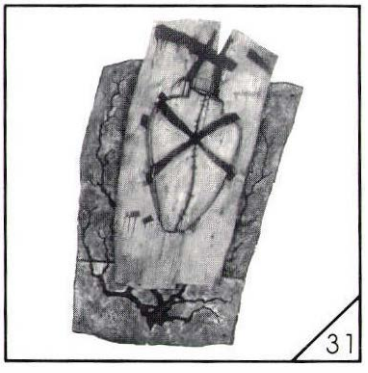

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ART CREDITS

Our September Law Practice Management cover is by legal cartoonist **G. R. Cheesebrough** of St. Paul, Minnesota.

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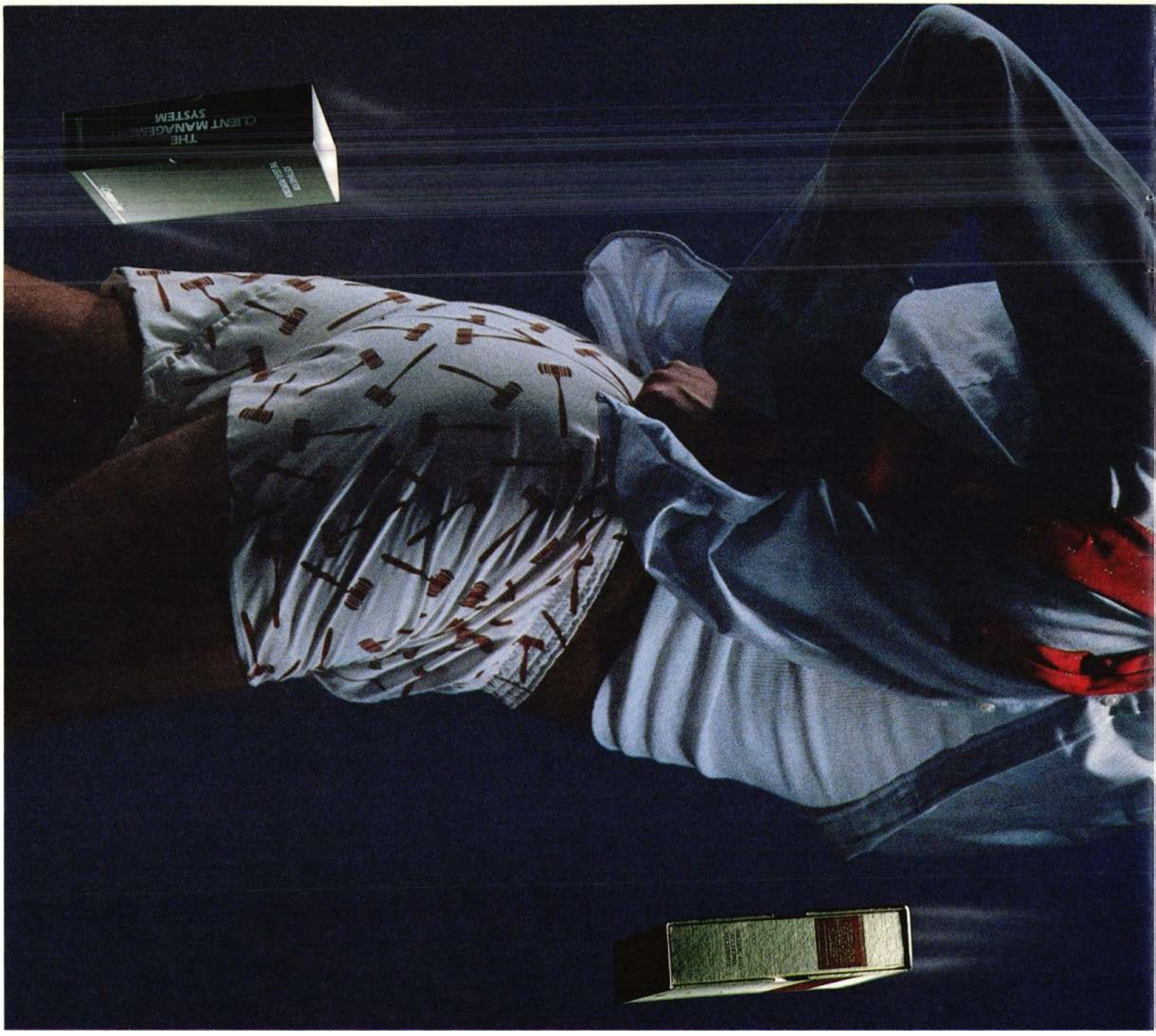

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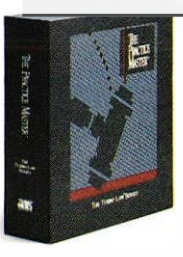

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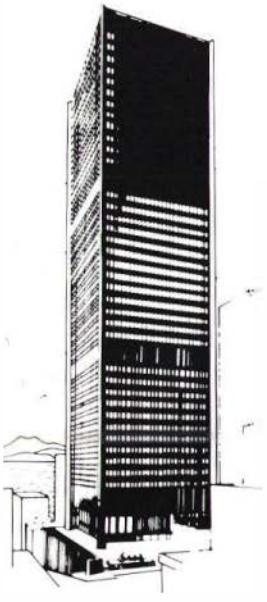

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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

The System Works

Editor:

My compliments to Jeffrey L. Tolman for his suggestion in the July *Bar News* that billing by the hour be banned.

I have not billed on a strict hourly rate for several years. Rather, I use my time as simply one criterion in formulating the billing. The other criteria I use are those set forth in RPC 1.5. Other lawyers are amazed that I never have a problem with this kind of a system. In fact, my clients like this system. However, the type of system I use makes it incumbent upon me to make sure my client understands fully how he or she will be charged at the inception of the case.

It is interesting to note that a few months ago I was subject to a random trust account audit by the Washington State Bar Association. There were discussions with a particular auditor about this type of billing system. The auditor insisted that there are only three permissible ways to bill: contingent fee, fixed fee, or flat hourly rate. It amazed me that an auditor for the Washington State Bar Association was not fully conversant with RPC 1.5 and what it meant.

Attorneys send itemized hourly billings to the clients under the guise of full disclosure. It affords the client no protection at all. In fact, it is a reflection of the lawyer's insecurity about the billing process. When you have a proper relationship with the client, when you do the work you should for a client, and when there is open communication about fees, my experience has shown that Tolman's system works, both for the lawyer and the client.

STEPHEN WHITEHOUSE
Shelton

Serving The Function It Should

Editor:

I congratulate the Board of Governors on its June vote to retain the current structure of the *Bar News*, *i.e.* keep the position of editor as an independent practicing lawyer rather than change to an "in-house editor" who would operate as part of the WSBA staff. I congratulate them particularly because the account of the voting (July 1987 Board's Work) indicated a number of the Governors had changed their minds after hearing from their "constituents" and gathering more information. I feel an "independent editor" has a more "global" view of the membership and issues related to the profession and thus puts out a better *Bar News*.

A particular point, apparently, has been publication of "intemperate" and "disturbing" correspondence from members. It is my opinion that in the last few years the Letters section has become more and more interesting and informative. I think the section is serving exactly the function it should, as a platform for criticism, discussion and philosophising about the practice of law and our association itself.

Further, I have been meaning to write and pass on my appreciation of the expanded "Discipline" section. The (now) detailed accounts of infractions also serve as a valuable educational tool.

CYNTHIA B. WHITAKER
Seattle

Age Discrimination in the Hiring of Lawyers

Editor:

In the June 1986 *Bar News*, a gentleman who asked to be identified as a "frustrated, middle-aged lawyer" asserted that age discrimination was alive and endemic within the State Bar. He or she analyzed the *Bar News* "Position Available" ads over two years; claimed that almost half limited the maximum experience of applicants to three, four or five years; and contended these limitations violated RCW 49.60.180 as well as the federal age discrimination act.

"Frustrated" was apparently right. RCW 49.60.180(4) makes it an unfair practice to cause to be printed any advertisement or publication "...which expresses any limitation, specification or discrimination as to...age..." WAC 162.16.120 states it is an unfair practice to publish or circulate an "advertisement...which...expresses a preference on a basis of... age..." I presume it can be proved that over 90 percent of lawyers between 40 and 70 years of age who seek employment have more than five years of experience, but this would be unnecessary under *Griggs v. Duke Power Co.*, 401 U. S. 424 (1971), which proscribes a job qualification with a disproportionate impact on a protected group such as those between the ages of 40 and 70.

Despite the gratuitous but accurate advice of "Frustrated", the *Bar News* has not only continued to publish such ads, but has also abetted their authors by furnishing anonymous box numbers for a price. My own perusal indicates that this limitation still appears in about 50 percent of these ads. RCW 49.60.220 makes it an unfair practice to aid or abet the commission of an unfair practice, such as those specified in RCW 49.60.180(4). Perhaps something as blatant as "Males (or Caucasians) only need apply" is required before the sensibilities of the editor, Editorial Advisory Board, or Governors of the State Bar are sufficiently engaged where advertising revenues are concerned.

Of course, these ads are only an indication of the prevalence of age discrimination in hiring practices as "Frustrated" pointed out. I am a 56-year-old lawyer with over 25 years of practice, who has been seeking employment for one and a half years. Through friends and acquaintances, I have sought employment with 20 of Seattle's 25 largest firms (excepting Bogle & Gates and Perkins, Coie, who were on retainer to my ex-employer), have advertised for a position in your splendid publication, and have supplied resumés in response to many ads.

My favorite rejoinder was from a utilities attorney who implied in writing that I had more experience than was dictated for the position of litigation attorney and so would not be afforded an interview.

More typical was the response from a government lawyer that there were only entry level positions available, a sentiment commonly echoed by partners in the larger firms I had talked with.

At my age, I am considered overqualified, and my employ would be deleterious to the morale of younger partners and associates (unless I can deliver lots of business), the latter sentiment similar to that reported by "Frustrated." There is a self-serving presump-

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tion that the older applicant would not be interested in entry level salaries or menial duties and the stereotypical conclusion that he or she would not work as hard as a younger associate. As I read the laws against discrimination, it is for the applicant to decide whether he or she wishes to apply for a job whose duties are specified at a given salary level.

With a rare exception, we know the hiring system employed by the larger firms is limited to campus solicitations or the discredited word-of-mouth method (see Vol. I, CCH Employment Practices Guide, Para. 414, Pp. 630-31); I do not recall ever seeing an ad in papers or bar journals soliciting entry level applications from the larger firms. We know the reason for the system is economic—to secure cheap, hard-working labor in return for the possibility that the survivors will become partners. It is also understandable (although not defensible under age discrimination law) that younger partners want somebody employed to be run through the same mill that they were. However, one reviews the age discrimination laws in vain to find any exemption extended to the legal profession. It is evidently too late to lobby for one as we successfully did in regard to the sales tax on legal services.

As has "Frustrated," I have contemplated a class action, but the paucity of the potential damages does not appear to make the effort worthwhile. I would expect to be dead before a claim processed through the EEOC or Washington State Human Rights Commission was resolved. I perhaps foolishly subscribe to the notion that the legal profession is capable of swamping out its own Augean stable. If the editor and Editorial Advisory Board and/or Board of Governors feel the slightest culpability over the continued running of these ads, may I recommend the following remedial action?

1. Discontinue running these advertisements. It is bad enough that lawyers do not comply with the law when it is brought to their attention, but it will also constitute a breach of trust if our Bar dues are used to respond to an inevitable claim for damages.

2. Publish the identity of the box number holders of all those entities who have placed these advertisements for the past two years. This is fair because the *Bar News* abetted their commission of an unfair practice in violation of state and federal law. It will also have the salutary effect of making all Bar members more conscious that the law requires non-discriminatory hiring practices.

3. Have the Board of Governors commission an investigation of the past hiring practices of all firms or agencies in the state that employ ten or more lawyers. To do less will only further convince the lay public that, as self-police-persons, we are great ostriches.

Unlike "Frustrated," I am signing my name. If this should occasion some gentle readers to wonder whether this connotes an absence of pride, the answer is yes. Pride is an attitude that rapidly disappears when one is unemployed.

GEORGE INMAN

Editor's note:

After seven years in private practice in Seattle, ***George C. Inman, Jr.*** *joined the predecessor of the Burlington Northern Railroad, from which he retired after 21 years in 1986.*

See page 58 of this issue regarding *Bar News* advertising policy update.

Billing Vulnerability

As an attorney whose practice presently consists of contingent-fee cases, I welcomed the July article by Jeffrey Tolman that criticized hourly billing practices. Contingent-fee attorneys have been the sole recipients of similar criticism for too long.

My hope is that my fellow "hourly" attorneys will appreciate their own vulnerability the next time the Legislature considers a bill that would restrict the right of clients to contract for a contingent fee. These bills are often premised on consumer rights, and as Tolman points out, the potential for consumer abuse in hourly billing practices is considerable.

If the Legislature can restrict the rights of clients and attorneys to enter into contingent-fee agreements, it can certainly justify restrictions on hourly fees as well. Members of WSTLA should not be the only attorneys who strongly resist intrusion into this area.

EUGENE M. MOEN
Seattle

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Lynnwood's 12 Great and Remarkable Stories

A First-Class Bar

Let me close out my comments this year by letting you in on something that well-informed people all over the country already know—the state of Washington has a very fine Bar Association.

We have some standout features in our activities that are the envy of every other state association. One of these is the excellent relationship we have with the Supreme Court and the judiciary of the state. Obviously, credit for this fine state of affairs must be shared with the court which does, indeed, make a real effort to be responsive to the Bar's needs and, at the same time, watchful for the general public interest. Probably the key to this relationship is the fact that the Bar itself has demonstrated a continuing recognition that the whole system, of which it is an integral part, must be run in the public interest.

Let me say here, parenthetically, while there is a widespread assumption that there is general antipathy between the Bar and the Legislature, the fact is that we have found the Legislature to be very attentive to our views and that the Bar's support or opposition is frequently critical to the outcome of some of the most important legislation.

Another standout among our programs is the Bar convention. Every other state covets the remarkable attendance and the good spirit our meetings generate. Many have flatly copied the format developed here.

But good court relations and good conventions are only a small part of the quality of this Bar. The bigger picture is that over the years we have either started the important new programs or have been among the first to pick up on those introduced by other bars around the country. We consistently find, when we compare notes with other bars at national or regional meetings, that the things we are doing work better and have more support than they do in other states.

One very impressive accomplishment has been the carrying out of an ambitious long-range plan. In August 1985 the Long Range Planning Committee under Brad Jones reported on a careful, 18-month-long examination of our Bar's structure and programs. That committee concluded that much of what was in place was good and should remain as is, but they identified some 17 areas in which a new direction or an entirely new program was indicated. Examples of these were: the requirement for a new headquarters facility, involvement of young lawyers, skills training programs, revision of the rules on advertising.

It is a pleasure to report that the recommendations have been carried out and implemented in all but one case, which is the enormously complex problem of the Bar's involvement in unauthorized practice of law.

Having seen this Bar in operation at first-hand for some time now, it is easy for me to identify the reasons for its success.

Unfortunately, many of you have not had the opportunity to see our marvelous staff in operation. John Michalik simply has no peer as a bar executive. It will embarrass him to have me tell you all that he has rejected opportunities to move to the top job in much bigger bar associations with much higher pay. Out of a long list of management virtues John possesses, the most striking is his prodigious productivity—he simply gets everything done, and well, and ahead of schedule. My bet is that when he finally retires it will take two people to replace him. John has assembled a first-class staff which is devoted to him and to getting the Bar's work done. All deserve our heartiest applause.

We have excellent volunteer leadership. This year Ed Lane, Roy Moceri, Jim Vander Stoep and Hal Vhugen complete terms on your Board of Governors. All of these men have dedicated themselves to the work of the Board, giving both enormous effort and invaluable judgment from their considerable experience.

I mention these four men because of the singular contribution to the Bar's success which is made by members of the Board of Governors. There are dozens more lawyers who deserve special accolades: lawyers who have served on and chaired, in some cases for several years, productive Bar committees; lawyers who have immersed themselves in special projects like pro bono and new legislation; lawyers who make the work of our sections so outstanding; lawyers who do major legal work for the Bar without compensation; lawyers who give days at a time to the various public commissions on which they serve as representatives of the Bar. I cannot name all of these splendid lawyers, so I had best not name any—they know

who they are. Along with Messrs. Lane, Moceri, Vander Stoep and Vhugen they deserve our heartiest applause.

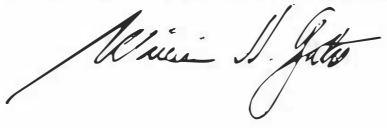
The last, most important, point is that our Bar does well because you, it's members, support it well. We have many more who want to serve on committees than we are able to appoint. We have significant competition among able lawyers for seats on the Board of Governors. We have hundreds of lawyers giving time and effort to local bar work. We have a huge percentage of you who identify yourselves with your Bar and care what it is doing.

All this brings me around to talking about professional pride—just this one more time. Some of you suggest I have lost sight of reality when I speak of our right to be proud. Not so. I know the world is not perfect, our Bar is not beyond improvement, and all lawyers are not saints. I do not ignore these truths. But there is an important falsehood which is overtaking us and which I abhor—that is the idea, widely enunciated in the world at large and accepted by all too many of us, that lawyers are unworthy. That idea is false.

If the glass were only half full, I would care little if you focused on its being one-half full or on being one-half empty. But when the glass is 99% full—right up to the top—I despair at the emphasis on 1% empty.

What is true is that your Bar Association is successful, accomplishing a great deal of good both in your interest and the public interest. And this is true because *you* are doing a good job—a good job supporting your profession, and living your profession—daily in your own practices.

We are doing a good job—be proud!



The editor wishes to thank the WSBA Law Office Economics & Management section for coordinating this theme issue of the Bar News, *especially chair* **Steve Horenstein** *of Vancouver, committee members* **Elliott Johnson** *of Mount Vernon and* **Dale Sherrow** *and* **Al Judy** *of Seattle.*

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Become the *Bar News* editor: It's a space and time odyssey. It'll make you a believer in all of Parkinson's Laws, and you'll get to create a few more in the process.

Three's a Charm

"Three years", I answered the question of the Editorial Advisory Board during my interview in January 1985. "I'd be willing to serve three years as editor."

Three has always been my digit of choice. I was born on the third day of a month (but not the third month), and I'm one of three kids (but not the third one). OK, so three works as well (or as poorly) as some of my editorials have, but three years did feel right: One year to figure out the process, one year to coast, and one year to aid in the transition.

The process has turned out somewhat differently from what I expected. Procedures were constantly being changed. (You know how it goes: Once you've figured out the rules, along comes someone and changes them.) And I've navigated more hazards than you, dear readers, will ever know. So much for coasting and transition.

Yet: I have somehow managed to stay in the good graces of my office mates, a great bunch all. My friends have put up with my whining. I've met some fine, fine souls from around the state. And I've had a ringside seat on the workings of WSBA.

But, my term expires March 1, 1988... and then it's time for some other lawyer with editorial aspirations to make an imprint on this 40-year-old magazine.

For you budding Pulitzers, the requirements are few:

- You must be an active WSBA member.
- It helps to be engaged in the practice of law.
- Editorial experience is not required, but it won't hurt.
- Neither will a predilection for tilting at windmills and a fondness for red pens.
- And then there are the helpful adaptive genetic traits: the hide of a rhinoceros (recommended by my predecessor, Steve Reisler), a deaf ear, jaundiced eye, a steady hand, and an oxygenated brain.

Send in a letter and resumé to Editor's Search, at the address on the masthead. (If you don't know what a masthead is, now's a good time to learn.)

The Editorial Advisory Board plans to interview in late November. Turkey time?

My successor sets sail March 1, 1988—starts receiving a stipend then—but is expected to hang around this lame duck starting January 1 to pick up, or ignore, whatever words of wisdom I impart.

Now, about money. The editor's stipend is currently $500 a month, which may or may not be subject to change.

The time you'll put in as editor is not necessarily limited to the number of hours in a day—especially during the week when you attend and write up the Board of Governors' meeting, select and edit articles, and write your editorial.

Perhaps you'd like to make the *Bar News* part of your personal journey.

Carole Grayson

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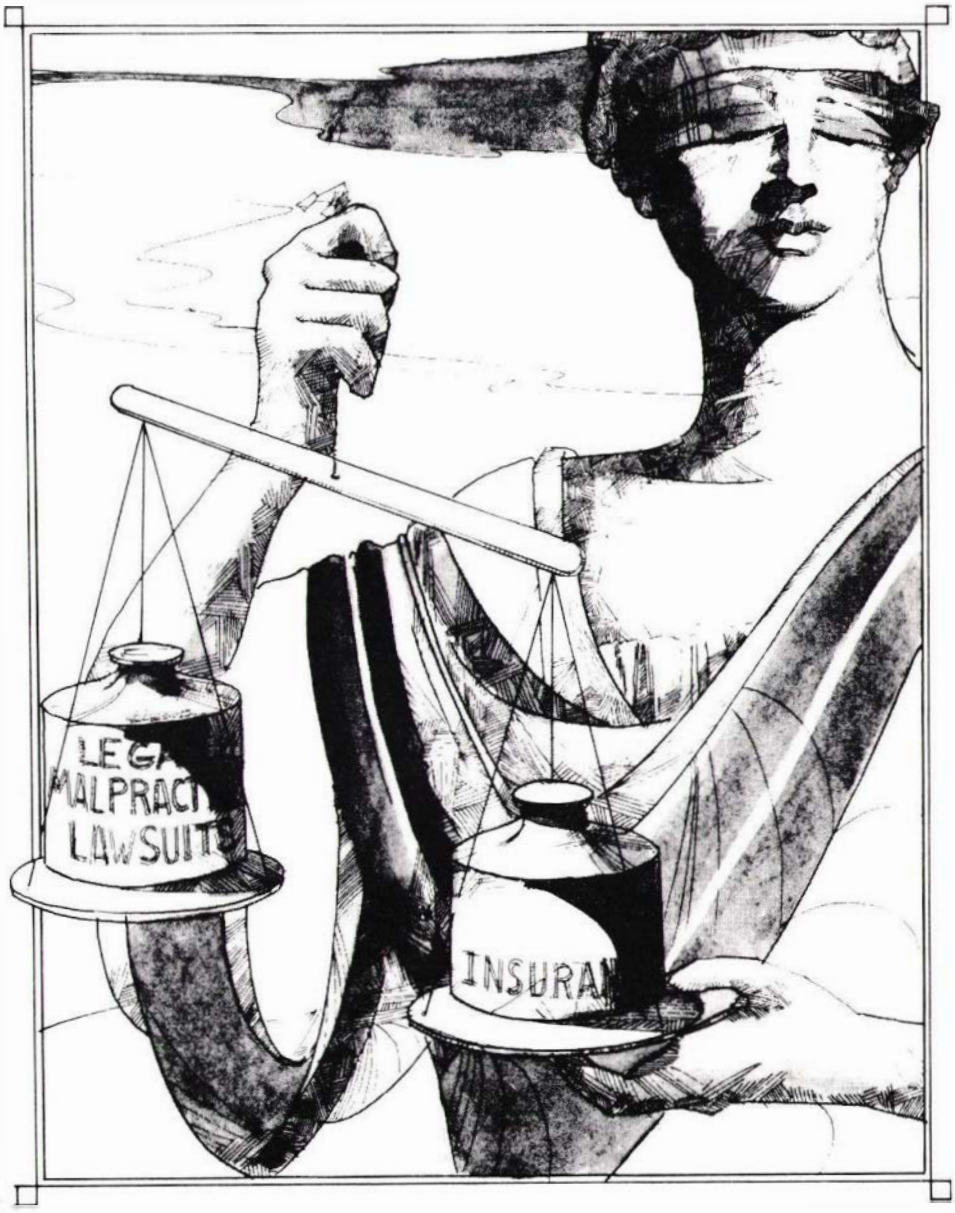

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September

by **John J. Michalik**

WSBA Executive Director

September. A month that "brings" a number of things. The end of summer and the start of school. Labor Day and the last holiday weekend for a few months. Crisp air and the football season. The State Bar Convention and its many activities. Summer associates heading back to school and recent law school graduates nervously awaiting the results of the summer bar examination.

September also brings a changing of the guard in the State Bar Association, since it is the end of the Association's fiscal year and also the time when new members of the Board of Governors come "on board" and start their three-year terms of *service*. I emphasize the last word of the previous sentence because that is exactly what is involved in being a member of the Board of Governors of this organization. There is no compensation for this "job" yet, on average, it probably occupies 20% to 25% of a Governor's working hours in any given month. In addition to three days out for a monthly Board meeting, there are countless hours spent in serving on Board committees; acting as liaison for the Bar to various other law-related organizations; handling professional and public speaking engagements; doing the work on countless "special" assignments and projects; meeting with local bar associations and individual State Bar members; keeping up-to-date on the issues facing the State Bar and the profession; digesting the two-inch thick (sometimes much more) Agenda that is typical for each Board meeting and doing follow-up work on that Agenda in order to be fully prepared for the meeting; and devoting hours of time to making the State Bar "go" in many areas. It is not an easy task, and the commitment is a major one. In exchange there is apt to be controversy, some measure of praise and more than a modicum of criticism from those who may disagree with the results of Board action or the views of individual Governors.

It is, every year, gratifying to see the quality and caliber of individuals who step forward for this service to the profession and the public. It is amazing to me to see how, even when the three-year term is over, Governors of this Association do not "fade away"—they resurface constantly on special assignments, on State Bar committees and in every conceivable form of positive professional activity. Saying "No" to renewed calls to service just doesn't seem to be a part of the makeup of these people.

Leaving the Board of Governors this September are Ed Lane of Tacoma and the Sixth District; Jim Vander Stoep, a Chehalis lawyer who represents the lawyers in the Third District; Roy Moceri, the Eighth District representative from Mercer Island; and Hal Vhugen, a King County at Large Governor from Seattle. Like every Governor who has gone before them, these four lawyers have devoted countless amounts of their time and immeasurable amounts of their energy to the work of the profession and the Association. They have made the State Bar Association far the better for their service. Too often that type of service is taken for granted. So, to these four about to be "former" Governors, as well as all who have gone before, a tip of my hat—and if you see one of them on the street, talk to one on the phone or run into him at the courthouse, give him the pat on the back he deserves.

Trends In Office Leasing: A Tale of Three Cities

courtesy of Wright Runstad & Company

by **Wade Cole**

According to a college classmate from New York City, there are only two kinds of places, City and Country. By his definition, everything that is not in Manhattan is Country. Here in Washington, where our attitudes are not so provincial, it is still true (as of July 1, 1987) that if you are a lawyer, the odds are 9,254 in 13,726, or 67.4%, that you practice in King, Pierce, or Spokane counties. This article discusses the impact of certain national trends on office leasing in the downtown central business districts of the three cities, Seattle, Tacoma and Spokane, where, as a lawyer, you are most likely to find yourself.

The National Outlook

As a lawyer friend who is compulsively quantitative in his view of life frequently reminds me, "Figures lie and liars figure." This is as true of statistics kept about office space as it is of other aspects of 20th century life.

With that caveat, let us consider some statistics presented by Sol Rabin of TCW Realty Advisors of Los Angeles at a meeting of the Society of Industrial and Office Realtors (SIOR) in June in San Francisco.

TCW's figures show an existing inventory of office space in 47 metropolitan areas of 2.159 billion square feet (sf), of which 440.9 million sf, or 20.5%, is vacant. An additional 201.3 million sf is under construction. TCW indicates an average annual absorption rate of 100.5 million sf and an average rate of expansion of 4.7% in these markets. At those rates, TCW projects that it will take 5.2 *years* for this space to be absorbed.

Seattle: Land of Opportunity

Seattle fits the national pattern: its supply of office space greatly exceeds demand. TCW puts the vacancy rate for Seattle (actually Seattle/Everett) at 17.6%, or roughly in the middle of cities in the TCW study. Cities with lower vacancy rates include Boston (11.2%), Hartford (12.9%), Charlotte (13.8%), Washington, D.C. (14.0%), and New York (16.6%). Cities with higher vacancy rates are Tucson (30.2%), Dallas (30.4%), Houston (34.3%) and Austin (33.7%).

Figures compiled by Steve Wilson of Kidder Mathews & Segner, Inc. indicate that the *downtown central business district (CBD)* of Seattle contains approximately 13.8 million sf of space in existing class A office buildings (generally the newer, more prestigious buildings), of which 2.07 million sf, or 15%, is vacant. 8.85 million sf of that space has been built since 1979. An additional 3.7 million sf is currently under construction. Developers engaged in a desperate race to see who can be the first to lose the most money threaten to build another 3.4 million sf.

Given the average annual absorption rate of one million sf., if all the space under construction is completed, Seattle would appear to have about a six-year supply of office space in the downtown CBD. In reality, new space is usually substantially leased relatively quickly. It is the vacancy left behind in older buildings which may be more difficult to lease.

The large vacancy rate gives tenants many alternatives to consider within a given area, among similar buildings, within a given price range or according to almost any other criteria a tenant may have. There is intense competition for high-quality tenants among property owners. This manifests itself in several ways:

1. *Rent* — The issue with rent is not what the *nominal* rate is but what the *effective* rate is. Free rent and any cash concessions are subtracted from the nominal rent called for in the lease during its term. This amount ("actual rent") is divided by the number of years of the term, and this result is then divided by the number of "rentable" square feet of space to produce the effective rent per square foot per year. ("Rentable" area generally includes a "load factor" for hallways, lobbies and other common areas in the building and can range from 8% up to 18%.) Annual rent per square foot in class A buildings tends to be in a range from $16 - $18 up to $20 - $25 or more, depending on a number of factors. In office leasing, as in life, everything relates to everything else. Rent generally includes the operating costs (taxes, insurance, maintenance, utilities and janitorial) during the base year with some kind of provision to pass through to the tenant increases in operating costs in excess of costs in the base year.

2. *Concessions* — Concessions can take many forms. They are available from every landlord actively on the market with space to lease. Some examples are:

Free rent — The developer procures financing from the lender on the basis of a pro forma showing rent at $x per

square foot. The developer writes $x on the lease and adjusts $x to the current market rate by agreeing not to collect rent for a predetermined number of months (or years). Everyone (landlords, tenants, equity partners, lenders, brokers, appraisers, and investors) understands the truth (with free rent the rent is lower than the lease says it is), but somehow the fiction that it is higher makes some people feel better.

Cash — Some tenants desire to receive cash in lieu of, or in addition to, free rent. A creative owner makes this possible with an appropriate schedule of rent.

Tenant improvements — Landlords provide a fully improved "turnkey" space to the tenant which includes improvements to "building standard" plus whatever else the tenant succeeds in negotiating as extras. Wall coverings; fancy millwork; upgraded carpet; extra lighting; glass relights; built-in shelving or work stations; upgrades in elevator lobbies; reception areas and conference rooms; hardwood; marble or tile floors and appliances are frequently included at the landlord's expense to induce tenants to move into the building.

Toys — Some landlords buy computer or phone systems, law libraries or other gadgetry as part of a package of concessions.

Moving expenses — Most landlords will pay all or an allowance of so much per square foot of the costs incurred by the tenant to move into the building. This includes the costs of moving furniture, etc. and can even include the costs of changing phones and reprinting cards and stationery.

Assumption of Existing Lease — It is often in the owner's interest to fill the building with tenants as quickly as possible in order to satisfy lease-up targets required by lenders or to reduce the magnitude of the negative cash flow. Particularly with large, desirable tenants, owners will offer to assume unexpired leases as an inducement to the tenant to move earlier than it would have otherwise. Landlords have even offered to assume a tenant's remaining obligation to repay the current landlord for tenant improvements provided by the current landlord and being paid for by the tenant.

Options — Most tenants need the ability to expand over time. Option space is generally left unimproved by the landlord until the tenant exercises its option to take the additional space. In some cases, option space is leased to other tenants (often at reduced rates) until the option is exercised.

Space pockets — Many landlords prefer to build the expansion space at the same time as the original space is built so that it is instantly ready when needed. No rent is collected on the space until either the commencement of use of the space by the tenant *or* the negotiated date on which the tenant is required to commence paying rent, whichever occurs first. Most tenants commence using pocket space sooner than the lease terms require them to.

Payment of brokerage or consulting fees — Many tenants have found it advantageous and efficient to hire knowledgeable, professional office leasing specialists to assist them with various aspects of leasing office space. Land-

lords generally agree to pay the compensation of tenants' agents and to amortize it in the rent in the same fashion as all other costs incurred by the landlord.

Opportunities in Special Situations

Large corporations — Large corporations lease large amounts of office space and often find themselves with surplus space resulting from reorganizations, changes in procedures, transfers of departments, and other factors. In many cases, the leases are long-term. Often corporations are able to sublease surplus space at lower rates than those offered by the building owner and thus reduce the loss on the otherwise empty space.

Leases assumed by other landlords — When a space has been vacated by a tenant whose new landlord is paying rent to the old landlord for the remainder of the lease term, the new landlord has three options: negotiate a buyout with the old landlord; pay the rent until the lease expires; sublease to a new tenant. Although these opportunities may be short-term, it is often possible to combine a very favorable rate on a short-term sublease with an additional term from the owner to the tenant's advantage.

Space encumbered by long-term options of other tenants — Property owners frequently discount the rates on space encumbered by options in favor of other tenants in order to reduce the cost of carrying the vacant space until the option matures, which sometimes can be five to ten years. The tenant gets a lower rent in exchange for accepting the risk it will have to relocate again if the option holder exercises the option.

Recent acquisitions — There are two types of purchasers who acquire buildings in voluntary transactions: those who pay too much and are willing to accept current market rents to keep the building full, and those who pay too much and are willing to leave the building empty until rents rise to the levels which will justify the price paid. In the words of Jerry Mathews of Kidder, Mathews & Segner, Inc., "As a building owner you have two choices: you can lease it or be proud of it." Aggressive, realistic, new owners will often make attractive offers in order to demonstrate their ability to make deals and attract tenants.

Where the acquisition results from an involuntary transfer such as a foreclosure, the lender with first priority often becomes the new owner. The equity interests of the developer and any equity partners and the interests of junior lenders vanish. Lenders in such a position can often offer very competitive rates and still achieve an acceptable return.

The past few years have been an excellent time to be a tenant in the Seattle office market. It continues to be an excellent time. It may continue to be an excellent time indefinitely.

Tacoma: The City of Destiny

The market for office space in the CBD of Tacoma is much smaller than

the market in Seattle. According to Bert Paul, a broker active in downtown office leasing in Tacoma, there are six class A buildings in the downtown CBD consisting of about 787,000 sf of space. Three of those buildings, accounting for 468,000 sf, are 100% leased. Total vacancy in the remaining buildings is approximately 62,500 sf, or 7.9%, of the total. One major new building of 240,000 sf is planned as a build-to-suit for a single tenant.

Rents range from $12 to $19 and include services and tenant improvements. Concessions are generally limited to free rent of about one month for each year of the lease term. In some buildings, tenants figuratively wait in line for spaces to become available.

In class B buildings (generally older, less prestigious and with fewer amenities), the vacancy rate is in the range of 30% with substantially lower rents and more concessions available.

Developers have been reluctant to attempt large-scale speculative building in Tacoma because of the relatively small size and low growth rate of the market.

Spokane—The Inland Empire in Decline

According to Bud Coe of James S. Black Management, Inc. in Spokane, there is approximately 940,000 sf of class A office space in the CBD in Spokane, of which about 131,600 sf, or 14%, is vacant. Vacancy in class B buildings is approximately 21% and in class C buildings, it is 50%. There is one recently completed building of 60,000 sf, but otherwise, "Not a crane on the horizon."

Landlords write what Coe describes as a "San Francisco Deal:" they aggressively buy tenants with the array of concessions offered in Seattle. Quoted rates range from $12 to $18, but effective rates can be as low as $5. There is a large amount of sublease space on the market either from landlords who have assumed leases to induce tenants to move or from companies which have reduced the size of their offices or moved out altogether.

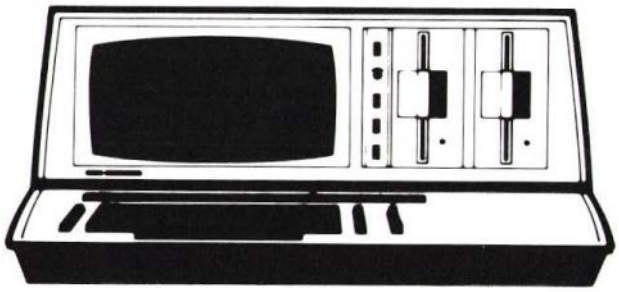
Ownership of property in the downtown CBD of Spokane is concentrated in a small number of mostly local owners with deep pockets who have typically owned the property for a long time. When the market is better, the owners make more money, and when it is depressed, they make less. In any event, very little of it changes hands.

Conclusion

A prospective tenant looking for office space should understand how national and local trends affect the owners of all the buildings being considered as well as have a complete grasp of the current marketplace in order to maximize its negotiating strength. For tenants seeking premium space in top-quality buildings at the best possible rate, timing is a critical factor. All tenants should begin planning a move *early*. Tenants must understand their own needs and objectives. For best results, tenants need a realistic sense of what to ask for *and* how to ask for it.

***William L. Wade Cole** practiced real estate law for five years before joining Kidder Mathews & Segner, Inc., a commercial and industrial real estate firm, six years ago. He is a member of the WSBA Real Property, Probate and Trust Section and the Seattle-King County Board of Realtors.*

Teach Your Computer to Draft Documents



by **James A. Eidelman**

Lawyers who have "systematized" their practices report that they are making more money with less work. They produce better organized, higher-quality documents for their clients and do not waste valuable attorney time rethinking the same process for client after client.

What is a substantive system? In the landmark ABA Economics of Law Practice Section publication *How to Create a System for the Law Office*, editor Roberta Cooper Ramo defines the term. A substantive system is a documented logical method or way of handling transactions, procedures, or work flow so as to minimize waste, conserve professional time, and optimize productivity.

Usually organized in a three-ring binder, a substantive system is a formal system of checklists, data, and forms. If a manual system can help, a computer or word processor can go a step further in the implementation of systems for the professional side of law practice.

Elements of a Substantive System

Master Information List (MIL)

The Master Information List (MIL) for variable information contains all of the fill-in-the-blank information. This list separates the client data from the forms, so that the information can be obtained completely and at the earliest appropriate time. It also ensures that the information will be available in one place and can easily be reused in a variety of other forms at any time during the progress of the matter.

For example, in the formation of a corporation, the MIL contains such information as the name of the corporation, incorporator, number of shares, and number of directors. This information is stored in the computer so that it can be merged with the text whenever the firm needs to prepare another form for the client.

Clauses

The clauses are the heart of the system. The documents should be broken down into sections that can be reassembled in an organized way. The variable information, such as names, personal pronouns, and optional clauses, should be tied to the MIL.

Instructions

Written instructions and procedures are essential. Generally, these instructions will be written in the manual in hard copy. If the word-processing operator needs instructions during processing, the instructions should appear on the computer screen at the appropriate time, in the form of menus, help screens, and warnings. Most word-processing systems permit the system writer to display prompts on the screen.

Checklist

The checklist or checkplan is an important part of a substantive system. This list identifies each step to be taken and identifies the responsible person. Generally, the checklist includes the consideration of legal issues and optional clauses. It also provides a place to check off the steps and dates of completion.

Creating Systems With Your Forms and Word Processor

A Few Words about Word Processors

Many dedicated word processors and word-processing programs can accomplish the majority of the techniques demonstrated here. However, only a limited number support programming with conditional statements. These include:

- MicroPro's WordStar with MailMerge (a utility program that works with WordStar to merge data files into text files) and WordStar 2000
- Microsoft Word
- The "student version" of Prof. James Sprowl's ABF processor
- Enable, an integrated program that combines word processing, a relational database and "if statement"
- XyWrite, Palantir, and PeachText, which offer conditional statements
- Ashton-Tate's integrated program, Framework, which supports conditional statements with its "FRED" programming language
- Dictaphone and Wang dedicated word processors, which offer IF statements
- Several new programs designed for programming legal documents, such as Legalware's Document Modeler, Legal Analytical Programs' WorkForm, and Prof. James Sprowl's ABF processor

You need conditional statements if you want to teach your computer to "think like a lawyer."

Merging Variables

The most basic function used by a word-processing program in creating substantive systems is the automatic fill-in-the-blank function of merging variable information into a new document. During the merge process, the operator is asked to answer a series of questions relating to the specific client or case, and then that information is merged into your systematized forms.

For example, in an estate plan, you

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will set up your forms so that all of the wills, trusts, powers of attorney, deeds, and correspondence contain the common variable, TESTATOR — NAME. You only need to tell the computer your client's name one time, and the program will replace the variable with your actual client's name each time that variable occurs throughout the document. For example:

LAST WILL AND TESTAMENT
OF
[TESTATOR — NAME]
I, [TESTATOR — NAME], a resident...

becomes:

LAST WILL AND TESTAMENT
OF
JAMES A. EIDELMAN
I, JAMES A. EIDELMAN, a resident...

The word processor must be able to merge with a new document on the disk, rather than just the printer. This enables you to freely make special changes to the documents. If the document is merged with a disk file, a new document is created in which all responses to variable information are saved in context. This new document can then be edited, permitting final touch-up formatting and the addition of special provisions for your client. Program only the clauses used 80 percent of the time. The remaining 20 percent of the time, add the clauses that are special to your client.

General Hints about Variables

Use long variable names to help attorneys

It is important for attorneys and staff to understand the forms when they are reviewed either for editing or to draft a client document. When setting up the variables in your forms, if possible, use long names for the variable information to make it easier to understand the document when you read it later with the merge codes in it. The variable names should not be short, cryptic abbreviations, but rather should be descriptive words that make it clear what the variable represents. Thus, "DATE-OF-ACCIDENT" is a more useful variable name than "1.23" or "DT-ACC."

Use numbers for quick lookup on MIL

Most traditional manual substantive systems use a numbering system for variables, with the numbers for variables in the documents corresponding to the numbers on the Master Information List. This is the easiest way for the secretary to find the information on the MIL.

Traditional data-processing concepts recommend using long variable names, without numbers. This makes it easiest for the attorney editing the forms to understand their meaning. If the computer is merging automatically from a data file, the computer doesn't "care" what kind of variables you use.

While long variable names are easy for the attorney or staff member who is editing the forms, it is difficult for the person who is manually inserting variable information into the form from an MIL on paper to find the information quickly unless numbers are used. For

this reason, it is a good idea to use *both* the MIL number *and* a long variable name as variable names.

Giving Values to Variables

Generally, MailMerge, Microsoft Word, and other popular programs supply the values of variable information to documents in three ways:

- Setting the variables in a word-processing document
- Prompting the user for variable information
- Reading the variables from a database data file

Each of these methods has its advantages and disadvantages

Setting the variable — an electronic MIL

With most word-processing programs, the best way to supply the value of the variables is simply to set up a separate word-processing document that contains nothing but commands to set the values of the variables. The disadvantages of this method are that it can be intimidating for use with long, complex document-drafting systems, and the client information that is gathered in the MIL is difficult to sort or to use for other purposes.

Asking the user for variable information

An interactive process in which the computer interviews the user is often a more elegant and user-friendly way to create and edit an electronic MIL. It can be a much less intimidating way to set up your documents than merely setting the variables.

Reading variables from a data file

Most businesses maintain databases of customers or other mailing lists, so it is not surprising that merge programs often offer the ability to merge letters and other documents with a data file. MailMerge and Microsoft Word can read variable information from a standard ASCII data file, in the same format as a data file created with BASIC, MicroPro's InfoStar, or dBASE.

Simple, integrated programs, such as PFS:Write/File, Q&A, Enable and Framework, offer an easy way to merge variables from data stored in that program's uniquely formatted database.

The advantages of this method include the ability to extract information from a case/client database that you can sort and use for other purposes *and* the ability to set up user-friendly screens for data input. The disadvantages with some of these programs are the need to use other programs beyond simple word processing, the greater effort required to set the system up, less flexibility if you want to make changes, rigidity in setting the length of variable information, and limitations on the number of variables you can store about any matter.

Inclusion of Subparagraphs

"Nesting" is another technique for document assembly that will improve your substantive systems. While it is possible to deal with a whole document at a time, it is much easier to break down your long documents into discrete modules or sections, paragraphs, and subparagraphs. This is particularly important for lengthy wills, complaints, and other modular documents.

Most word-processing programs offer the ability to "include" or insert other "files" or documents. These included files can, in turn, include other files, which can include other files. With WordStar, for example, files can be nested eight deep.

This technique permits you to have a will that includes a marital deduction provision, which in turn includes a marital trust, which in turn includes a clause naming a bank as the trustee, and so on.

"IF" Statements— The Automated Paralegal

When handling a matter for a client, a lawyer thinks through all of the conditions. For example,

> IF the corporation will be a Subchapter S corporation,
> *THEN* include the resolution in the minutes, prepare a cover letter to the IRS, prepare the IRS form and file within 30 days, the fiscal year must be a calendar year. . .

This kind of logic is used regularly by programmers but is uncommon in word-processing programs. If it is used effectively, you can embed your documents with IF statements to permit paralegals, assistants, or yourself to handle transactions without having to think through the logic again.

ABF Processor for the IBM PC

Professor James Sprowl of Illinois Institute of Technology's Kent Law School designed a special language for lawyers to use in putting together "expert systems." The language, called ABF, was developed while Professor Sprowl was at the American Bar Foundation. ABF not only handles IF statements and INSERT FILE statements to assemble paragraphs, but also has a unique ability to query the user for information the computer doesn't have in its client file and to build a client file from that infor-

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mation for future use. (See Professor Sprowl's articles in the *American Bar Foundation Research Journal* cited in the attached bibliography.)

A "student" version of ABF is now available in conjunction with the textbook *Computer Applications in the Law* by Peter B. Maggs and James A. Sprowl, published by West Publishing. (Call West Telemarketing, 800-328-9352.) The student version can build a client database of 1,000 variables. It can be used with WordStar, WordPerfect, standard ASCII files, and other popular word-processing programs for the IBM PC and compatibles.

IBM has been contributing to the development of the full ABF document-drafting language, including math functions and Boolean logic (statements using *if, and,* and *not*), and an "artificial intelligence" rule base. It will have user-friendly windows and an outline processor built in, and should be available in 1988 or 1989, if funding is continued.

Legalware

A system similar to ABF for the Apple Macintosh and IBM PC (running under Microsoft Windows with a "mouse") is called Document Modeler. In addition to this document-drafting system, there is also an integrated program that automates checklists of procedures to keep track of the steps in handling a legal transaction. This program calls other programs and keeps track of the dates the various documents have been created and the actions to be taken.

Legalware provides a complete, self-contained, integrated set of tools for system authors to use in setting up user-friendly substantive law practice systems. For further information, you may contact:

Legalware
33 Yonge Street
Suite 1120
Toronto, Canada M5E 1C9
(416) 863-6906

Microsoft Word

The Microsoft Word program offers a convenient IF-THEN-ELSE structure for conditionally assembling text, although it has a somewhat limited ability to edit a merged document.

Wordstar/MailMerge

The latest version of WordStar (Version 4.0) includes MailMerge conditional statements in the form of "dot commands," in which the conditional commands are much easier to use than with previous versions. WordStar 2000 is excellent in its document-assembly feature.

Enable2.0

Enable is an "integrated package" that includes a relational database manager and word processing. With its word processing, the documents can merge variable information from the databases and use "if" statements to construct complex legal documents.

Dictaphone and Wang Dedicated Word Processors

Wang has always offered "decision-processing glossaries." These offer the ability to reprogram the keyboard so that when you press a key, it begins a program that can include logical statements. Many larger firms have programmed sophisticated document-drafting systems on a Wang WP, OIS, or VS system.

The Dictaphone Dual Display and 6000 offered a wonderful ability to have an integrated system for assembling documents with two databases, conditional statements in an easy-to-use programming language, and completely editable output documents. Unfortunately, Dictaphone couldn't compete and gave up in the word-processing business. If you have a Dictaphone, there is no machine better for setting up document-drafting systems.

Other Systems

Other word-processing programs, such as Peachtext, FinalWord, XyWrite, and SpellBinder, also include IF or CASE statements.

Internal Comments or Notes the Computer Ignores

It is good programming practice to put comments, notes, and remarks in your template documents. This helps both the drafter of the form and those who later use it, since it generally is difficult for one person to understand the logic of another person's programs, and it is difficult for the original programmer to follow his or her train of thought at a later date.

WordStar ignores all lines that begin with two periods. Therefore, my documents are full of lines that begin with a double dot followed by notes to myself about the clauses and the flow of the system. Similarly, you can use these notes heavily in the MIL document to explain what all the variables mean and the circumstances under which certain answers should be given.

Off-The-Shelf Systems You Can Buy

Don't reinvent the wheel. An increasing number of substantive law practice

systems are available for purchase with a user manual and floppy disks for your system:

- In estate planning—Bob Wilkins's "Drafting Wills and Trusts: A Systems Approach," marketed by Shepard's/McGraw-Hill.
- For auto accident cases—Michigan ICLE's "Handling the Automobile Negligence Case: A Systems Approach."
- Many law book publishers, CLE organizations, and software houses are now getting into the law practice systems business.

For some reason, lawyers are reluctant to buy forms prepared by others. They shouldn't be. My experience is that these systems are prepared by experts in their field and are excellent. They are also a great starting point in setting up systems using your own documents.

If you can't find a computerized system for your area of practice, buy a manual substantive system from your state bar, CLE organization, or a private publisher if one is available. This will provide a good model for you and your staff as you organize your documents on the computer.

Conclusion

While it takes a substantial amount of effort to set up document-drafting systems on your computer, you can minimize this time in several ways:

- Delegate as much work as you can to your secretary or paralegal.
- Develop your systems slowly, on an evolutionary basis. Start with the forms you already have on the computer, and generalize them. Change them on a client-by-client basis, slowly adding new paragraphs, modules, and variables as needed for each new client.
- Consider using a portable computer so that you or your staff can perfect the systems at home in the evenings or on weekends, without the constant interruptions of the normal workday.

It is worth the effort! Lawyers who have set up and computerized substantive systems swear by them, and say that the systems have paid for themselves many times over. They are able to get out the work faster, more competently, and at a much lower cost. □

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James Eidelman owns an Ann Arbor, Michigan firm which provides consulting services in law office management, design of substantive law practice systems, and selection of computer and word-processing equipment and programs. He is also a practicing lawyer who emphasizes computer law. He is vice-chair of the ABA's Economics of Law Practice Facilities and Technology Division and Chair of the PC Users Group.

Did You Know?

Paper For Long-lasting Documents

Alkaline-based paper is now available on the Washington market. It can be used in place of any other paper—on letterhead and envelopes, in photocopiers and for printed matter, such as annual reports and brochures. It is especially valuable to book publishers and buyers. Both white and colored stock are available.

Past paper-making depended on an alum-based process, and the product began eating itself up the minute it was made. Neutral sheet, alkaline-based paper, however, has decades of life without change. It will color a little after a century, but it is expected to last up to 400 years.

Environmentally concerned consumers hail it as a plus because there is improved retention of materials in the mill and, thus, less waste in the effluent. The calcium carbonate helps buffer the sludge and ties up heavy metals, making the effluent less harmful.

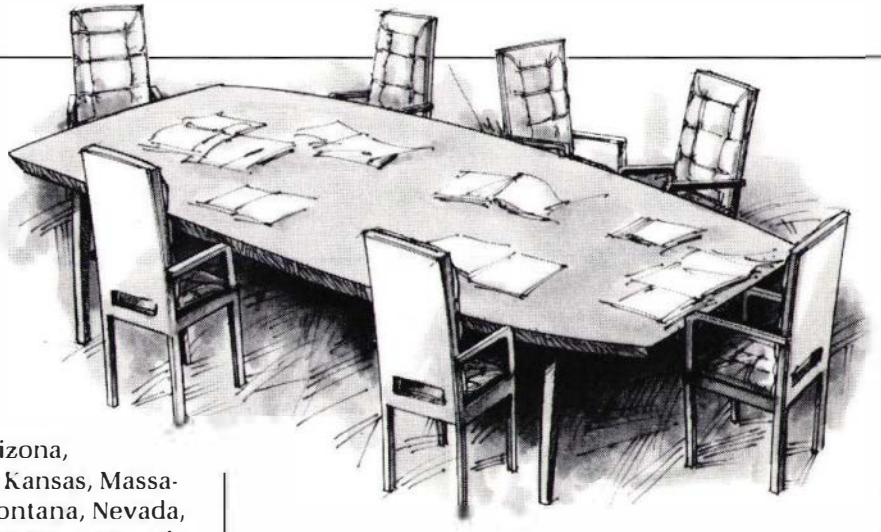
Grays Harbor Paper Company mills the paper in-state. There are currently three Washington distributors:

Standard Paper Company at 3701 - 20th Street East, Tacoma, WA 98424;

Western Paper Company at 7011 South 188th Street, Kent, WA 98032 and at 3003 North Capitol Avenue, Pasco, WA 99301; and

Zellerbach Paper Company at five locations: 6301 Airport Way South, Seattle, WA 98108; East 3530 Ferry at Freya, Spokane, WA 99202; 1225 West Poplar Street, Walla Walla, WA 99362; 1751 C North Wenatchee Avenue, Wenatchee, WA 98801; and 915 Rock Avenue, Yakima, WA 98902.

Limited Directors' and Officers' Liability Comes to Life in Over 20 States!



IT BEGAN last year in Delaware. The state passed landmark legislation enabling Delaware corporations to limit or eliminate the personal liability of their directors under certain circumstances. The reaction among the business community was overwhelming.

So far, 22 other states — Arizona, Colorado, Georgia, Indiana, Iowa, Kansas, Massachusetts, Michigan, Minnesota, Montana, Nevada, New Jersey, New Mexico, Ohio, Oregon, Pennsylvania, South Dakota, Tennessee, Utah, Virginia, Wisconsin and Wyoming — have passed legislation affecting the liability of directors and/or officers. (Details are contained in our new publication, *Provisions Relating to the Limitation of Directors' and/or Officers' Liability*, available from your local C T office.)

A reminder: C T handles thousands of amendment assignments annually — from typing waivers of notice and unanimous written consents to compiling and filing certificates of amendment, obtaining required certified copies, and effecting recording and/or publication, where required.

C T can also assist you with any *special meetings of shareholders* which may be required in order to adopt the new provisions.

Your local C T Account Representative will be delighted to give you (lawyers and their paralegals only, of course) more information about the help we can provide in connection with this important new legislation. Why not call us today?

C T: I'm a lawyer. Please send me a copy of your newest compilation *Provisions Relating to the Limitation of Directors' and/or Officers' Liability.*

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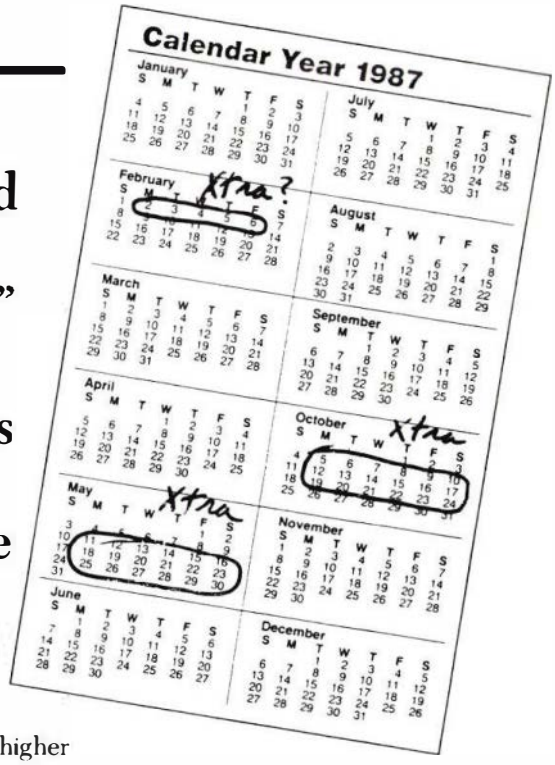
Lawyer Temporaries—

More Firms Find Hiring "Contract" Lawyers Makes Sense

by **Robert J. Thomas**



David Meyer, one of three partners in a Bellevue firm, faced several major business closings and two trials in the coming two weeks. His partners also had full schedules, and several new clients had just come in the door: "It was a Friday afternoon; I was looking at a lot of midnight oil, realizing that I didn't even have time to get help." Meyer turned to an organization specializing in the placement of "contract" lawyers, and immediately hired one for two weeks. After they had worked together for a month, he decided to make the temporary a permanent offer. The lawyer who had taken the assignment was a recent arrival from California. His six years of experience in handling business transactions as well as litigation made him qualified to take temporary work while he was looking for a permanent position.

A Growing Need

More and more Washington law firms are participating in the growing national trend toward hiring lawyers, outside of the normal associate or partner track, either for specific projects or for set time periods. They have discovered that contract lawyers can provide the extra help necessary during the peak demand of an active practice. The Seattle firm of Garvey, Schubert, Adams & Barer hired full-time and part-time contract lawyers to help handle the consolidated industry defense for asbestos litigation. "It was good to be able to match our program with the workload. We knew that the massive backlog of cases might be resolved as quickly as it had arisen," commented Charles Routh, the partner who initiated the program. The firm also found that hiring contract lawyers enabled it to continue its policy of providing permanent associates a broad range of legal experiences, despite the significant demands made on the firm's resources by this single group of cases.

Firms are also finding that contract lawyers make economic sense by generating new revenues from existing overhead. Since most of the lawyers taking such assignments are experienced, they can be billed by firms at the higher rates commensurate with their expertise. The Seattle firm of Schweppe, Krug & Tausend usually hires contract lawyers on part-time, annual contracts to do legal research and writing. The firm informs clients in representation letters that contract lawyers will be working on their matters. "The clients see this as a positive factor, knowing that their work will be done efficiently by experienced research and writing experts," says Martha Dawson, partner in charge of the program.

In addition, costs for temporaries can be significantly less than those for permanent associates. Contract lawyers generally are treated as independent contractors. This means no added firm expense for benefits, taxes, office or support staff. No commitment is made to train, evaluate, or consider contract lawyers for partnership (these time-consuming activities can be a significant drain on valuable partner time). The risk of not having enough work to keep permanent associates busy is minimized. As do temporaries in other industries, contract lawyers allow law firms to match their resources (and associated costs) most efficiently with changing workloads.

Clients are also becoming aware of the cost savings and are starting to hire contract lawyers directly. Jane Wilkinson, a Tacoma attorney, was hired by Simpson Timber Company to work on two specific projects: land claim negotiations with the Puyallup Indian Tribe and the drafting and negotiation of forest practice rules with industry, environmental, tribal, and state representatives. Each project involved several months of work, which she balanced with her continuing obligations as an arbitrator and parent.

A Growing Pool of Talent

While firms that have not used contract lawyers have expressed concern about quality control, those that carefully hire and monitor contract lawyers generally find that this is not a problem. "During the six years that we have used contract lawyers, short-term as well as long-term, we have been very satisfied with the quality of their work," stated Dawson.

Performing contract work meets the individual needs of a growing number of experienced lawyers. Some use it to find their next permanent position. (Although most firms try to avoid potential misunderstandings by not considering contract lawyers for permanent positions, some firms use it to "test drive" an experienced lawyer before making a permanent offer.) Sole practitioners can accept temporary assignments during

slow periods in their own practices.

Other lawyers, following a full-time commitment to a firm, prefer the scheduling options offered by contract work. Some work on a contract basis to balance a second unrelated career or to continue in their profession while taking on the responsibilities of parenting. Even retired lawyers, who often find it hard to leave the practice of law entirely, are making themselves available on a temporary basis to firms that can benefit from their years of experience.

Making It Work

Not all projects lend themselves to the effective application of contract lawyers. Assignments that require short, frequent trips to the office for the contract lawyer may prove too inefficient. It is also important to agree upon the level of commitment expected (On call full-time until the project is completed? A certain number of hours over a certain period?) and the work product required (A polished brief covering all potential legal theories? An informal interpretation of a specific legal principle?).

A firm can avoid referring clients "outside" by using a contract lawyer with special expertise. The firm should check to see if its malpractice insurance policy excludes coverage for work in such subject areas and decide whether to expand it. For work within the firm's normal scope of practice, malpractice coverage may be comparable to that of a summer associate or lawyer "of counsel."

Locating qualified contract lawyers can be difficult, especially for firms that need immediate help and that do not have an established network of candidates. Firms can advertise in bar publications, notices at law schools and law libraries, or bypass the advertising and screening process by using a contract lawyer placement service. Such services have a pre-screened database of candidates whose backgrounds and availability they can quickly match with the specific needs of the firm.

Finally, firms using contract lawyers for short-term assignments must be especially careful to explore any potential conflicts of interest or confidentiality concerns relating to the candidate's previous assignments. The Ethics Committee of the American Bar Association is expected to issue guidelines in this specific area in response to an informal inquiry arising out of the proliferating use of contract lawyers.

New Opportunities

Temporary professionals are one of the fastest-growing segments of the national economy. The Washington legal community is just beginning to participate in this trend. Only the future can tell how the profession will adapt this flexible working arrangement to meet its own changing needs.

Robert J. Thomas *practices with the Seattle law firm of Monroe, Stokes, Eitelbach & Lawrence, P.S., emphasizing commercial litigation and corporate finance. He is a founder of The Alexander & Thomas Group, Inc., a contract lawyer placement service.*

"The Offering" by Seattle artist Mark Calderon, 1987. Tarpaper and mixed media, 67" × 42". Courtesy the artist and Greg Kucera Gallery.

Avoid Promoting Unrealistic Client Expectations

by **Harry H. Goldman**

Practicing attorneys often face a recurring dilemma: How to keep clients upbeat about their case, and at the same time give them a straightforward and realistic appraisal of the lawsuit.

The practice of law is not only a profession, but by necessity a business through which we earn a living. Is there a built-in hesitancy to render the candid advice required by RPC 2.1 when that advice may either unnecessarily alarm a prospective defendant/client or frighten off a prospective plaintiff/client? While the need to garner clients is not mutually exclusive with the rules of professional conduct, many of us at times fail to provide the blunt evaluation to our clients early in the litigation. As a result, we can find ourselves with clients who feel the rug was pulled out from underneath them as the litigation proceeded forward.

My observations are derived from my own practice, mediating dozens of cases, and serving as a judge pro tempore and arbitrator in King County. Although the discovery process in any lawsuit can produce facts which change the lawyer's initial evaluation of the strengths and weaknesses of the client's case, we do our clients a disservice if we use the discovery process as an excuse for failing to provide an adequate and thorough evaluation to the client at the outset of the case. As plaintiff's counsel, it is easy to commiserate with the client's plight and therefore downplay the legal and/or factual problems of the case that are initially apparent. As defendant's counsel, we often sympathize with the client who feels he has been wronged and is bewildered as to why a lawsuit was even brought.

Because of a natural tendency to shy away from bearing bad news, at the very moment we want the prospective client to hire us, we often defer our negative comments. We use the initial sessions to allow the clients to lament the lawsuit which, at that instant, is the most important thing in their life. Candid advice is not always the order of the day.

By deferring bad news to a later date, we often make it more difficult to settle the litigation without the necessity of proceeding to trial. The plaintiff soon begins to believe she has a perfect case and the defendant is less than human. The plaintiff becomes understandably irritated when the trial date approaches and her attorney recommends a settlement for an amount which the attorney believes to be fair and reasonable in light of all of the facts, circumstances and applicable law. The client is baffled as to why the $100,000 case is now only worth $15,000 to settle. She is angry with the attorney, mad at the judicial system, and feels no one can sufficiently understand what has happened to her.

The client who is a defendant in a lawsuit takes a similar view of the plaintiff. The plaintiff is seen as someone who is trying to receive something for nothing and who, in fact, should be paying the defendant money for all the problems he has suffered because of the plaintiff's action. When a settlement is attempted by the defendant's attorney, the defendant, like his plaintiff counterpart, is angry and baffled. Why should any sum of money be paid to the plaintiff, much less the ridiculous amount the plaintiff is demanding??? The defendant is incredulous that he not only has to pay his attorney to defend the frivolous lawsuit, but has to pay money to the plaintiff to settle the case.

Much of this can be avoided by an honest and frank discussion with the client at an early stage. Naturally, any advice to the client is made with the caveat that additional facts can change the initial evaluation. However, a candid appraisal by the lawyer based on the available information and applicable law can set the tone for the client's subsequent expectations. This will serve not only to prevent the client from getting out of control (which would destroy the possibility of settlement), but will also likely result in the client having greater respect for the attorney and the judicial system. Since the overwhelming majority of cases settle out of court, it is foolhardy for lawyers to sow the seeds of client dissatisfaction and make it more difficult to resolve the case without going to trial.

As we all know, there are some cases which we anticipate from the outset will likely not be settled outside of court. However, almost any case can be resolved without trial if the expectations of the parties are reasonably established by both plaintiff's and defendant's counsel in the beginning. Candid advice by the attorney is essential if we are to avoid clogging our trial calendars with cases which would have been settled had the proper background been set initially by each party's attorney. □

Harry H. Goldman *has a general practice in Seattle with an emphasis on litigation.*

How New York view

Every 25 years or so Seattle adds another landmark to its skyline, according to New Yorkers.

That's the Smith Tower on your right.

The Space Needle on your left. Clearly astray.

And – unless you're an architect, a company looking for space or a New York Times reader – you may not know a lot about the building in the middle. But you will.

It is 1201 Third Avenue by Wright Runstad & Company, circa 1988.

Some locals say it is an architectural expression of the Seattle ethic: straightforward, fair, meticulous in detailing, understated, quality.

Yet it was an outsider, The New York Times, that brought up the real significance of this new office tower on the Seattle skyline:

"Today, Wright Runstad & Company is building a 55-story office tower... as integral to the future of downtown Seattle as the old wood homes were to the past." ©

Architects of 1201 Third Avenue: Kohn Pedersen Fox Associates PC, New York, and The McKinley Architects PSC, Seattle. © The New York Times Co. 5/11/86 and 3/16/86.

ws the Seattle skyline.

About the architects of 1201 Third Avenue, Paul Goldberger, New York Times architecture critic, said:

"Among those who have strongly influenced American architecture over the last decade – Robert Venturi, Robert A.M. Stern, Michael Graves, Philip Johnson – none provides a better sense of the temper of the times than does Kohn Pedersen Fox. Its work is the new American mainstream."

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To get the full story and leasing information – and see one of the world's greatest views – call Kevin Kaywood, (206) 447-9000, Wright Runstad & Company.

After all, an opportunity like this may not happen again.

At least not for another 25 years.

1201 Third Avenue

The Seattle building they talk about in New York.

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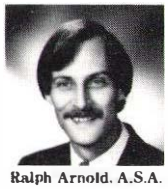
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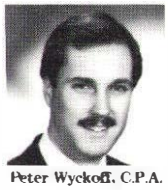
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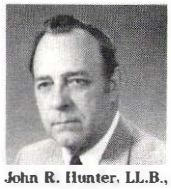
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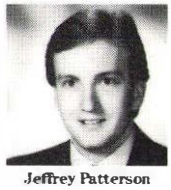
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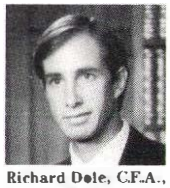
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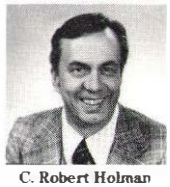
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General Rule 12
Washington State Bar Association: Purposes

General Rule 12, passed by the Washington Supreme Court, was mentioned in "The Board's Work" in July (*Bar News*, page 29) and featured in "The President's Corner" in August (*Bar News*, page 7). The full text appears below.

ARTICLE I.
FUNCTIONS

(a) **Purposes; In General.** The Purposes of the Washington State Bar Association (referred to in this rule as the Bar Association) shall be to promote and aid in the effective administration of justice; to assist in the admission and discipline of members of the Bar Association; to foster and maintain high standards of competence, professionalism and ethics among its members; to promote the availability of legal services to all in need; to advise the public and its officials in matters relevant to these purposes and the professional interests of the Bar Association; to promote respect and understanding for our legal system; to promote the creation of voluntary associations of lawyers concerned with their members' professional interests; to carry on programs of legal research and education; to provide a forum for the discussion of subjects pertaining to jurisprudence and the practice of law; to foster camaraderie among members of the Bar Association and good will between the Bar Association and the public; to promote the independence of the Bar Association and the judiciary of which it is a part; and to promote the interest of the legal profession.

(b) **Specific Activities Authorized.** Among the specific Bar Association activities authorized by this rule and these stated Purposes are:

(1) The regulation of those persons who seek admission to practice law, including the administration of examinations and the review of applicants' fitness and character to practice law;

(2) The regulation and administration of lawyer discipline;

(3) Providing a forum for the discussion of subjects pertaining to the practice of law, law reform and jurisprudence;

(4) Sponsoring, conducting and participating with qualified organizations in programs of continuing legal education;

(5) Carrying on research in fields of substantive law, practice and procedure, and making reports and recommendations thereon;

(6) Conducting audits of lawyer trust accounts;

(7) Maintaining, in its discretion, a program to indemnify clients in whole or in part against losses caused by dishonesty of active members of the Bar Association, or by failure of such member to account properly for funds entrusted to such member;

(8) Maintaining, in its discretion, a program for the aid and rehabilitation of impaired lawyers;

(9) Sponsoring and maintaining committees, sections and divisions whose activities relate to the Purposes stated herein;

(10) Providing communications of interest and utility to lawyers and the public and disseminating information about Bar Association activities, interests and positions;

(11) Monitoring, reporting on and reporting to public officials about matters of interest to the Bar Association;

(12) Maintaining a legislative liaison who shall keep the Bar Association informed about new and proposed legislation and who shall, from time to time, inform public officials about positions and concerns of the Bar Association;

(13) Maintaining and fostering programs of public information and education about the law;

(14) Maintaining and fostering programs to promote good will among the members of the Bar Association and between the Bar Association and the public;

(15) Allocating and disbursing funds, in its discretion, so that these Purposes may be effectively and efficiently discharged.

(c) **Activities Not Authorized.** Among the specific actions which this rule and these Purposes do not authorize are:

(1) Taking positions on issues concerning the politics or social positions of foreign nations;

(2) Taking positions on political or social issues which do not relate to or affect the practice of law or the administration of justice;

(3) Supporting or opposing, in an election, candidates for public office.

Bergsten, DeForest, Stritmatter and Turner Elected to Board of Governors

Once more a changing of the guard will occur as four new members of the Board of Governors take office at the close of the 1987 Annual Meeting in September. The newly elected Board members will represent members of the WSBA in the Third, Sixth and Eighth Congressional Districts, and King County.

Hoquiam attorney **Paul L. Stritmatter** was elected to represent lawyers in the Third Congressional District. A native of Hoquiam, Stritmatter was graduated from the University of Washington with a B. A. in Economics, and he received his J. D. from Willamette University College of Law in 1969, Magna Cum Laude. He was admitted to the WSBA that same year. Stritmatter began his legal career as a clerk to Washington State Supreme Court Justice Matthew Hill in 1969. He became clerk to Justice Charles F. Stafford in 1970 and, later that year, went into private practice in Hoquiam with his father, Lester O. Stritmatter, who passed away in 1982. He has practiced in Hoquiam since 1970 and is currently a principal of the Stritmatter, Kessler & McCauley law firm. Stritmatter also serves as Municipal Court Judge for the city of Ocean Shores, a position he has held since 1971. In addition to being a member of the American Bar Association, the Washington State Trial Lawyers Association (president 1984-1985) and other statewide and national associations, Stritmatter holds invitational memberships in the American College of Trial Lawyers, the American Board of Trial Advocates and the International Society of Barristers, among others. He is a frequently published author and lecturer on trial practice topics.

Stritmatter will replace Board member James A. Vander Stoep as the representative of the Third Congressional District.

Taking his position on the Board to serve lawyers from the Sixth Congressional District will be Tacoma lawyer **William P. Bergsten,** who succeeds predecessor Edward M. Lane of Tacoma. Bill Bergsten is a partner in the Tacoma law firm of McGavick, Graves, Beale and McNerthney, where he has practiced since 1972.

Bergsten received his B. A. from Washington State University in 1962 and was graduated from the University of Oregon School of Law in 1967. He was admitted to the WSBA in 1968. He was a trial attorney for the Federal Trade Commission (1967-1971), and became Deputy Prosecuting Attorney in 1972, prior to joining his present law firm. He has been active in service to the profession as a member of the Tacoma-Pierce County Bar Association and a member of that organization's Board of Trustees (1978-1980), and a member of the American Bar Association and the Washington State Trial Lawyers Association. He has also served the WSBA as a member of its Board of Continuing Legal Education (1978-1981 and 1987).

Bergsten has been a leader in Tacoma area community activities, having served on the Executive Committee and as a Board Member of the Pantages Center for the Performing Arts; on the Executive Committee and as Vice President of the Tacoma Art Museum Activities Council; and as Secretary and a Board Member of the Tacoma Country and Golf Club.

Elected to represent the lawyers of the Eighth Congressional District is **James S. Turner** of Bellevue. He takes over the reins from Board Member Roy J. Moceri of Mercer Island.

Jim Turner received his law degree from the University of Washington in 1955 after receiving his B. A. from the UW in 1953. He became a member of the WSBA in 1955. Having served a term early in his legal career as an Assistant Attorney General for the State of Washington (1956-1959), Turner has practiced law in the Seattle area since that time. He also served as a Special Master, U. S. District Court, Western District of Washington (1974-1975), and as a Special Attorney for the City of Seattle (1979-1980). In addition to being a member of the American Bar Association, Turner has a long legacy of service with the Seattle-King County Bar Association, having held numerous positions including membership on the Board of Trustees (1974-1977), and in various officer posts, culminating in a term as President (1983-1984). He is presently a sole practitioner in Bellevue.

One of the King County at Large positions on the Board of Governors has been well represented in the recent term by Seattle lawyer Harold F. Vhugen. Taking over that seat at the close of the WSBA Annual Meeting will be an equally capable leader, **Stephen E. DeForest.**

A native of Seattle, Steve DeForest was graduated from Yale University (B. A., Summa Cum Laude) and received his law degree from Harvard University (J. D., Cum Laude) in 1960. He was admitted to the WSBA in 1960. He has been with the Seattle law firm of Riddell, Williams, Bullitt & Walkinshaw for 27 years, where his primary areas of practice are corporate and employment discrimination law, qualified retirement plans, and business and defamation litigation. DeForest has been continually active in service to the profession on the state and local levels. His activities with the WSBA include memberships on the Bench-Bar-Press Committee, Editorial Advisory Board (Chairperson 1976-1977), Legal Education Liaison Committee (Chairperson 1972-1974), and the Young Lawyer's Committee (Chairperson 1967-1970). Among many activities with the Seattle-King County Bar Association are terms as a member of the Board of Trustees (1967-1970), and as President (1981-1982). DeForest was also President of the Seattle-King County Bar Foundation (1986-1987). He has served on the King County Public Defender Board of Trustees (1975-1977) and was a lecturer in Trial Practice and Torts for Bar Review Associates of Washington (1965-1979).

Also active in Seattle area community service, Steve DeForest's principle area of interest outside the legal profession has been in service to United Way of King County. He was a volunteer from 1971 through 1980, during which time he was on its Board of Directors for five years, a member of the Executive Committee for a similar period, and Chairperson of the Planning and Allocations Committee for two years.

William P. Bergsten

Stephen E. DeForest

Paul L. Stritmatter

James S. Turner

The Board's Work

by Carole Grayson

PORT LUDLOW. AUGUST 21-22, 1987.

Present: President Gates, all Governors. Also: Kay Frank (SKCBA Young Lawyers); Paul Stritmatter (8-22), Steve DeForest, Jim Turner, and Bill Bergsten (Govs.-elect); Robert Farrell (WSBA counsel); John Michalik (WSBA exec. dir.); Tom Fitzpatrick (8-21) and John Riley (8-22) (WSBA Young Lawyers); Patricia Smith (Wa. Women Lawyers); Jack Dean (WSBA Pres.-designate); Ed Reed (Ct. of App. Judges Assn.); Mary Prevost (Govt. Lawyers); Gary Burleson (Wa. Assn. of Prosecuting Attys.); Marc Boman (SKCBA trustees); Richard Ishikawa (Superior Ct. Judges Assn.)

1988 BUDGET PASSES; DUES INCREASED. The Governors unanimously passed the FY 1988 budget of $5,442,641.00, but subject to review of the proposed budget of the Public Affairs Department and the publication, Resources. The budget as approved will include a dues increase to $195 per year (and $115 per year for the first two full years of practice).

- The Bar News editor will receive a $550 monthly stipend, up from $500.
- Governors deleted $57,643 for the Washington Project proposal from the State Board of Public Instruction for K-12 education curriculum in the schools.
- Governors deleted $21,200 for a statewide mock trial program.
- Governors deleted $5,000 for a bi-centennial program.

Governor Frank Hayes Johnson of Spokane wondered why the budget had increased $1,718,000 in three years, up from $3,725,000 in FY 1985. According to his figures, in FY 1986, the budget increased $447,000, in FY 1987 another $594,000, and in FY 1988, as proposed, $778,000.

"Part of our function is to be creative," responded WSBA executive director Michalik. "We're not playing a game here; we don't go to the budget committee and ask for the moon, knowing that we will only get cheese." Governor Ed Lane of Tacoma countered, "I'd be happy to let the budget stay at last year's level and let the departments work within that."

BYLAW AMENDMENT? The Governors voted 7-3 to defer at least until November a proposal to amend Article VII, Section 8(b) to change the current requirement of 250 signatures for filing a referendum to either a specific number or a percentage, e.g., 10% of the active members of the Association.

Executive director Michalik, noting the 250-signature requirement had been in existence since the early 1950s, said it was the "fourth or fifth time I've ridden this horse." Michalik said the current situation has a "potential for abuse," and "adjustment was needed based on the growth of the Bar." "How many times has this provision been used?" asked Governor Julie Weston of Seattle. Michalik recalled three occasions since 1979, although he agreed that on one of those occasions, the malpractice insurance situation, the Governors were going to poll the membership in any event. Weston responded that four referenda in eight years was not an abuse of the system.

The Governors agreed that the referendum process was important but were unable to agree on what to do with the signature requirement. Johnson termed "something more than 250" as appropriate considering the "substantial expense of a referendum" which he placed at $12,000 to $20,000, but he was "not necessarily wedded to 10%."

Governor Hal Vhugen of Seattle said, "We recognize the right to a referendum," but the 10% figure is "too high [and would] eliminate the right of referendum ...If it ain't broke [don't fix it]."

Governor James Vander Stoep of

Chehalis said that the right of referendum had to be protected. "How about 5%?" he asked.

Governor Steve Reisler of Seattle urged the Governors to "keep in context" the two different numbers which apply to referenda: 250 signatures are needed to file a petition with the Bar, but 50% of the active membership must vote on the referendum in order for it to "validate." As he noted, as the size of the Bar increases, so does the 50%--"And that's the threshold that counts. We may get to the stage where we may need to budget money for referenda and that's O.K. What's important is what's required to validate --- 50%."

Governor Jay White of Seattle said, "As a general proposition, I don't like to change the right of the members to participate." He was "convinced" that "10% is way too high."

Marc Boman of the SKCBA trustees urged the Governors to "consider the financial burden" and impact on the person who seeks to initiate a referendum: That person has no source of funds as does the Bar.

The Governors decided that the Bar News shall carry a notice that the Governors are considering action on the bylaw. Concerning notice to the membership, Governor Roy Moceri of Mercer Island said that if you allow the members to comment, you'll hear from fifteen or twenty. "You know who you'll hear from. That's not valued input." Moceri was joined by Lane and Johnson in voting against the motion to defer action.

COMMITTEES A motion by Reisler for the Governors to reaffirm their "turnover" rule for committees, adopt the Vander Stoep plan to equalize representation on committees by district, and to establish a tracking system for King County-at-Large committee appointments failed by a 5-5 vote. Voting in favor of the motion were Reisler, Ed Shea of Pasco, Weston, Vander Stoep, and Mike Carlson of Everett. The turnover scheme, under which committee members would serve up to three years and then be named chair or be removed from the committee, is, in Frank Hayes Johnson's words, "A concept more honored in the breach than the observance. If we adopt the plan, let's do it across the board...and bite the bullet."

Ed Lane disagreed with the Reisler proposal altogether, terming it "the absolute province" of the Governors to determine who stays on committees and for how long.

President-designate Jack Dean of Spokane will investigate the committee appointment procedure.

LAW EXAMINERS In an effort to "humanize" the Bar exam process, Colonel Betz of Mt. Vernon, chair of the Committee of Law Examiners, told the Governors, his committee has taken a "dog and pony show" to the law schools.

Betz also described the preparation of the exam questions. Examiners who constitute the review committee have no knowledge of the preparation of the questions or the original grade received by the test taker. Because of the extensive work required, exam graders, for example, receive $2,500 for the summer exam and $1,500 for the winter exam. The review committee members each receive approximately $750.

EDITORIAL ADVISORY BOARD HANDBOOK ACCEPTED The Governors 10-0 accepted the editor's handbook created by the Editorial Advisory Board. The EAB "did a terrific job," said Governor Julie Weston of Seattle. The Governors agreed that the existing resolutions relating to the Bar News will be attached to the handbook as an appendix.

IN OTHER WORK: (1) The Governors forwarded to the Supreme Court the names of Evergreen Legal Services attorney Ty Duhamel of Wenatchee and Larry McKeeman of the Snohomish County Prosecutor's Office. They will be considered for appointment to the Judicial Council. (2) Patrick Comfort of Fircrest was appointed WSBA delegate to the ABA House of Delegates through the August 1988 ABA meeting. (3) Richard Hemstad of Olympia and Anne Redman of Seattle were appointed to the Statute Law Committee for six-year terms. The committee is a legislatively-created body to which the WSBA makes appointments.

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In the LAP

A Grassroots Emphasis

In upcoming issues of the *Bar News*, peer counselors of the Lawyers' Assistance Program (LAP) will detail the distress that led to their impairment and eventual recovery. Each history will be followed by a discussion about how widespread that pattern is among Washington lawyers. Although every lawyer's history will be unique, specific symptoms recur consistently. LAP found that this was true in the random sample taken of the Bar earlier this year.

This first history appears anonymously, for confidentiality is the critical component of the LAP. Eighty-seven peer counselors currently work with distressed lawyers throughout Washington. Do you know even one peer counselor? Have you heard anything about an ongoing case? LAP peer counselors and staff maintain confidences scrupulously.

A Lawyer's "Unhappy Hour"

Not exactly the chic spot for Seattle High Society, "The Mint" near First and Pike in Seattle, circa 1962. But it opened at 5 a.m., and it served cheap screwdrivers. So at 6 a.m. I sat at its sleazy bar in my business suit next to my shirt-sleeved, less-than-spick-and-span drinking companions, downing a fifth (or sixth—you lose count) screwdriver before departing for the office. A lawyer's lawyer in the mold of Hemingway, I thought.

I now realize that one of the clear signs of the downward plunge of the alcoholic is drinking with inferiors or, perhaps, in inferior surroundings. The dimly lit Mint was not likely to attract any of my associates at daybreak. Yes, a fine, romantic, safe place to drink and contemplate the slings and arrows of life, the unfairness of not having received the Mr. Nicest Guy in America award by age 40.

My life was not in a shambles—yet. But it was getting there. I was married to an unhappy wife. We were raising three children, lived in a comfortable home, and had an adequate income—when it wasn't wasted on booze and crazy spending. I had never had a DWI, had never been arrested (should have been!), and had never been called on the carpet by the State Bar for malpractice or other misdeeds. I had never been hospitalized or treated for alcoholism.

Yet, some of my friends would ask, "Why are you drinking so much?" My wife had given up asking. This charge was, of course, ridiculous. I didn't drink any more than a lot of lawyers I knew. And, after all, wasn't I working and supporting my family? I deserved some recreational drinking. Nevertheless, at my wife's insistence and to pacify her, I sat on a psychologist's couch for a few sessions. He never discussed booze, nor did I. I did not quit drinking.

I am not aware of any special problems which caused me to abuse alcohol. Certainly there were financial and job-related problems, but these were not unique, and most lawyers do not run to the bottle to escape them. I got along fairly well with people (when sober!), but hard drinking makes one cynical and bitter.

A year later, I hit bottom. Late one night I sobbed out a call for help to an Alcoholics Anonymous answering service. The Battle of Denial was over. I wanted desperately to get off the merry-go-round of drinking, of hangovers, of guilt and remorse and endless apologies ("It won't happen again, dear—I swear it!").

The next night I attended my first AA meeting and heard the inspiring stories of others about how they were recovering in AA. That was more than 20 years ago. I have not taken a drink since that first meeting. My life has changed dramatically, but not overnight. It has been a long, gradual process.

Today, I reflect upon those sober, rewarding years of being a lawyer, surrounded by many good friends and a loving, loyal family. The alternatives make me shudder: Disbarment? Early death?

Before it is too late, find out what your choices are. For mine it was, and is, AA. Give the Lawyers' Assistance Program a call.

And, no, I don't miss the early hours at The Mint!

What It Means

This is a true history of chemical dependency and its consequences. The history expresses the tragedy and waste of the compulsive drinker. The author, a recovering Washington lawyer, agreed to complete *Lawyer Ways of Living and Health Questionnaire* as he would have before he decided to recover.

Two strong themes emerge from his responses to the LWLHQ. The lawyer was alcohol dependent and clinically depressed. Here were some of the signs:

- He was regularly drinking noontime cocktails
- His relationships with clients, staff, friends and family were deteriorating
- He was getting drunk at social gatherings and losing control when professional decorum was called for
- He was feeling no interest in his usual activities, feeling hopeless about the future, and feeling worthless
- He was often nervous and stressed
- He was often angered because things that happened were outside his control

How many other Washington lawyers suffer from alcohol problems and clinical depression? The results from the LWLHQ suggest that 6% of male lawyers now suffer as the author did.

If the fact pattern sounds familiar, call us. We can arrange peer counseling with recovering lawyers or professional counseling or both. Our peer counselors have identified counselors and programs that are targeted for lawyers. So call us at (206) 448-0605 for confidential assistance that works.

(Next column—A female lawyer tells her story)

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INFORMAL OPINION 87.1
Conflicts of Interest That May Limit a Lawyer's Ability to Serve as Trustee in a Deed of Trust Foreclosure

When the state of Washington in 1965 enacted a non-judicial foreclosure alternative for real property security interests, it provided for the title to the property to be held by a third party given the common law title "trustee." The Act, while providing that "any attorney" admitted to practice in this state could serve as trustee, prohibited the beneficiary, or the beneficiary's employee, agent or subsidiary, from acting as trustee. In 1975 the Legislature deleted this prohibition. Implicitly this amendment created a question for lawyers: are there circumstances under which a lawyer cannot serve as trustee?

This question was expressly raised in *Cox v. Helenius*, 103 Wn.2d 383 (1985), where the court set aside a deed of trust foreclosure sale, in part because of a conflict of interest on the part of the trustee. The trustee was an attorney who also represented the beneficiary in a collateral lawsuit commenced by the grantors who claimed offsets arising from the underlying transaction that exceeded the secured indebtedness. Acknowledging the 1975 amendments that allow an agent to serve as trustee, the court stated:

> . . . [T]he statute may not allow attorneys to do that which the Code of Professional Responsibility prohibits. The spirit of CPR DR 5-105(B) would seem to condemn action of the nature that occurred here. Where an actual conflict of interest arises, the person serving as trustee and beneficiary should prevent a breach by transferring one role to another person.

The court cites the "spirit of" CPR DR 5-105(B) which prohibited multiple employment if independent professional judgment on behalf of a client is likely to be adversely affected by representation of another client. In citing this rule, the court suggested that to analyze whether a lawyer has an impermissible conflict, the grantor and beneficiary should both be viewed as clients of the trustee.

With the adoption of the Rules of Professional Conduct, the grantor need not be viewed as a client of the lawyer-trustee in order to analyze the conflicts issue. Rather, the grantor should be viewed as a third party to whom the lawyer-trustee owes a duty. Rule 1.7(b) addresses the conflict between duties to a client and duty to a third party:

> (b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:
> (1) The lawyer reasonably believes the representation will not be adversely affected; and
> (2) The client consents in writing after consultation and a full disclosure of the material facts (following authorization from the other client to make such a disclosure). . . .

In applying Rule 1.7(b) to a particular fact pattern, the initial question is, when the rule is triggered—under what facts may the representation of the beneficiary be materially limited by the trustee's duty to the grantor? If there may be a material limitation, then the lawyer must resolve a second question—whether he or she reasonably believes the representation will not be adversely affected.

The trustee, according to the *Helenius* decision, owes some duty as a fiduciary to the grantor; must act impartially between grantor and beneficiary; must take reasonable and appro-

priate steps to avoid sacrifice of the debtor's property and his interests; and can postpone a sale "for any cause he deems advantageous." These responsibilities on the part of the trustee mean that in some situations, a trustee has discretionary authority, and may need to exercise independent judgment in deciding whether to proceed with the sale.

In the deed of trust foreclosure context, where a particular trustee also represents the beneficiary, a conflict between grantor and beneficiary may trigger 1.7(b), and put the attorney-trustee in a position where the representation of the beneficiary may be materially limited. Thus, for example, if the grantor seeks but the beneficiary refuses to accede to a delay of the sale, the threshold may be crossed and the attorney-trustee can go forward with both responsibilities only if he or she reasonably believes the representation of beneficiary will not be adversely affected, and the beneficiary consents in writing.

If, under the particular facts, the trustee must exercise independent judgment in deciding about how to proceed with the sale, then the lawyer-trustee cannot continue to serve both as trustee and as lawyer for the beneficiary. A lawyer cannot, consistent with the Rules of Professional Conduct, act as a fiduciary exercising discretion and as an advocate. In the words of Rule 1.7(b), it would not be reasonable for the lawyer-trustee to believe he or she could exercise independent judgment while at the same time fulfilling all of the professional responsibilities to the client-beneficiary. Consent of the beneficiary, in such circumstances, does not solve the problem.

If, for example, the grantor makes no request for delay of the sale, there would not be a problem under Rule 1.7(b). On the other hand, if the grantor requests a delay which reasonably appears to the trustee to be nonfrivolous, but the beneficiary refuses to agree to a postponement, then a conflict may exist that under Rule 1.7(b) prevents the lawyer from going forward with both roles; the conflict cannot be solved by the beneficiary's consent to the continued representation by the lawyer-trustee of the beneficiary.

As *Helenius* makes clear, the fact that a court is involved does not necessarily mean that the trustee has no need to exercise independent judgment. Such judgment may not be called for in a bankruptcy where the grantor is represented and the bankruptcy judge will decide whether to lift the automatic stay. Depending upon the particular facts, the attorney-trustee may be able to represent the beneficiary in such circumstances because the focus of the court's decision will be on the very area where the trustee would otherwise have some discretion. The court will, in effect, make the trustee's decision. In every case, however, this may not be true. The focus may be on whether there is a default, and the court may not rule on whether, for some other reason, the sale should be delayed.

The lawyer trustee who represents neither grantor nor beneficiary can serve as trustee, exercising the independent judgment required, even though the demands of the grantor and the instructions of the beneficiary conflict. The obligations of the Rules of Professional Conduct do not preclude a lawyer from serving as trustee in these circumstances.

Informal Opinions are published pursuant to authorization granted by the Board of Governors but they have not been individually approved by the Board and do not reflect the official position of the Association. An informal Opinion is provided for the education of the Bar and reflects the opinion of the Rules of Professional Conduct Committee.

Now *You* Can Help Introduce Students to Rights, Duties

by **Cheri L. Brennan**
Asst. Public Affairs Director

"I signed a sales contract to buy a car, but later decided I couldn't afford it. Since I haven't picked up the car, can I cancel the contract?"

"Can my employer fire me without a reason?"

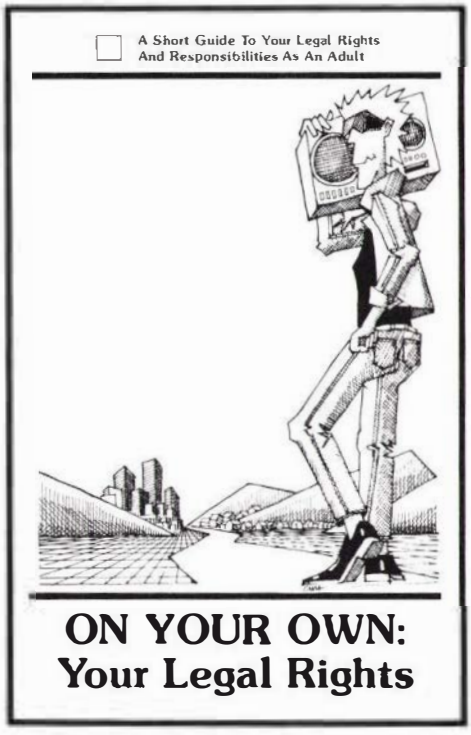
"Must I report every automobile accident to the police?"

"Can my landlord use my damage deposit to clean the carpets?"

These and other questions about legal rights are answered in a new publication for young adults. Called *On Your Own: Your Legal Rights*, this 32-page booklet will be distributed this fall to high school seniors throughout the state. Lawyers and judges are invited to visit classrooms to help introduce the material.

The "short guide to legal rights" is the product of a collaborative effort by members of the Seattle-King County Bar Association and the Washington State Bar Association in cooperation with the Office of the State Superintendent of Public Instruction and the Washington Center for Law-Related Education (formerly L.E.A.R.N.). Project funding was provided by The Legal Foundation of Washington and SAFECO Insurance.

The contents, presented in eight chapters, include sections on family law, consumer protection and credit, employment concerns, automobiles, landlord/tenant rights, criminal law, the civil court system and freedom of speech.



To assist teachers in presenting the information-packed booklets, the WSBA, in cooperation with local bars and the Superintendent's office, hopes to pair at least one member of the Bar with each high school in the state.

An orientation guideline and set of presentation tips will be provided to each speaker to help minimize the volunteer's preparation time. Arrangements for speaking appearances will be made with each individual. Overall coordination is being handled by the State Bar and Superintendent's office, in cooperation with regional school districts and county bar associations.

To volunteer for the program, simply complete and return the coupon or contact the State Bar's Public Affairs office at (206) 448-0441, ext. 250. When registering, you may designate schools you prefer to visit.

What's in it for you? Some lawyers who make regular classroom visits believe the experience is mutually enlightening! One veteran of the school circuit explains, "The compensation comes in the form of satisfaction and the thank you notes you'll receive..."

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

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CASELAW CAPSULES

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

Community property—family law. Husband filed petition for dissolution. Agreed temporary order was entered prohibiting husband and wife from changing beneficiary of any insurance policy. Subsequently husband changed beneficiary of his group term life policy and named wife and third party as co-beneficiaries. Six weeks later, husband committed suicide. In dispute between wife and third party over proceeds of insurance policy, court held that husband's death abated dissolution proceeding. Following abatement, trial court lost jurisdiction over insurance policy. Therefore, validity of beneficiary designation was controlled by community property rule stated in ***Francis v. Francis,*** 89 Wn.2d 511, 573 P.2d 369 (1978), and husband was permitted to designate third party as beneficiary of his half of proceeds of policy. ***Standard Insurance Co. v. Schwalbe,*** 47 Wn. App. 639, 737 P.2d 667 (5/12/87).

L. S. Hume

Creditor-debtor law. *(Case 1.)* Under Washington law, where debtor in bankruptcy had handled all affairs of joint venture, debtor was treated like managing partner and had duty to act as trustee for affairs of joint venture. He was therefore "fiduciary" within meaning of Bankruptcy Code § 523(a)(4), which creates exception to discharge for defalcation while acting in fiduciary capacity. ***Lewis v. Short,*** 818 F.2d 693 (9th Cir. 6/2/87).

(Case 2.) In bankruptcy, status of creditor's claim at date of order of relief determines whether claim falls within an exception to discharge under § 523(a). Therefore, where creditor had not obtained judgment or consent decree before date of order of relief, there was no exception to discharge under § 523(a)(9), covering "debt that arises from a judgment or consent decree," based upon liability incurred as result of debtor's operation of motor vehicle while legally intoxicated. Such claim may be nondischargeable under § 523(a)(6) exception for willful and malicious injury, but complaint to determine nondischargeability must be filed within 60 days of § 341(a) meeting of creditors or extension date set by court. Creditor's assertion of claim in response to complaint filed by debtor may satisfy this requirement, but not where response was filed after required 60-day period. ***Stackhouse v. Hudson,*** 73 B.R. 649 (9th Cir. BAP 1987).

M. D. Rombauer

Personal property security. *(Case 1.)* Secured creditor's disposition of collateral in commercially unreasonable manner will not be treated as absolute waiver of deficiency judgment, and value of collateral will be presumed to have been at least equal to amount of unpaid debt. Where secured creditor had made no effort to rebut presumption, judgment for deficiency was reversed. ***Rotta v. Early Industrial Corp.,*** 47 Wn. App. 21, 733 P.2d 576 (3/2/87).

(Case 2.) Secured creditor with validly perfected security interest that has been assigned for security on secured creditor's debt has right to foreclose on collateral, so long as secured creditor was current on its debt to assignee. ***Uni-Com Northwest, Ltd., v. Argus Publishing Co.,*** 47 Wn. App. 787, 737 P.2d 304 (5/26/87).

M. D. Rombauer

Real property. *(Case 1.)* Real estate broker who relayed to buyer misinformation from seller was not liable to buyer for negligent misrepresentation when broker did so "innocently and nonnegligently." *I.e.*, in this case broker used "the standard of care of a reasonably prudent broker" to verify seller's information. (*Comment.* Rhetorically the decision is consistent with earlier Washington decisions on brokers' liability for misrepresentation. On the facts of the case, it may be slightly more favorable to the broker than are some earlier decisions.—W.B.S.) ***Hoffman v. Connall,*** 108 Wn.2d 69, 736 P.2d 242 (4/30/87).

(Case 2.) Condominium sales agreement, warranty agreement, and condominium declaration all contained lengthy, express statements that any action on warranties or negligence was limited to one year. Held, plaintiff condominium owners' actions for negligent design, selection of building materials, and construction were barred after one year. ***Southcenter View Condominium Owners' Ass'n v. Condominium Builders,*** 47 Wn. App. 767, 736 P.2d 1075 (10/20/86).

(Case 3.) Preemptive purchase option (right of first refusal) contained in real estate sale contract is not assignable unless there is evidence parties so intended. In this case, letter that vendor wrote to third person raised fact question as to parties' intent on this question. Case remanded for trial to determine intent. ***Shower v. Fischer,*** 7 Wn. App. 720, 737 P.2d 291 (5/20/87).

W. B. Stoebuck

The Thirty-Second Estate Planning Seminar

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

The Thirty-Second Estate Planning Seminar will be held on October 29 and 30, 1987 in Seattle at the Westin Hotel. Once again this program includes outstanding speakers from the state of Washington and around the country. Sponsored by the Estate Planning Council of Seattle and the WSBA, this year's seminar will feature **Orin C. Smith,** former Director of the Office of Financial Management, Washington state, as the guest luncheon speaker on Thursday, October 29. Smith most recently served as Director from 1985 to 1987, when he was in charge of budget development and implementation for Washington; he served as Transition Director to Governor Booth Gardner and later as the senior advisor to the Governor on financial and policy issues. He was a principal at Touche Ross & Co. in Seattle before his recent state service, working at separate times in the Tax Division and in the Management Consulting Division.

The Program Chair for this year's event is **Frederick G. Fogg** (Peoples National Bank, Seattle), assisted by Co-Chair **Laverne L. Dotson** (Touche Ross & Co., Seattle). The speakers include: **Evan O. Thomas III** (Lane Powell Moss & Miller, Seattle); **Malcolm A. Moore** (Davis Wright & Jones, Seattle); **Daniel H. Teas II** (The Teas Company, Inc., Colorado Springs, Colorado); **Thomas C. Gores** (Bogle & Gates, Seattle); Dean **John R. Price** (University of Washington, Seattle); **Bernard W. Nebenzahl** (Peat Marwick Main & Co., San Francisco, California); **Joseph M. Gaffney** (Foster, Pepper & Riviera, Seattle); **Jonathan G. Blattmachr** (Milbank, Tweed, Hadley & McCloy, New York, New York); Professor **Gary C. Randall** (Gonzaga University School of Law, Spokane); **Janis Cunningham** (Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax, P.S., Seattle); **Pam H. Schneider** (Drinker Biddle & Reath, Philadelphia, Pennsylvania); **Byrle M. Abbin** (Arthur Andersen & Co., Washington, D.C.); Professor **Leon E. Irish** (University of Michigan Law School, Ann Arbor, Michigan); and Professor **F. Ladson Boyle** (University of South Carolina, Columbia, South Carolina).

For further information about this program, please contact Debbie Kirchhauser, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, or telephone (206) 448-0433.

Two other October programs to plan for are "Franchising," to be presented in Seattle at the Westin Hotel on October 15 and "Discrimination Law for the General Practitioner: An Update on Washington Law Against Discrimination Under Ch. 49.60 RCW," to be presented in Seattle at the Westin Hotel on October 23.

For the "Franchising" seminar, Program Chair **C. Kent Carlson** (Preston, Thorgrimson, Ellis & Holman, Seattle) has recruited Professor **Jack Davies,** Chair of the Drafting Committee on Uniform Franchise and Business Opportunities Act (William Mitchell College of Law, St. Paul, Minnesota), to give the keynote address on the status of "Trends and Developments in Franchise Legislation." Other program speakers include: **Michael Stevenson** (Department of Licensing, Securities Division, Olympia); **Suzanne E. Sarason** (Department of Licensing, Securities Division, Olympia); **William G. Hagelin** (Hagelin & Associates, Seattle); **Terence M. McTigue** (Attorney at Law, Bellevue); **Robert H. Alsdorf** (Alsdorf, Armstrong, Bradbury & Maier, Seattle); **Gary R. Duvall** (Merkel, Caine, Jory, Donohue & Duvall, Seattle); **M. Eugene Stone** (Chairman and Chief Executive Officer, Skipper's Inc., Bellevue); and **Willard Hatch** (Hatch and Leslie, Seattle). For further information about this program, please contact Karla Ellison at the WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599 or telephone (206) 448-0433.

The "Discrimination Law for the General Practitioner" seminar is designed to help the general practitioner recognize potential discrimination issues under Washington law. It will be helpful to those who may represent potential plaintiffs and also to any attorney who represents retail businesses, landlords, financial institutions, or small businesses of any kind. The program will be held in Seattle at the Westin Hotel on October 23, 1987. For further information about this program, please contact Karla Ellison at the WSBA.

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OCT 15	Seattle (Westin Hotel)

Discrimination Law for the General Practitioner: An Update on Washington Law Against Discrimination Under Ch. 49.60 RCW

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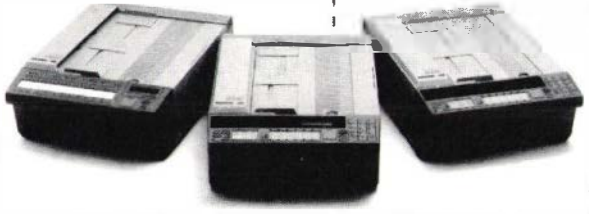

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LOIS

Law Office Information Service ("LOIS") is a bibliography of articles about the economics of law offices. For a mere $80 per year you can have what two organizations feel is some of the best information available to help in managing your law firm to a successful future. That is less than the cost of one hour of most law firm consultants' time—and can prove to be far more versatile. LOIS covers many more subject areas of interest to the managing partner and/or law firm administrator than a consultant could cover in any but the most expansive engagements.

The general areas of classification of the articles in LOIS are: law practice systems (non-financial); financial management; law office management; personnel; forms of practice; law office equipment and design; and miscellaneous (a potpourri of subjects not fitting within the prior listed general areas). The articles are indexed by subject matter, title, author, keyword and a numerical subject classification.

LOIS is published quarterly by The American Bar Association Section of Economics of Law Practice and The Institute of Continuing Legal Education. For further information contact The Institute of Continuing Legal Education, ATTN: Book Department, Hutchins Hall, Ann Arbor, Michigan 48109; (313) 764-5142.

AROUND THE STATE

ASOTIN COUNTY

C. Alan Grieder, a former Clarkston police officer, is practicing law with **Charles T. Sharp** in Clarkston. Grieder was graduated in December of 1986 from the University of Idaho law school.

CHELAN COUNTY

Phillip Johnson of Wenatchee is the new president of the Chelan-Douglas County Bar Association. **John Bridges,** also of Wenatchee, is the new vice-president.

CLARK COUNTY REPORT
by **JOHN F. NICHOLS**

Every summer in that far-away corner of Clark County known as Hazel Dell, strange and mysterious things take place. The causes of these events have never been fully explained nor, for that matter even explored, until now. With the aid of the C.C.B.A. "In Search of..." investigative team we present for your edification the following:

"Tales of Weird Things in Hazel Dell"

1. **Chuck Kinnunen** of the Lee, Mitchelson & Yoseph firm, is leaving the practice of law to follow a higher calling. No, Chuck is not becoming a siding salesman, but is in fact joining the priesthood. Father Chuck will be taking the vows of chastity, poverty and obedience. Being a young Vancouver attorney, the first vow should not be a problem. Having worked for **Darrell Lee** for a couple of years Chuck is used to the last two vows. *Bon chance* Chuck and *mea culpa.*

2. **Vicki Lee,** spouse of the aforementioned Darrell, gained notoriety for being a semi-finalist in the nationwide search for Ann Landers' replacement. Vicki, who has been giving free advice to Clark County for years, garnered high marks for originality and poise. She was ultimately eliminated however, when she refused to adopt the patented Ann Landers bouffant. Apparently Vicki felt the hairdo was a mite too radical for Hazel Dell.

In the news outside of Hazel Dell, the annual C.C.B.A. golf and giggle show invaded the verdant fairways of Orchard Hills Country Club. Unfortunately the C.C.B.A. was invaded by the ensemble of **Jim Holland.** Jimbo's snappy outfit of suspenders and work shirt understated a swing that could only be called a "Holland." As in, "I had a blind date last night and boy was it ever a Holland." Jimbo captured the hotly contested M.P.H. (most pick-ups hit) award by bagging a Ford off the 4th tee, landing a 9 iron in the bed. After that act, all other awards were called off.

New guys in new places or old guys in new places:

New guy, **Mark Muenster,** (Herm to his friends—none, as of yet), has locked up with **Steve Thayer.** Mark will practice criminal stuff and still have enough time to wash Steve's Ferrari.

Old guy, **Mike Langsdorf** is now with Lee, Mitchelson & Yoseph, Hazel Dell see *supra.*

New guy, **Douglas Edmunds,** had a grand opening at Vancouver Mall. Doug is "specializing" in shopping law.

New guy, **Baldwin Minton**, is an associate with Miller & Storz and is "specializing" in piano law.

GOVERNMENT LAWYERS REPORT
by **MARY C. BARRETT**

As President Gates noted, governmental lawyers as a group "... has developed a strong group in bar affairs." Individually our voices will be heard, as many governmental lawyers were appointed and reappointed to bar committees by outgoing Governor Jim Vanderstoep. We wish to thank him for his open door and open mind through the expiration of this term. He is an asset to the Third District and Bar membership at large.

The Third District Board of Governors race was an issue-packed campaign with four qualified candidates and approximately two-thirds of the active members casting ballots in the primary and run-off elections. Our new Governor, Paul Stritmatter, has pledged to maintain the tradition of accessibility and sensitivity regarding the unique needs of the governmental lawyer and the membership at large.

Activities through the summer included supporting maintenance of the *Bar News* as an independent attorney-edited publication, ongoing efforts in formulating a viable APA, monthly luncheons, legislative update, CLE and anxiously awaiting the summer lull. Well, it's September, and we are still waiting for the lull.

Plans for the fall include luncheons and CLEs with presentations on the Thurston County Superior Court Administration, the Pro Bono Program, Immigration Law and maybe a little non-governmental socializing.

Regular luncheon meetings are held on the last Monday of the month. If you are in the area, drop in. For more information, contact Mary at (206) 459-6558.

SEATTLE-KING REPORT
by **JAMES L. VARNELL**

Office Moves. Seed and Berry announces that **Paul T. Meiklejohn** has joined the firm as a partner, and that **Jeffrey B. Oster** has joined the firm as an associate. **Jonathan S. Cole** has joined the Office of General Counsel, U.S. Environmental Protection Agency in Washington, D.C. Westmark International Inc. has named **Julie A. Brooks** vice president and general counsel, **Mary Brodd** senior associate general counsel, and **Marcy Hikida** associate general counsel. **Kurt H. Olson** has become an associate with Franklin and Bersin. **Harold D. Carr** has joined the Woodinville law firm of Langlie, Johnston and Goddu. **Anthony W. Doughtery** and **David R. Hallowell** have formed a partnership with offices in the Norton Building. **John Payseno** joins Doughtery and Hallowell as an associate.

Culp, Dwyer, Guterson & Grader announces that **Michael D. Helgren** and **Gayle E. Bush** have become partners, and that **Corrie J. Yackulic, Barbara R. Arfin** and **Sally Carman** are now associated with the firm. **Pauline V. Smetka, David Gross** and **Bruce Benson** have become partners in Helsell, Fetterman, Martin, Todd &

Hokanson. New moves to the Key Tower (formerly Seattle Trust Tower) include **Richard P. Matthews**; the law firm of Byrnes & Keller; and Miracle, Pruzan & Morrow.

Stephen L. Nourse, Stuart C. Allen and **Michele Hitomi Johnson** have joined Carney, Stephenson, Badley, Smith, Mueller & Spellman through a merger, and **John P. Griffin** has become associated with the firm. **Donald Kronenberg** has moved to the Pacific Building, and is joined there by **S. Edward Wicker** and **Jeffrey John Bode.**

Honors. Professor Emeritus **Harry M. Cross** has been elected president of the University of Washington Retirement Association for the 1987-1988 academic year. **Peter Haller** of Karr, Tuttle was recently appointed to the American Bar Association Standing Committee on Environmental Law. **Daniel C. Blom** of Ryan, Swanson & Cleveland will serve as an American Bar Association delegate to the Union Internationale des Avocate in Quebec and Montreal.

Richard Clinton, Jerry McNaul and **Frederick C. Meyers** have been named as fellows of the American College of Trial Lawyers.

GRAYS HARBOR COUNTY REPORT

by **JOHN L. FARRA**

Out in Ocean Shores we have a new attorney named **Janet M. Watson,** Post Office Box 399, Ocean Shores, WA 98569.

Hoquiam attorney **Paul L. Stritmatter** won a seat on the Board of Governors and, obviously, members of the local bar wish him well in regard to that endeavor. He is a member of the lawfirm of Stritmatter, Kessler and McCauley.

Recently in the *Seattle Post-Intelligencer* there was an article written by a writer who had been in jury duty in the King County Superior Court and had the opportunity to observe **Kessler.** For those individuals reading the article, Kessler's first name is **Keith** and, while the writer seemed to indicate that Kessler was a Hoquiam lawyer, implying that we are somewhat out in the sticks, it should be noted that Kessler practiced in King County for six or seven

years and drives a souped-up Ferrari. He is no country bumpkin, so at least he should be awarded the first-place trophy of manipulation of jurors, based upon the accuracy of that particular article. Way to go, Kessler.

Charles Hyndman has retired from the practice of law in Hoquiam. We wish him well in his time of rest and relaxation.

Finally, **Frank Franciscovich** has left the law firm of Phillips & Brown. His present address is 640 Sea-First Bank Building, Aberdeen, WA. Phillips & Brown have taken in a new assistant by the name of **Deborah Pierson.**

PIERCE COUNTY REPORT
by **ROBERT W. MARSDEN**

Pierce County's newest judicial officer is District Court No. One Court Commissioner **Ron Culpepper.** Culpepper, formerly a sole practitioner in Tacoma, was appointed to the newly created position by the district court judges.

Mike Pate, formerly a partner with Gelman, Couture and Pate, has opened his own office and is sharing office space with **Dennis Comstock** in Tacoma.

SPOKANE COUNTY

New officers and trustees of the Spokane County Bar Association are **Joseph P. Gagliardi,** president; **Richard J. Schroeder,** vice-president; **Michael J. Pontarolo,** secretary; **Gary J. Gainer,** treasurer. Trustees are **Seaton Daily, Jr., Richard J. Kuhling, Richard B. White, Richard L. Cease, Michael E. Donohue,** and **R. Max Etter, Jr.**

STEVENS COUNTY REPORT
by **CHRIS A. MONTGOMERY**

The MENTOR Project at Colville Senior High School will be open to all honors classes of U.S. history and senior English. Students will be paired with **Chris A. Montgomery, Dannette W. Allen** and **Louis N. Chernak** of Montgomery Law Firm for seven encounters during the 1987-1988 school year. The kick-off session for the

MENTOR Project will be held in conjunction with Constitution Day on Thursday, September 17. Students will be presented with an overview of the Constitution and justice system, including the courts and jury systems. Course instructors for the project are **Sheila Stalp** and **Carolyn Chase.** Other encounters will include sessions on criminal law and procedure, civil law of contracts and tort liability, family law, a courthouse tour and inspection (including observance of a trial in process), a mock trial conducted by students, and a special treat by Chief Justice **Vernon R. Pearson,** who will argue the appellant and respondent sides of an appellate case to the students who will be acting as Supreme Court Justices.

The local firm of McGrane and Schuerman is pleased to announce the association of **Gary L. Pounder** as a new associate attorney. Gary is a graduate from Lewis & Clark School of Law with a background in real estate. He should prove to be a valuable asset to the firm as senior partner, **David E. McGrane,** is also District Court Judge. This is a part-time position with a demanding case load.

Young Lawyers Division Network members met for the second time in Leavenworth on Saturday, July 25. Details for 1987-1988 projects concerning newspaper columns and courthouse directories were discussed. Break-out sessions were held concerning various other network projects. You can expect a full report at the WSBA Annual Meeting in Vancouver, British Columbia.

ATTORNEY REFERRAL PROJECT OF THURSTON AND MASON COUNTIES

by **MARY JO DIAZ**

The Pro Bono Panel of the Thurston-Mason Attorney Referral Project in Olympia is planning a phone-a-thon on September 22 to recruit local attorneys to represent low-income persons residing in this area. Because of the population growth experienced by Thurston and Mason counties and a reduction in sources of government funding for the provision of legal services, the demand for volunteer counsel to serve the interests of low-income persons has increased. The panel views the phone-a-thon as an effective means of recruitment.

The committee has compiled a list of all area attorneys not currently members of the panel and will phone each attorney on the list to solicit his or her assistance in providing pro bono legal services to low-income clients. Calling will be conducted on September 22 from the offices of Swanson, Parr, Cordes, Younglove, Peeples & Wyckoff.

Participants will be asked to provide approximately 20 hours of free representation annually to eligible clients. Generally, all types of civil cases are handled by the attorney including family law, bankruptcy, accident litigation and debt collection defense. No criminal work is done under this program.

We're all hoping that local attorneys will be sitting near their phones on the evening of September 22 just waiting for this opportunity to fulfill their ethical obligation to provide pro bono services for low-income clients.

WASHINGTON STATE ASSOCIATION OF MUNICIPAL ATTORNEYS

by **ROBERT F. HAUTH**

The following persons were elected or succeeded to their respective offices and to WSAMA Board of Directors for 1987-1988 at the 31st annual meeting of the Washington State Association of Municipal Attorneys held June 18-19, 1987 in Yakima:

John D. Wallace, City Attorney of Bothell, Gig Harbor and Mill Creek—president;

Scott C. Broyles, City Attorney of Asotin and Clarkston—first vice president;

Donald H. Stout, Chief of the Advisory Division, City of Seattle Law Dept.—second vice president;

Richard L. Andrews, City Attorney of Bellevue—board member representing cities of more than 2,500 population;

Martin F. Muench, City Attorney of Puyallup—board member representing cities of between 2,500 and 50,000 population;

Patricia Bosmans, Assistant City Attorney of Tacoma—board member at large;
William L. Cameron—immediate past president;
Robert F. Hauth, General Counsel, Municipal Research and Services Center—secretary.

YAKIMA COUNTY REPORT
by **RAYMOND V. GESSEL**
and **MARK KUNKLER**

The county bar association held its annual Bar Picnic on Friday, June 19 at the Ahtanum Mission. The weather was perfect for those stalwarts who annually ride out on their bicycles even though they were too worn out to ride back. As always everyone had enough, or rather more than enough, to eat and drink.

There are several new associates in town. **Ryan Edgley** has become a new associate in the law offices of **Gary Lofland.** Edgley, who moved here from North Bend, has emphasized workers' compensation, personal injury and products liability. **John Adcock,** a May 1985 graduate of Willamette College of Law, has become a deputy prosecuting attorney in the county. He has been a private practitioner in the Seattle area. **Barry Sherman** has also joined the prosecutor's office after being employed by a Kirkland law firm. The Lyon law firm has hired **Steve Tilson** as a new attorney. Tilson was graduated in August of 1986 from the University of Puget Sound and passed the Bar exam this past February.

The Seattle-based firm of Bogle and Gates has opened a new office in Yakima. **Paul M. Larson** is the managing partner of the new office, and associates include **James A. Perkins, Raymond V. Gessel** and **Patrick H. Ballew.** The law firm of Brooks & Davis, P.S. has moved its offices to the Lake Aspen Office Park. The law firm of Elofson, Vincent, Hurst, and Crossland is moving its offices to the Yakima Mall on September 1.

The Yakima Bar Association's new officers were elected in May. They are president **Mark Fortier,** vice president **Jim Scott,** secretary **Mark Watson,** and treasurer **Corinna Ripfel-Harn.**

DISCIPLINE

Disbarred

Seattle attorney **Dominic T. Santiago** (admitted 1978) was disbarred by the Washington State Supreme Court on June 15, 1987, pursuant to a stipulation for discipline. The order of the court was based upon Santiago's guilty plea to two federal felonies involving attempts to deceive and mislead the Immigration and Naturalization Service.

Censured

Vancouver attorney **Janet L. M. Anderson** (admitted 1980) has been ordered to receive three Letters of Censure by the Disciplinary Board, which on June 17, 1987, approved her Stipulation to Discipline. Anderson's discipline was based upon her conduct with respect to three separate clients.

Anderson stipulated that she did not properly handle or account for client funds on behalf of one client, nor did she withdraw from the client's case when she could not complete the client's work due to personal problems.

With respect to a second client, Anderson failed to insure that the client's appeal was perfected as requested by the client.

The Stipulation to Discipline was also based on Anderson's neglect of a personal injury claim on behalf of a third client and her misrepresentation to the client regarding the case status. Anderson will be on probation for two years under a variety of conditions.

Suspended and Censured

Long Beach attorney **August F. Hahn** (admitted 1957) was suspended from the practice of law for thirty days by order of the Supreme Court, entered June 16, 1987, and effective that date. The discipline, which was pursuant to a stipulation, was based on Hahn's failure to perfect a client's appeal from a civil contempt order imposing a jail term and his misrepresentation to the client regarding the status of the appeal. Hahn was also ordered censured pursuant to the Stipulation for Discipline, based upon his neglect of an unrelated civil trespass claim.

Suspended

Vancouver attorney **Jeffrey M. Witteman** (admitted 1969) was ordered suspended for two years by order of the Supreme Court on June 4, 1987. Witteman was given credit for the time he had already been suspended. His reinstatement on June 12, 1988 is conditioned upon proof that he has maintained the continuing legal education

courses required of active lawyers, with emphasis on law office management and personal injury law.

The Court also imposed a requirement of two years of supervised probation after reinstatement.

This discipline was imposed because of Witteman's neglect of a client's legal matter and subsequent misrepresentations to his client regarding its status. Also involved was Witteman's prior disciplinary record of a 1975 Letter of Censure for neglect; a 1981 suspension for 30 days for neglect, misrepresentation to a client and conviction for failure to file a federal income tax return, and a 1984 Reprimand for neglect of a legal matter.

ET ALIA
New Phone

The Institute of Judicial Administration has a new telephone number: (212) 998-6280. Its address continues to be One Washington Square Village, New York, NY 10012.

Top Honors

The Speakers Bureau of the WSBA took top honors in the community relations category, receiving the Totem award from the Public Relations Society of America, Puget Sound Chapter. The Speakers Bureau won in the nonprofit division. Overall, nine awards for outstanding P.R. programs were awarded.

IOLTA Grant Applications

Applications for the 1988 grant program of the Legal Foundation of Washington are available from the Foundation at 600 Central Building, 810 Third Avenue, Seattle, WA 98104-1612. The Foundation funds programs involving civil legal services for the poor, pro bono and/or private bar representation for the indigent, law-related educational programs for lay persons or law-related educational programs which will have broad positive impact upon the legal foundations of the poor, alternative dispute resolution programs, and emergency situations to assist organizations or community groups with unexpected needs and enable them to continue law-related educational or charitable services.

Interim Suspension

Seattle attorney **Carlos Manuel Sosa III** (admitted 1981) was ordered suspended by the Supreme Court pending the outcome of disciplinary proceedings, based upon conviction of a felony, effective July 7, 1987. This interim suspension is pursuant to RLD 3.1 and is not a disciplinary sanction.

Seattle attorney **Jerome J. Doherty** (admitted 1973) was suspended from the practice of law pending the outcome of disciplinary proceedings by order of the Supreme Court entered July 20, 1987, and effective immediately. This interim suspension is pursuant to RLD 3.2 and is not a disciplinary sanction.

Resources Addenda & Amenda

Please note the following additions and change to the court listings in the

April 1987 edition of *Resources*.

To page 12, United States Bankruptcy Court, Western Washington, add

Tacoma Office

COURT ADDRESS
U.S. Bankruptcy Court
224 Post Office Building
P.O. Box 1797
Tacoma, WA 98402

JUDGE
Robert W. Skidmore . . (206) 593-6345

To pages 11-12, United States District Court, add

Tacoma Branch
COURT ADDRESS
240 U.S. Courthouse
1102 "A" Street
Tacoma, WA 98401

DEPUTY-IN-CHARGE
Janet R. Sheriff . . . . . (206) 593-6313

On page 53, **Court Clerk** listing for **Benton County,** change the number to (509) 735-8388. The old number with the 783 prefix has been given to a private party.

Seminar on the Judicial Selection Process

October 9, 1987: Friday, 1:30 to 5:30 p.m.; and
October 10, 1987: Saturday, 8:30 a.m. to 4:30 p.m.
Location: Olympic Four Seasons Hotel, Seattle, WA.
Fee: $100

The Women Judges' Fund For Justice, a national nonprofit research and educational organization, has developed a program to assist women lawyers in becoming judges in Washington state. The program will cover both the appointive and elective processes and information on basic skills and techniques of campaigning.

Rosalie Whelan, former administrator of the National Women's Education Fund and director of the 1980 Institute on Judicial Selection, will be the facilitator. Judge Carolyn Dimmick of the United States District Court will be part of a panel of local women judges who will discuss their personal insights into the selection process. Small-group discussions will explore the personal and professional assets and liabilities of the seminar participants.

This seminar will be held concurrently with the National Association of Women Judges' Seattle Conference and will include a Friday evening reception and a Saturday luncheon with the women judges attending the conference.

For more information or to register, please contact attorney Patricia A. Smith at 2701 Sylvan Drive West, Tacoma, WA 98466; (206) 565-3866.

NOTICES

Age Discrimination Prohibited in Law Employment Advertising

The following is the text of a memo issued by the WSBA Legal Department concerning the prohibition of age discrimination in the publication of law employment advertising. This memo will be used as a guideline for the acceptance of all employment advertising to be published in the Washington State Bar News. *The memo refers to both federal and state laws. You may wish to consider these factors for any advertising for legal positions which you intend to publish in any publications.*

Advertisements for legal employment which state or imply that the position is restricted to exclude any potential applicant between the ages of 40 and 70 may violate federal and/or state statutes prohibiting age discrimination in employment. This would apply to advertisements which stated "age 25 to 35," "under age 30," and the like. It would also apply to advertisements which use such phrases as "recent graduate," "not more than 5 years' experience," and the like, since most lawyers between the ages of 40 and 70, the protected age group under both the federal and state statutes, would be excluded from those qualifying for employment by such advertisers.

The Federal Age Discrimination in Employment Act, 29 U.S.C. § 621 *et seq.* prohibits age discrimination against persons between the ages of 40 and 70 by any employer who employs 20 or more employees. This act makes it unlawful "for an employer, labor organization, or employment agency to print or publish... any notice or advertisement relating to employment... indicating any preference, limitation, specification, or discrimination based on age." 29 U.S.C. § 623(c).

Washington state law prohibits "an employer or licensing agency" from refusing to hire or discriminating against individuals between the ages of 40 and 70, or to print or circulate any advertisement which expresses "any limitation, specification, or discrimination respecting individuals between the ages of 40 and 70" (RCW 49.44.090). RCW Ch. 49.60 provides that it is an unfair practice for any employer to refuse to hire any person because of age or to print, circulate, or cause to be printed any advertisement which expresses any limitation, specification, or discrimination as to age (RCW 49.60.180). RCW 49.60.040 defines "employer" as any person who employs eight or more persons. RCW Ch. 49.60 protects individuals between the ages of 40 and 70. *Gross v. Lynnwood*, 90 Wn.2d 395, 583 P.2d 1197 (1978).

A federal regulation, 29 CFR § 1625.4(a), states:

> When help-wanted notices or advertisements contain terms and phrases such as "age 25 to 35," "young," "college student," "recent college graduate," "boy," "girl," or others of a similar nature, such a term or phrase deters the employment of older persons and is a violation of the Act, unless one of the exceptions applies. Such phrases as "age 40 to 50," "age over 65," "retired person," or "supplement your pension," discriminate against others within the protected group and, therefore, are prohibited unless one of the exceptions applies.

Similarly, WAC § 162-16-100 defines as discriminatory in a job advertisement or notice, "recent graduate, new graduate, college student (implies preference for youth)" unless it constitutes a bona fide occupational qualification.

There are two ways an employer may legally justify restricting employment based on age. The first is that it is a bona fide occupational qualification (BFOQ). The burden in showing that a discriminatory factor is a BFOQ is a heavy one, and generally, the courts have upheld BFOQ's only in connection with employment involving public safety.

The other justification is that the restriction is a business necessity. An employer would have to demonstrate that there were no other ways to seek qualified employees such as advertising the salary levels or that it is an "entry-level position" and that it was not practical to assess such individuals in the actual employment interview process.

Courts have considered these issues in several cases. For example, in *Geller v. Markham*, 635 F.2d 1027 (2d Cir. 1980), *cert. denied*, 451 U.S. 945 (1981), recruiting of teachers with not more than five years' experience was found to be discriminatory as a matter of law. Similarly, in *Hodgson v. Approved Personnel Services*, 529 F.2d 760 (4th Cir. 1975), an advertisement by an employment agency using "trigger words" such as "recent college graduate" was held to indicate a preference for younger workers and thus was prohibited in the context of an advertisement for a specific job.

Therefore, it would appear that advertising legal positions with a maximum experience level which would have the practical effect of excluding most persons between the ages of 40 and 70 from qualifying for the positions would constitute age discrimination, and employers who ran such advertisements in the *Bar News* might arguably expose themselves to possible liability for such advertisements.

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