

Washington State **Bar**
News Vol. 42, No. 3, March 1988



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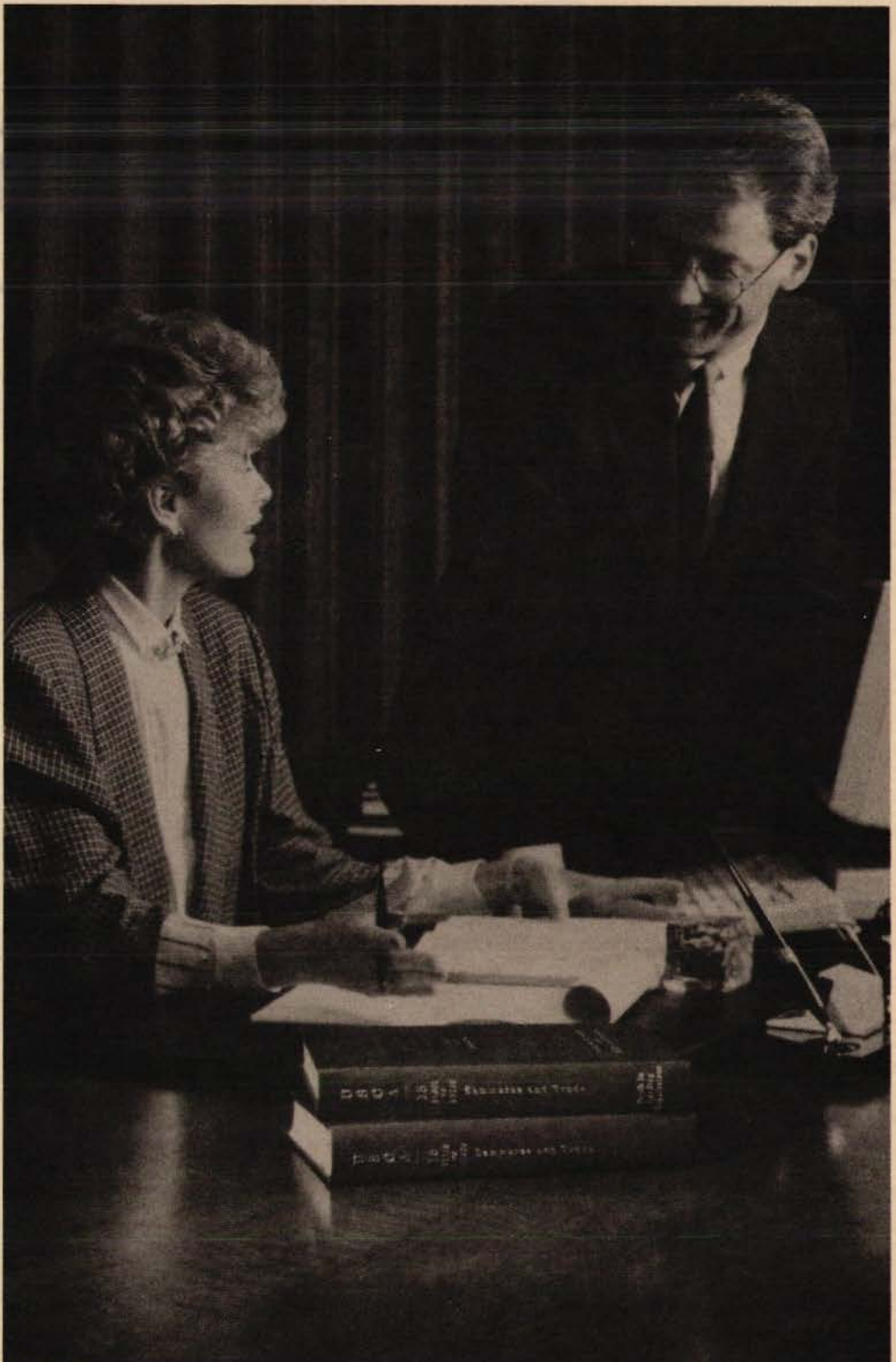
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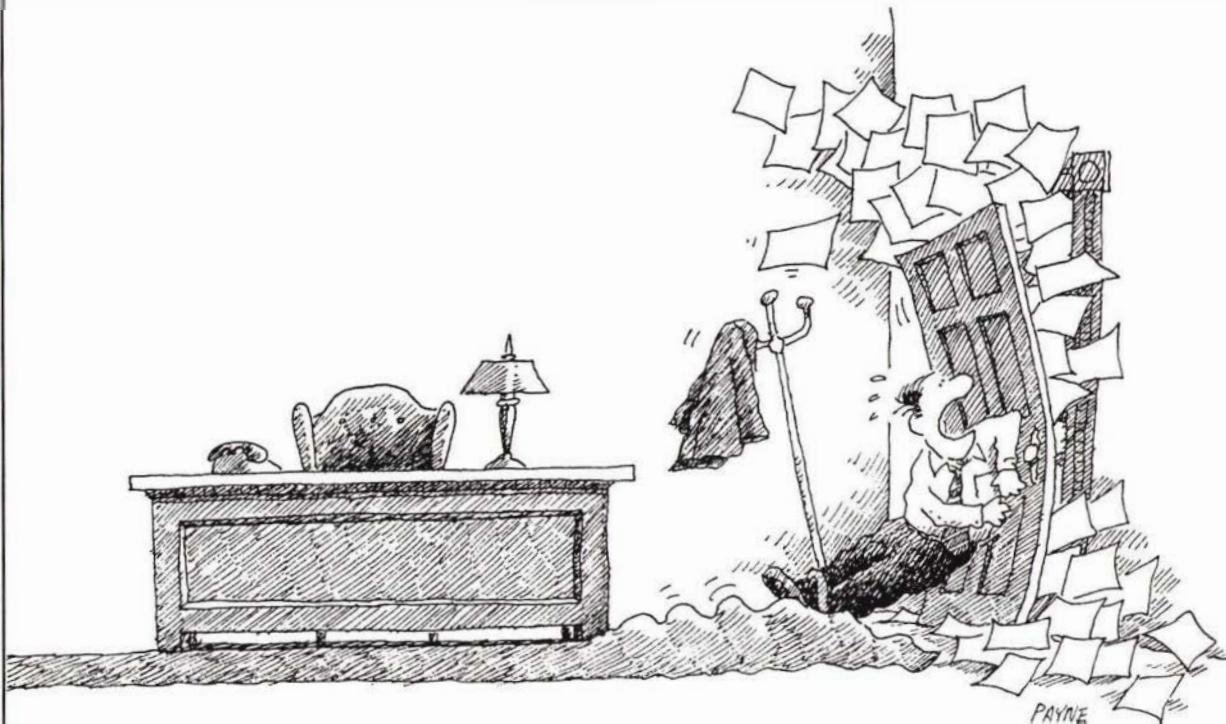
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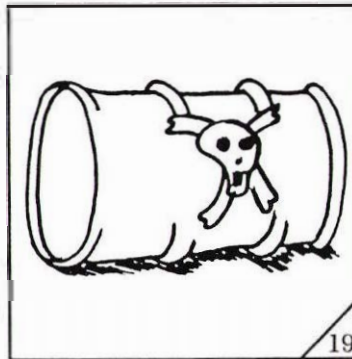


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Cover: "Afternoon in the Glass House" by Seattle artist Tom Fawkes; acrylic on canvas, 52" x 52", 1987. Photo by Bill Bacchuber. Fawkes' work is featured at the Linda Hodges Gallery.

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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.

A Collector's Item

Editor:

Thank you for the December 1987 issue of the *Bar News*. It is a collector's item. Each one of us knows families, friends, and peers who would find useful information from the article on "Relationships at Risk" by Trisha Pearce, R.N. and Kathy Severson, M.C., followed by your interview with Lori Dwinell on "Co-Dependency and Lawyers." Both were excellent.

The humor by Jeff Tolman in "A Lawyer's Christmas Tale" with appropriate apologies to Charles Dickens was also very clever and enjoyable.

In addition, the common questions about "LAP" were thoroughly informative.

Finally, the "President's Corner" by Jack Dean was likewise informative in communicating how many activities this Bar Association does, and does so well. Good Job.

ROBERT H. HUNEKE
Spokane

RCW 19.86.095 Injunctive Relief: Notify the AG

Editor:

It has come to my attention that the vast majority of the private bar is not aware of the provisions of RCW 19.86.095. That statute requires:

In any proceeding in which there

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is a request for injunctive relief under RCW 19.86.090, the attorney general shall be served with a copy of the initial pleading alleging a violation of this chapter. In any appellate proceeding in which an issue is presented concerning a provision of this chapter, the attorney general shall, within the time provided for filing the brief with the appellate court, be served with a copy of the brief of the party presenting such issue.

Thank you for your attention to this matter. If you have any questions regarding the foregoing, please let me know. I can be reached at (206) 464-7663.

CAROL A. SMITH
Chief, Antitrust Section
Consumer and Business
Fair Practices Division
Attorney General of Washington

Law As a Work of Art

Editor:

For several years I have donated estate planning services, including preparation of a Last Will and Testament, to various charities in Snohomish County which auction these items at their annual fund raising events. I have deducted the reasonable value of the wills as a charitable contribution on my income tax returns.

The I.R.S. has disallowed this deduction on the theory that I am donating "services" rather than "material goods" and, therefore, do not qualify for a deduction under Section 1.170A-1(g) of the Tax Regulations. My argument that a will is a "material good" was not persuasive. I was referred to the case of *Grant v. Commissioner*, 84 U.S. Tax Court Reports 809 (1985) which holds that a lawyer's work product constitutes "services," but a musician's work product in drafting music manuscripts, an artist's work product in drawing cartoons, and an author's work product in writing essays constitute "material goods." I suggest that this distinction is illusory and fails to give me credit for the melodious and cartoon-like quality of the wills which I draft. As a New Year's resolution I have dedi-

cated myself to thwarting the I.R.S. by making my practice of law a work of art.

JAMES H. ALLENDOERFER
Snohomish

Error of Its Ways

Editor:

I have just finished reading the article on "The New Era in Child Custody Resolution," and in particular the statement that child custody cases will "become more detailed, time-consuming, and will require a great deal of patience—and sensitivity—to child-related issues."

This only confirms my nascent opinion that this act was a total nightmare, designed by social workers and psychiatrists, to bedevil both the lawyer and their clients.

"Time-consuming" must be translated as "more expensive" to clients. While this may be to the benefit of a few lawyers with a clientele consisting of exclusively higher-income clients, this act will redound to the detriment of most of the population, in addition to offering a whole new array of subjects for parents to feud over.

Rather than lauding this failure of rational thinking, the Bar should instead actively undertake to persuade the Legislature of the error of its ways.

ROSS E. TAYLOR
Tacoma

I Have Broken the Law

Editor

I have broken the law and wish to publicly confess to appease my conscience.

My crime: I have violated RCW 48.30.080 (1947), which makes it a *crime* to make a statement which is "maliciously critical" of an insurance company.

My punishment: RCW 48.01.080 (1947) \$10 to \$1,000 fine, up to one year in jail, or both!

Maybe the insurance industry had a good idea (and good lobbyists). Let's get the same statute passed for lawyers.

JOHN P. COGAN
Redmond

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A Needy Cause

Editor:

I am a sole practitioner in eastern Washington and received a malpractice insurance notice that my premium will increase 25% to 50% for the upcoming year.

Recently I attended an IOLTA lecture in which the WSBA has donated \$2,000,000 per year to help needy

causes.

I feel that I am a needy cause.

I would like to recommend that \$1,000,000 of such fund be placed in an attorney malpractice pool so that a self-insured malpractice plan is available for attorneys. Within two years the pool would have a \$2,000,000 base with which attorneys could obtain malpractice insurance.

Quite frankly, it is a matter of time

before sole practitioners such as myself are economically forced out of the market.

The sole practitioners are, to my understanding, the bread and butter of the legal profession and are in excess of 50% of the Bar Association. It seems logical for the Bar Association to assist its own members and to seek a reasonable solution to the malpractice problem.

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Healthy Attitudes

Editor

Thank you for the thought-provoking and insightful interview "Co-dependency and Lawyers" in the December *Bar News*. I appreciate your efforts, and, like many other members of the Bar Association, take comfort in knowing there are others who try to focus on healthy attitudes while continuing to practice law.

SUZANNE C. HOWLE
Seattle

Increasing Our Mistrust

Editor:

I write regarding the recent referendum which sought to freeze Bar Association dues.

The arrogance of the Board of Governors and the Washington State Bar staff is unbelievably appalling. The almost total disregard for the concerns raised regarding the dues increase is blatant throughout the whole procedure.

1. A dues increase is proposed based, from all I could determine, on only two facts:

- A. There has not been an increase since 1981; and
- B. Other states have higher dues.

2. Some members of WSBA question the need for an increase and have the nerve (shocking behavior) to ask for details as to the budget and copies of checks to verify that, in fact, the Bar dues actually need to be increased.

3. In the absence of verification of the need for an increase, a proposal is made by a concerned member to freeze Bar dues at the current level.

This is voted down at the annual meeting attended by significantly fewer than 50% of the WSBA membership.

4. With no further justification for the dues increase forthcoming, the members concerned that the increase is not appropriate again demonstrate shocking nerve in applying the democratic procedure of a referendum to the membership to address the issue of the pending increase in Bar dues. They circulate petitions and achieve the necessary signatures to require a referendum. (Incidentally, how many signatures for an increase did the Board of Governors obtain before they first voted to increase our dues?)

5. The referendum is mailed to members with an unconscionably short response time. Included are two statements. The one in favor of the proposed referendum requiring a freeze on dues at current levels raises the same *unanswered* solid concerns that have been raised previously. The statement opposed to the referendum provides the same meaningless generalizations as before, *i.e.*, the WSBA is an excellent organization, there has not been a dues increase since 1981, other state bars have higher dues.

6. The members of the WSBA receive their dues notices with the alleged results of the "Dues Freeze" Referendum. That notice reeked of childish responses. The Board of Governors and staff might just as well have written, "Nyah! Nyah!" and stuck out their tongues. Why didn't they have the honesty and courage to inform us of exactly how many people voted, and how they voted on this referendum? Or is it as I and most of the attorneys in my office expect that the vote was almost unanimously against the increase and the number of votes cast dwarfed the tiny group who voted at the annual meeting. So the WSBA was forced to rely on the under 50% mechanism to announce the referendum had failed.

The theme for the WSBA has been "professionalism". The handling of the dues increase is the best example of hypocrisy that I have seen in a long time. Perhaps it was intended to be a negative example of how we as lawyers are not to behave. On the other

hand, perhaps the tactics were designed to increase our mistrust of the WSBA. In either case it was surprisingly successful. Attorneys looking for guidance as to how to comport themselves should behave as the proponents of the resolution did and not as the Board of Governors and WSBA staff have.

MARTIN LOVINGER
Seattle

UPL: More "Do Nothing"

Editor:

I read with interest the letter of Edward D. Campbell on the unauthorized practice of law in the November *Bar News*. He raised some fundamental questions about the function of the Bar Association and the professionalism of its members. I looked forward to the promised re-

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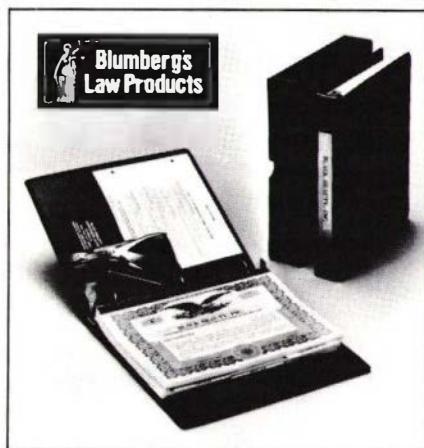
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sponse by WSBA executive director John Michalik which has appeared in the December *Bar News*, pages 19-20.

Michalik states that the Supreme Court of Washington has not defined unauthorized practice. He might have checked 91 Wn 2d 54, cases cited therein, and many cases from other jurisdictions found in the West's Digest, Attorney and Client, Sec 11-11 (17). Does anyone have any question about lay persons (not uncommonly referred to as "legal advisors") acting for third persons, drafting and filing pleadings including a trial, sitting at counsel table and advising, and arguing in open court as constituting the practice of law? How about classified ads for assistance in bankruptcies and divorces by non-lawyers? I have observed all of these in recent years.

Michalik refers to APR 12 permitting real estate closings by certain lay persons. How does a reference to an area where practice of law is permitted justify ignoring situations where it is prohibited? The Bar has challenged unauthorized practice by realtors and savings and loan associations (41 Wn 2nd 697 and 91 Wn 2nd 48). Apparently the Bar will enter the fray if the practice sufficiently impacts the pocketbooks of its members, but it is not concerned about the little guy who gets poor advice from a "legal advisor".

Michalik notes that RCW 2.48 does not authorize the Bar to prosecute unauthorized practice violations (Cf. 41 Wn 2nd 697 and 91 Wn 2nd 48). Does RCW 2.48 authorize "public affairs" or the sponsoring of TV programs? The buck is passed to the prosecutors. I work for a prosecutor, and know that enforcement of higher priority offenses must be favored. And if the Bar doesn't care about unauthorized practice, why should a prosecutor? Michalik's statements about lack of definition of unauthorized practice and the "general jumble of the area" will provide fodder for jury arguments that can only hurt criminal prosecutors.

Spokesmen for the Bar tell us that indifference is OK because it is the

attitude of other bar associations. A check of West's Digest establishes that at least eighteen state bar associations (including Washington) were involved in unauthorized practice litigation during the period 1976-1986. Do we look to what other bars are doing in other areas, such as member discipline? Representatives of the Bar have told us otherwise for years.

Among definitions is that the practice of law is what lawyers do that is different. If we don't do things that are different, or in a different manner, as Campbell noted there is no justification for an integrated Bar. The problem of unauthorized practice is increasing. Indifference to enforcement is undoubtedly a contributing factor. We are told the matter is under review. The likely answer will be that the Bar will "do nothing," which proves, as Campbell suggests, that we are not "professional" and public welfare is secondary. The Bar should reconsider its priorities and spend some money where it is needed, instead of attempting to buy a better reputation.

EDWARD E. LEVEL
Everett

Democratic Disenfranchisement?

Editor:

The Bar Association should be proud of the democratic manner in which it conducted the referendum associated with the "dues freeze."

It is common for attorneys to take a break during the Thanksgiving holiday. I for one left for a vacation on November 19, 1987. Upon my return on December 1, 1987, I found the referendum ballot in my office mail. Of course, by then, it was too late to vote. I wonder how many members were similarly disenfranchised.

Keep up the good work, Board. If the participation in this referendum was close to 50%, you may wish to consider holding the next referendum during the Christmas holidays.

THOMAS J. MAJHAN
Port Townsend



Enriched Beyond Measure

Two editorials to go until a different signature appears on the bottom of this page. In the meantime, some fiercely held, wildly subjective beliefs:

1. Law is stylized war.
2. The law ain't magical or mystical. It is merely the product, generally speaking, of generations of common sense, everyday experience, as the Washington Pattern Jury Instructions tell us. Lawyers who hide behind legalese and long sentences do their clients—and the legal profession—a disservice.
3. The law is the same stuff we learned in second-grade Sunday school. There would be less lawyer-bashing if laypersons knew—and lawyers weren't afraid to let them know—this. The Golden Rule inheres in all of law.
4. Laypersons who feel powerless or ignorant of the legal profession are the most likely to engage in lawyer-bashing. It doesn't matter if they are not powerless. Their perception is what counts.
5. Lawyers have no monopoly on legal wisdom or knowledge.
6. Perhaps two-thirds of legal claims could be resolved satisfactorily by non-lawyers.
7. Laypersons would be better served if laws had to pass the Napoleon's "idiot test."
8. A Japanese proverb tells us: "Give a person a fish and she can eat for a day. Teach a person to fish and she can eat for a lifetime." How long will it be until we lawyers spend more time on preventive law than curative law? How many of us have taught our clients their rights and responsibilities in order that they never again need to consult us?
9. My clients expose me to ways of living outside my ken. For this enlightenment I am enriched beyond measure.
10. Our client's particular dilemma is only the tip of his personal iceberg. We do not assist our clients by focusing on the tip, that is, by dealing only with the reason why the client crossed our doorstep.
11. An important function of a

lawyer (or an editor) is to be a resource specialist. The trick is to refer clients and others to appropriate sources without becoming their caretakers.

12. Being a good listener is not always easy. Sometimes I hear what I want to hear instead of what my client or the court or opposing attorney is trying to say. Paradoxically, lawyers would be better communicators—better mouthpieces for our clients—if we listened more and talked less.

13. Small law firms have more in common with Mom and Pop corner grocery stores than with big law firms.

14. "Alternative dispute resolution" is a misnomer. It is not "alternate"; it is the original way our ancestors resolved matters in the old days.

15. Too many people become lawyers for the wrong reasons. Too many people remain lawyers for the wrong reasons.

16. Because we do not live in the best of all possible worlds, judges will sometimes reach the right result for the wrong reason.

17. Most lawyers would rather expend energy on behalf of their very real clients than tilt at the faceless windmill of the WSBA. This is why many lawyers do not communicate their views to the Board of Govern-

nors. Instead, they assume that the Governors are acting responsibly.

18. Lawyers outside the inner circle of WSBA politics cannot perceive what it's like to be an insider. WSBA movers and shakers sometimes cannot remember what it was like to be an outsider. Each sector sometimes feels maligned.

19. There is no one objective reality. All persons—be they lawyers, clients, jurors, witnesses, or Bar bureaucrats—have their individual subjective realities. This is why all of the people cannot be pleased all of the time.

20. I never tire of the satisfied feeling I get when a client says, "Oh, I feel much better. Thank you for your help."

Carole Grayson

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Output - Input

Our Bar journal editor recently quoted me as saying as a part of a debate that we can't "over communicate" with our members. In looking at this Board of Governors, it was something that did not need to be said because they are very aware of the fact that they owe the best communication possible to those in their districts.

By this time you will have received a legislative update. The Board has voted to provide three of those each year. One will be at the beginning of the legislative session, one during the session at a time felt to be important and one wrapping up what the Legislature has done, including a list of new laws that concern lawyers. These updates will also be used to enlist your aid in making the view of the Bar known to your individual legislators.

The Board has also voted to provide each of the Board of Governors with one newsletter per year to each member of the Bar in their Congressional District. It is the cost of these mailings that has prevented the Board from providing them more often. It would be our choice otherwise to mail them on a monthly or bi-monthly basis.

Several members of the Board of Governors have their own individual letter reports that they write each month. This includes the actions of the Board of Governors at the immediate preceding meeting, together with any other general news that Governor feels important. It is then mailed, to this date at the Governor's expense, to leaders in that Congressional District. In many instances the leaders then will re-photo the Board report from the Governor and pass it on to the individual members in the particular county bar association. A lot of positive feedback has come to us from that approach.

John Michalik, our Executive Director, sends his Executive Director's newsletter to all Bar leaders in the state of Washington each month.

We think our most effective method of communicating with you is by the use of our state bar journal. The Board and I continue to utilize it in the best manner possible to disseminate information to you.

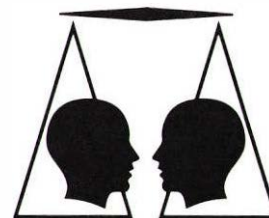


The Governors generally have been disappointed with the amount of input that they have received from you. On the recent dues raise, not one of the 10 Governors had more than a few questions, inquiries or complaints about the proposed dues raise. I am wondering if one of the reasons is the unwillingness or inability of the members out there to contact their particular Governor. You are listed as a member of the Congressional District in which your home lies and not your office. Very many of you practice in downtown Seattle, but you reside in a different Congressional District. For that reason you would not be in the 7th District and would not be a constituent of our 7th District Governor, Julie W. Weston. In all likelihood many of you reside in the 1st Congressional District and your Governor is Jay V. White. For those in the 8th District your Governor is James S. Turner. King County attorneys please remember also that you have two added representatives who serve the Board at large, Steven A. Reisler and Stephen E. DeForest.

I do want you to know that the Governors want to hear from you on issues you wish to address. They are very responsive to the suggestions of their members, and I'm satisfied you will have good airing of any suggested subject that you bring before your Governor.

It is our promise to continue to "over communicate," and we would ask you to read and respond.

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Information about other pamphlets in the State Bar's "Citizen Rights" series will be included with your sample. If you would like a sample of each of the 11 topics now available, please include 90¢ postage with your request for a "Pamphlet Packet."





What's New for '88...

LRE Pinups

by Jo Rosner

Assistant Director of Student Education

Thanks to a \$12,500 grant of IOLTA funds to the Washington Center for Law-Related Education, a fourth-grade LRE curriculum will be developed this year and piloted in four school districts: Yakima, Colville, Ferndale and Highline.

Teachers will be trained in the use of the infusion materials, which will then be field-tested and evaluated.

Larry Strickland, Supervisor of Social Studies for Office of Superintendent of Public Instruction, will assist in correlating the curriculum with the new state social studies guidelines.

For the second year, Washington state has received Department of Education funds from the American Bar Association's Special Committee on Youth Education for Citizenship (SCYEC) to conduct Bar-school partnership programs.

Spokane, Yakima and Seattle's Highline districts held law-related education workshops in the school year 1987-1988 with the help of DOE funds. Elementary principals, teachers and school administrators, as well as attorneys who contributed their time, participated in hands-on experiences of mock trials and simulation strategies. The ABA sent Dr. Charlotte Anderson, their staff director for SCYEC, to lead the workshops.

While it may not knock "L.A. Law" off the charts, a new 18-minute video showing MENTOR in action has just been produced. WSBA's Public Affairs Department, with Kramer Video of Seattle, made the tape so that law firms, school boards, judges' groups and local bar associations can see how the law firm/high school partnership benefits both the legal and educational professions.

If you are interested in borrowing a copy of the tape or scheduling a presentation about MENTOR for your local bar meeting, call WSBA's Public Affairs office, (206) 448-0441, or fill in the coupon and send it to Jo Rosner, Public Affairs, WSBA, 2001 Sixth Avenue, Seattle, WA 98121-2599.

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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Clients' Rights

by John J. Michalik
WSBA Executive Director

Concern over whether clients receive enough information from their lawyers is a subject which is under study in a number of states. In California, which already has a law requiring written fee agreements in all cases in which fees exceed \$1,000, a "clients' rights" proposal is under active consideration by the bar. In Florida a far-reaching "Statement of Clients' Rights," believed to be the first of its kind, has been incorporated as a part of the fees section of the Code of Professional Responsibility. Under the Florida Code, all lawyers must give their clients a copy of the statement—the document must be signed by the client and the lawyer and it is retained by the lawyer along with the written fee agreement.

Here are some highlights of Florida's "Statement of Clients' Rights," an interesting and perhaps precedent-setting document.

Before you, the prospective client, arrange a contingent fee agreement with a lawyer, you should understand this statement of your rights as a client. This statement is not a part of the actual contract between you and your lawyer, but, as a prospective client, you should be aware of these rights:

- The client has the right to discuss and bargain about the proposed fee and the rate or percentage of fees. No law states that a lawyer must charge a set fee or a percentage of money recovered in a case.

- Contingent fee contracts must be in writing, and clients have three business days to reconsider or cancel the contract.

- The client has the right to know about the lawyer's education, training and experience before retaining him.

- Before a contingent fee contract is signed, the lawyer must tell the

client if he plans to handle the case alone or with the help of other lawyers. If the case is referred, the lawyer must inform the client of the fee-sharing arrangement. If lawyers from different firms handle the case, a lawyer from each firm must sign the contract.

- The lawyer must tell the client at the beginning if he plans to refer or use other counsel in the case. A new contract must be written if the referral happens at a later date. The client has the right to consult with all lawyers working on the case, and the lawyers are legally responsible for representing the interests of the client and for the acts of other lawyers handling the case.

- The client has the right to know at the beginning the arrangements for payment of expenses and legal fees. If a deposit is required, the client must be told how the money will be spent. The lawyer should offer an estimate of future costs. The client is entitled to know how, and how much, money has been spent.

- The lawyer should tell the client about possible adverse consequences if the case is lost, *i.e.* money for costs or liability for fees of the opposing counsel.

- Before paying a bill, the client is entitled to a closing statement, listing all financial details of the case.

- At reasonable intervals, the client can ask the lawyer about the progress of the case.

- The client has the sole right to make final decisions on settlement of a case.

- The client has the right to contact The Florida Bar if he believes fees charged are excessive or illegal.

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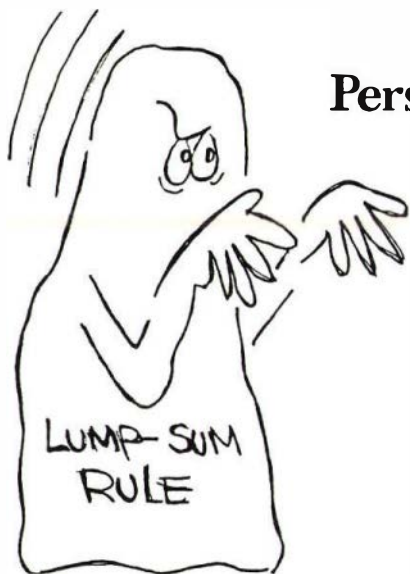
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Personal Injury Recovery and the Lump-Sum Rule



by Norman R. McNulty, Jr.
and Kenneth Isserlis

The federal "lump-sum" rule disqualifies AFDC recipients from benefits if they receive a personal injury recovery or other lump-sum income. You can limit the harm to your client.

A new client walks into your office. Her name is Brenda, and she and her two children are recipients of Aid to Families with Dependent Children (AFDC) benefits from the Department of Social and Health Services (DSHS). She has been injured in a car accident, and she feels that the culpable party's offer is too low. She wants you to help her obtain a more adequate recovery.

You take the case. The culpable party makes a reasonable offer and Brenda accepts. Several days after receiving her \$4,250 net recovery, she calls and says that she's in trouble with DSHS. The agency has disqualified her from AFDC. She says she spent the money the day she got it on delinquent bills, a used car and clothes for her kids. DSHS is telling her that she should have used the money to live on, and that even though it is all gone she is ineligible for AFDC benefits for the next five months. "Why didn't you tell me this was going to happen?" she cries.

Good question. Why didn't you tell her?

The answer is twofold: First, you did not know that Brenda was on AFDC. She got financial assistance from the state because her children's father was not in the home and she had no means to support them². You simply had not concerned yourself with her source of income. Second,

even if you had known she was on AFDC, you did not know about the federal "lump-sum" rule which can disqualify a family from AFDC for months due to receipt of lump sums of money (including personal injury awards). Until recently DSHS was enjoined from applying the "lump-sum" rule to personal injury awards; however, that order has now been reversed and these awards are again subject to the rule. *LaMadrid v. Hegstrom*, 830 F.2d 1524 (9th Cir. 1987).

Congress created this rule by statute, (42 U.S.C. § 602(a)(17)); and the Department of Health and Human Services and DSHS have issued implementing regulations. 45 C.F.R. § 233.20 (a)(3)(F) and WAC 388-28-484 (2). Under the lump-sum rule, an AFDC applicant or recipient who receives a lump sum of income is ineligible for AFDC benefits for several months. With certain limited exceptions (discussed below), this disqualification period continues even if the family has spent all of the money and is destitute.

Under the "lump-sum" rule, the length of the disqualification period is determined by a formula. For example, to determine Brenda's period of disqualification, DSHS divided the net amount of lump sum (after payment of medical expenses, attorney's fees, etc.) by the state financial "need standard."³ The need standard for Brenda's three-person

household is \$835, which when divided into the \$4,250 net award, results in the five-month disqualification.

You ask, "What can I do to avoid this problem in the future?" You can begin by asking your clients whether they receive AFDC benefits, and if they do you should plan accordingly.

1. Avoid the Lump-sum Rule.

The "lump-sum" rule only applies to a person who applies for or receives AFDC in the same month in which he or she receives a lump sum.⁴ Have your client get off AFDC before the month in which he or she receives the lump sum.⁵ A former recipient is not subject to the lump-sum rule. The lump sum will then be treated as a "resource," and your client will again be eligible for AFDC when he or she has spent the lump sum down to or below the \$1,000 AFDC resource limit. WAC 388-28-435 (2).⁶ For a minor with a lump-sum recovery subject to SPR 98.16W, it may be possible to establish a trust, WAC 388-28-440 (6)(a), following voluntary termination from AFDC so that the recovery is considered "unavailable" to the minor and therefore not subject to the \$1,000 resource limit.

2. Dealing with the Lump-sum Rule.

If your client receives a lump sum in a month when he or she is an AFDC applicant or recipient, do the following:

a. Tell your client that he or she may be ineligible for a period of time determined by the "lump-sum" rule formula and that he or she should budget the money accordingly. (Your client may remain eligible for some limited medical assistance or food stamp benefits and should contact DSHS about these benefits.)

b. Suggest that the client not spend any of the money prior to talking to DSHS about the length of the disqualification period.

Norman R. McNulty, Jr. and Kenneth Isserlis are staff attorneys with Spokane Legal Services Center. They represented the plaintiffs in a case which was consolidated in the 9th Circuit with LaMadrid v. Hegstrom (see above).

c. The period of ineligibility for AFDC benefits can be reduced under certain circumstances. Such a reduction is possible if 1) the client incurs and pays medical costs during the disqualification period, 2) the money becomes unavailable for reasons beyond his or her control,⁷ or 3) an event occurs which, had the client been receiving AFDC, would result in an increase in the family's need standard

(for example, the family size increases).

The lump-sum rule can be harsh. Your job is to know about it when representing AFDC recipients who may receive a lump sum of money.⁸

Footnotes:

¹This article does not necessarily reflect the views of Spokane Legal Services Center.

²A child is eligible for AFDC if de-

prived of parental care and support because of death, continued absence, unemployment, or incapacity of a parent or stepparent. See WAC 388-24-055 through 388-24-074; 45 C.F.R. § 233.90.

³The "need standard" is the amount of income DSHS has determined a family of a given size needs to live on for a month. WAC 388-29-100. An AFDC recipient actually receives only 59 percent of the "need standard," and this reduced amount is called the "payment standard." *Id.* Currently, the need/payment standards are \$533/\$314 for a family of one, \$675/\$397 for a family of two, \$835/\$492 for a family of three, etc. *Id.*

⁴A lump sum is deemed to have been received when the client has possession or control. See WAC 388-28-482.

⁵To get off AFDC, a recipient should submit a change of circumstances form or other writing to DSHS asking to be terminated effective the first of the next month.

⁶Your client will be expected to provide an accounting of how the lump sum was spent. This can usually be done with a combination of receipts and the client's written statement. Also, to be eligible for AFDC, an individual can only own certain property ("exempt resources") including the home in which he or she lives, WAC 388-28-420, and certain personal property, WAC 388-28-435. Thus, if your client reapplies for AFDC, he or she should have spent the lump sum on either consumable items (food, rent, etc.) or on exempt resources.

⁷45 C.F.R. § 233.20(a)(3)(F)(3) requires the state to provide a definition of "unavailability" and specify what reasons will be considered beyond the control of the family. DSHS has yet to comply with these requirements. See WAC 388-28-484 (2)(b)(ii). Thus, the applicability of this provision for reducing the disqualification period to any particular situation is unclear and will have to be tested on a case-by-case basis.

⁸The impact of the lump-sum rule may be less in the future due to passage of the Family Independence Program (FIP) by the Washington Legislature in 1987 (Wash. Legis. Serv. Chapter 434 (West)). This legislation will be implemented in stages over the next eighteen months starting in June 1988, and it is anticipated that the lump-sum rule will be eliminated. The Washington State Register will contain the published regulations governing FIP. If you have questions whether the lump-sum rule is actually operative in your area of the state, you can contact DSHS or an attorney at the local legal services office. □

A PPEAL: *On direct discretionary review of a denial of summary judgment, the Washington Supreme Court held that the State is not immune from liability for the National Guard's negligence. This was the first case in the nation to decide whether the federal Feres doctrine immunizes state National Guard training activity.*

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We are pleased to have helped Douglas Ehlke of Federal Way and Fred Scott of Charleston, S.C., secure this result. **Emsley v. Army National Guard**, 106 Wn.2d 474, 722 P.2d 1299 (1986).

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"BJA"

(See related picture on page 38)

As a state-level policy-making body, it may be unique.

With rule-based authority, Washington's Board for Judicial Administration—"BJA" to its members—makes policy and, when necessary, can become a command post for the promotion of key issues affecting the state judiciary. In most states, such leadership is vested in the Supreme Court. Few have "executive committees" representing all levels of court.

Composed of the state's top-ranking judges, the BJA meets quarterly to make leadership decisions on certain global issues—caseload management, judicial salary and retirement benefits, legislative initiatives—that affect the four levels of the state's judiciary. Since its start, veteran members of the Bar have always participated in BJA deliberations.

And though they serve *ex officio*, State Bar representatives Patrick C. Comfort and Robert R. Redman, play a key role in BJA deliberations. The two former WSBA presidents do what one would expect lawyers to do—act as lawyers.

As "house counsel" and advisors to the eight BJA judges, they are frequently

queried for opinions on pending legislative and rule change proposals. They don't have to vote on their own advice or counsel, so their *ex officio* status gives them arm's-length objectivity. They also provide valuable, policy level, bench-bar liaison.

The first BJA meeting was held seven years ago. Mainly a discussion group, BJA was an informal, low-key organization. Perhaps deliberately, the group claimed little authority.

Last year, its members voted to change that. A resulting amendment to Supreme Court rules (see Board for Judicial Administration Rules (BJAR) 1-3) increased BJA power, giving it spokesperson authority to represent to the Legislature and others the views and initiatives of all of the state's trial and appellate courts.

Now when the chief justice or another selected member testifies on judicial policy matters, legislators know the testimony reflects the agreed-upon policy of all court levels of the state judiciary. They also know the board's liaison with the State Bar means judicial policy positions have not been made without WSBA input.

BJA does not make policy via simple majority rule; to become BJA policy, votes must be unanimous. But the BJAR makes it clear board stances "(do) not replace or restrict the activities of the existing judicial associations or courts." Judges at any court level are free to promote public positions independent of the Board for Judicial Administration.

And, though the chief justice always chairs, the BJA cannot decrease the independence of lower courts: "This rule shall not be construed as extending the Supreme Court's control over the other courts."

Supreme Court rules say BJA membership must be composed of the chief and "acting" chief justice of the Washington Supreme Court; the chief presiding judge of the Court of Appeals plus one of its divisional chiefs; and the presidents and presidents-elect of the Superior Court Judges' and District and Municipal Court Judges' associations. The rule also requires that two *ex officio* members, picked by its board of governors, be selected from the membership rolls of the Washington State Bar Association.

continued on next page...

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In Washington, claims incurred by the insurance company we represent have exceeded earned premiums by over \$1,000,000. But, this is not isolated experience... similar results are experienced by other carriers.

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You can take steps to minimize your exposure to potential liability claims situations.

The basic requirement for avoiding malpractice claims is a good client relationship. People are quick to sue a stranger, but may refrain from bringing an action against a friend.

A second point which cannot be over-emphasized is a dependable system of docket control. A dual system used on a chronological basis will do much to reduce the number of claims resulting from time element errors.

The following list of "Tips to Minimize Exposure" has been assembled by Ronald E. Mallen, partner in the San Francisco-Los Angeles law firm of Long & Levit and member of the ABA Committee on Lawyers Professional Liability:

- Do not promise, represent or guarantee any specific outcome or dollar recovery.
- Advise your client of the amount and method of computing fees prior to rendering any services.
- Do not ignore your client... keep him/her advised and preserve his/her confidence.
- Do not take any material action which prejudices or may prejudice your client in any way.
- Do not represent parties with conflicting interest.
- Calendar all deadlines, statutory limitation, law and

motion matters, trial setting dates and all other dates which must be remembered.

- Do not reveal that you carry malpractice insurance.
- Do retain all your policies, primary and excess, especially those written on occurrence basis.
- Do not attempt to defend your own malpractice claim.

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Notes From the Academy

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

Civil procedure. One defendant was served by leaving summons on his porch when no one was home. Another defendant was served by leaving summons with his secretary at his office. Both attempted services were held deficient, even though defendants actually received the summonses. Statutory procedures must be "strictly pursued." *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 744 P.2d 1032 (10/8/87).

*K. B. Tegland
(former U. of W. faculty)*

Creditor-debtor law. (Case 1.) In adversary proceeding in bankruptcy, assignee of vendee's interest under real estate contract sought to assert priority over vendors who had, prior to bankruptcy, obtained judgment for unpaid balance under the contract. Affirming decision in favor of vendors, majority held that vendor had no duty to give notice of action for price to assignee of vendee's interest where vendor had no actual notice of assignee's interest; recorded assignment of vendee's interest gave no constructive notice because sub-

sequent in time to vendor's interest. Majority found it unnecessary to determine whether Washington law required, in vendor's action for specific performance of contract, tender of conveyance at time of entry of judgment for unpaid balance or at time judgment was fully paid, since vendee had agreed to entry of judgment and had agreed that conveyance would be deferred until judgment was paid in full. Dissenter reasoned that issue was whether bank could be collaterally estopped by a state court judgment that was arguably inconsistent with Washington law; he would have certified time-of-conveyance question to Washington Supreme Court. *Frontier Bank v. Scott*, (In re Scott), 829 F. 2d 865 (9th Cir. 10/6/87).

(Case 2.) In husband's bankruptcy case, lien imposed by Washington court on residence that was awarded husband in prior dissolution action to secure \$8,000 awarded to wife under property agreement was "judicial lien" within meaning of § 522(f)(1). Thus, husband could avoid lien as a lien that impaired homestead exemption, to which he would have been entitled in bankruptcy case. Dissenter would have followed *Boyd v. Robinson*, 741 F.2d 1112 (8th Cir. 1984), in which such a lien was found to be "on a pre-existing interest" of debtor, not "on an interest" of debtor, as required by § 522(f). *In re Pederson*, 78 B.R. 264 (9th Cir. BAP 9/30/87).

M. D. Rombauer

Evidence. (Case 1.) Following items of evidence held admissible in asbestosis suit against asbestos manufacturer: (a) So-called "Sumner Simpson papers," consisting of correspondence and reports by president of prominent asbestos manufacturer, discussing possible asbestos dangers. Relevant to show industry was aware of hazards but did not attempt to prevent them. (b) Evidence that defendant had acquired additional knowledge about asbestos hazards after plaintiff's last exposure. Relevant to plaintiff's claim that defendant breached continuing duty to warn plaintiff, even after he was exposed. (c) Papers and notes by defendant's

director of environmental affairs, describing his attempts to warn defendant. Exceptions to hearsay rule because admissions of agent. *Lockwood v. AC & S, Inc.*, 109 Wn.2d 235, 744 P.2d 605 (10/15/87).

(Case 2.) In prosecution for forgery and possession of stolen goods, state offered defendant's prior conviction for theft to impeach him. To determine whether it was a kind of theft that involved dishonesty or false statement, and so to be admissible under ER 609, trial judge inquired into circumstances and admitted evidence when it appeared it was that kind. On appeal it was held error to make such inquiry. Trial court should consider only elements and date of prior conviction, type of crime, and punishment imposed. If this limited information does not show whether it was crime of dishonesty, evidence of prior conviction should not be admitted. *State v. Newton*, 109 Wn.2d 69, 743 P.2d 254 (10/1/87).

*K. B. Tegland
(former U. of W. faculty)*

Personal property security. In legal malpractice action, measure of recovery is amount of loss actually sustained as proximate result of attorney's conduct. Thus, where defendant attorney had failed to perfect security interest for benefit of plaintiffs, trial court did not err (1) in valuing lost collateral at its auction value where evidence supported conclusion that plaintiffs could not have sold it for its fair market value and (2) in holding that plaintiffs were required to prove, in establishing proximate cause and amount of their loss, extent of collectibility of unsecured debt. Court did err, however, in deducting from amount of loss thus determined a projected dividend from debtor's bankruptcy estate, because its recovery was too uncertain. *Tilly v. Foreman*. 49 Wn. App. 727 (11/23/87).

M. D. Rombauer

Real property. Real estate broker may not recover commission unless he has written employment agreement, even if he is procuring cause of sale. *Haskell v. Raugust*, 49 Wn. App. 719, 745 P.2d 535 (11/19/87).

W. B. Stoebuck

Continued from page 17

BJA's 1988 membership includes: Chief Justice Vernon R. Pearson, Washington Supreme Court; acting chief justice Keith M. Callow; Edward P. Reed, presiding chief judge, Court of Appeals; Jack P. Scholfield, chief judge, Division I, Court of Appeals; Norman W. Quinn, judge, King County Superior Court, president, Superior Court Judges' Association; Harold D. Clarke, judge, Spokane Superior Court, president-elect; Joel A.C. Rindal, judge, Bellevue District Court, president, District and Municipal Court Judges' Association; Christine Cary, judge, Spokane District Court, president-elect; Patrick C. Comfort, Tacoma, WSBA president, 1985-1986; and Robert R. Redman, Yakima, WSBA president, 1983-1984.



1985 © Illustrated by Kevin Wissell

by John Daniel Ballbach

On October 10, 1987 the Washington State Legislature met in special session and enacted a comprehensive new state hazardous waste site cleanup law.¹ This major piece of environmental legislation will substantially affect transactions involving the generation, possession and disposal of hazardous substances; transfer of property; and ownership and use of contaminated property. The act was signed by Governor Gardner on October 16 and took effect immediately except for the new hazardous substance tax, which became effective January 1, 1988. The primary purpose of this legislation is to establish a fund and appropriate procedural mechanisms for the cleanup of hazardous waste sites in the state.

Legislative Background and Current Status

For several years the Legislature debated—but failed to enact—various forms of waste cleanup legislation. The latest round of that debate peaked in the spring of 1987 but once again, despite serious attempts by business, environmental groups, regulators, and individual legislators to achieve a consensus, led to no action. Some environmental interest groups then prepared Initiative 97. Political leaders continued to work on

acceptable legislation, which culminated in the passage of Senate Bill 6085.

Although passage of a bill normally ends debate, the initiative continued to be circulated and sufficient signatures were gathered by year-end for filing with the Secretary of State. In theory, the Legislature can approve and enact the initiative or enact an alternative law. However, Section 65 of Washington Superfund states that the new law constitutes the alternative to Initiative 97. Therefore, state voters will likely have both Initiative 97² and Washington Superfund to consider on the November 1988 ballot. In the meantime, the bill that was passed in October became law. Major portions are codified at RCW 70.105B. Because of possible constitutional questions, a bill which is virtually identical to SB 6085 is, at this writing, moving through the Legislature as SB 6440.

How Washington Superfund Works

The expressed intent of the legislation is to encourage private parties to clean up sites for which they are responsible and, if they refuse to undertake cleanup, to provide the state with both funds to clean up the sites and enforcement authority to recover the cleanup costs from private

parties. The legislation places equal attention on solid waste landfills: it provides for state financial assistance for cleanup along with contributions from landfill operators and ratepayers.

At the heart of the superfund operation is a requirement that the Department of Ecology ("DOE"), the state equivalent to the federal Environmental Protection Agency, both notify potentially liable persons whenever there has been a release or threatened release of a hazardous substance and provide those persons with a reasonable opportunity to propose a settlement agreement providing for cleanup of the release. In the event that the parties fail to submit an offer of settlement, or DOE does not accept it, then the DOE has authority to undertake the cleanup.

The funds for DOE-initiated cleanups will come from the new tax imposed on the possession of hazardous substances at a rate of .008 times the wholesale value of the substance. The funds secured from the tax are divided between two accounts: The state toxics control account carries out a variety of state hazardous waste-related programs as well as cleanups; the local toxics control account is for cleaning up facilities used primarily for the disposal of municipal solid waste and for providing related assistance to local governments.³

The act gives the DOE substantial

John Daniel Ballbach is a partner in the Seattle firm of Perkins Coie. His practice includes environmental and resource energy development law.

new investigative and enforcement powers for compelling parties to act and for recovering cleanup costs. The DOE can assess penalties up to \$10,000 per day for refusal to comply with orders. Cleanup costs incurred by the state can be trebled for willful noncompliance with orders.

Who Is Liable?

Washington Superfund follows the pattern of federal Superfund⁴ by imposing liability on owners and

operators of facilities and on generators and transporters of hazardous substances for the release of such substances which requires cleanup. The terms "facilities" and "hazardous substance" are broadly defined. The DOE may take the position that any place where a hazardous substance exists is a facility. State and federal law already broadly define "hazardous substance," although unlike federal law, the Washington Superfund definition includes petro-

leum. The statute is unlike federal Superfund in that it also imposes liability on manufacturers, distributors and retailers of hazardous substances who are responsible for written instructions for use of those substances. The statute is somewhat less strict than federal law on transporters of hazardous substances.⁵ Liability under the statute is strict, joint and several, so that any one of several parties who contribute hazardous substances to a site can be potentially liable for the entire cleanup of the site, not just for its proportionate share of the cleanup.

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Defenses Under Washington Superfund

A person is not liable if the release of a hazardous substance was caused by an act of God, an act of war or an act of a third party. As with the federal law, the exemption does not apply if the potentially liable party has a contractual relationship with the third party. The state statute incorporates the federal Superfund "innocent landowner" provision, which exempts owners of property who can establish that they had no knowledge of, and no reason to know of, the release of a hazardous substance on the property.

Washington Superfund exempts personal or domestic use of a hazardous substance in or near a dwelling if such use is lawful and without negligence. It exempts persons who without negligence, and in accordance with federal and state law, apply pesticides or fertilizers for specified agricultural purposes. The release or threatened release of used motor oil that has been collected for recycling purposes is exempt, assuming that the oil had not been mixed with other hazardous substances.

A highly publicized and debated "exemption" within the statute concerns petroleum. Until July 1, 1990, petroleum will be covered only under the liability portions of the statute by one principal subsection.⁶ That subsection gives the DOE authority to investigate spills, leaks or discharges and to initiate cleanup and to recover costs for cleanup and for damage to natural resources under strict, joint and several liability. However, the

petroleum exemption will expire on July 1, 1990 unless the state Legislature has established and funded a comprehensive cleanup program for releases of petroleum from storage tanks.

How Can Liability Be Minimized?

Faced with strict, joint and several liability and limited defenses, potentially liable parties should focus their attention on steps that can be taken within Washington Superfund to minimize or shift some of that liability. Obviously, the initial consideration is whether to prepare a voluntary cleanup or remedial action. Failure to make such a proposal carries a high risk of enforcement and potentially greater damages. A settlement with the DOE protects settlers from claims of contribution by nonsettlers.

Several important concepts can diminish the scope of liability. One is "de minimis" protection whereby the DOE must expedite agreements with parties whose contribution to the release of hazardous substances at a site is insignificant in amount and toxicity.

"Mixed funding" can decrease liability through government contribution of funds to account for parties who are insolvent, unidentifiable or not available: the so-called "orphan shares." An equally important aspect of mixed funding is the contribution of state funds to soften the harshness of joint and several liability, such as in an instance when a party would suffer great economic hardship or when solvent but recalcitrant parties are present and can be pursued by the DOE. Washington Superfund allows the DOE to enter into a settlement agreement which requires the DOE to provide funds from the state fund in the foregoing instances. The DOE is required to consider the extent to which public funding will prevent or mitigate economic hardship. However, entering into mixed funding is solely discretionary with the director of the DOE, and the amount of state funds contributed is not subject to judicial review.

The cleanup standards imposed by the DOE at a site could also potentially minimize liability. The goal of any cleanup is to achieve a level that is

protective of human health and the environment. Cleanup standards in the state statute are much the same as under federal Superfund law. The DOE will set cleanup levels, and at a minimum, those standards must meet the requirements of applicable state and federal laws, regulations and rules. Where applicable standards are not available, the cleanup levels will be set on a case-by-case basis. Parties have the opportunity to demonstrate that an alternative to a

particular cleanup level will protect human health or the environment, and the DOE may allow a deviation.

Perhaps no area of minimizing liability is more important to potentially liable persons than the extent to which the state is willing to give a covenant not to sue in voluntary settlements. Washington Superfund authorizes the DOE to enter into covenants that preclude the state from initiating any future administrative or judicial action to force the potentially

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liable person to clean up or pay expenses related to cleanup of the site. The extent of the covenant not to sue and the scope of the DOE's discretion to give the covenant are related to the cleanup standards contained within a particular settlement. However, a covenant does not preclude claims by federal authorities or private parties.

Real Estate Issues

Several aspects of the Washington Superfund have been observed with

great concern by the real estate and banking industries. The law establishes a lien in favor of the state on real property where state funds have been spent for cleanup. The lien arises at the time costs are first incurred and is subject to all prior liens. In other words, Washington has chosen not to adopt a "superlien" which takes precedence over prior liens.

The definition of "owner or operator" for purposes of establishing liability under the statute does not

include the holder of a security interest who exercises control consistent with ordinary and customary lending practices, so long as that control does not include either operation of the facility or assumption of business decisions. Substantial interpretation is needed to determine what this means practically and what can or cannot be done in trying to avoid the serious liabilities which come with meeting the definition of owner or operator.

The act provides that the owner of public or private nonresidential property on which a release of a significant quantity of hazardous waste has occurred place a notice in the records of real property kept by the auditor of the county. Another provision of note with respect to real property is that, before selling any interest in real property, the seller must provide a written statement to the purchaser describing any release of a significant quantity of a hazardous substance the seller knows to have occurred during the prior 20 years on the property. This latter provision applies to residential real property. Failure to comply with either of these notice provisions can subject a person to a damage action for any injuries suffered by a person with an interest in the property. The law requires the DOE to establish by rule what is a "significant quantity" for purposes of these provisions and calls for the DOE to limit reporting to releases of a magnitude that would cause a significant adverse impact to human health or the environment.

Judicial Review

Review of the actions the DOE can take under the statute is, in many respects, limited. However, when the DOE rejects a final offer of settlement with respect to cleanup of property, a petition for review may be filed in superior court within 10 days of receipt of that decision. The court will then review the administrative record to determine whether the DOE's decision to deny the settlement is "clearly erroneous."

Other investigative or remedial action decisions by the DOE are reviewable in superior court only in the context of an attempt by the DOE to recover costs, an action by the DOE to compel remedial action, an action

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by a potentially liable person for reimbursement for costs that it has expended, or an action by the DOE to establish and collect a civil penalty. In other words, much of the review is limited to a situation in which the DOE is actually enforcing its authority under the statute and, as in federal law, pre-enforcement review is virtually nonexistent.

The statute permits citizen suits. By filing an action in superior court, a person may compel the DOE to perform any nondiscretionary duty. Citizens may also sue for failure to comply with an approved settlement agreement. All citizen suits other than those seeking to require the DOE to perform a nondiscretionary duty can be commenced only if the DOE is not diligently prosecuting either a judicial or an administrative action.

The Immediate Future

The DOE has been granted substantial rule-making power and has specific deadlines for promulgating certain rules. The rule promulgation process has already begun, with the Department of Revenue adopting rules for putting the tax mechanism in place.⁷ Of particular note in the rule-making process is the requirement that the DOE facilitate discussions and act to mediate differences among persons in order to achieve to the maximum extent possible consent on the rules.

This article skims the surface of this new, complex statute, whose operation will vary in different situations and create new issues of interpretation. While Initiative 97 may eventually compete with Washington Superfund for voter approval, a hazardous waste site cleanup program is in place now and likely will be in place in Washington for years to come.

Footnotes:

¹The law clearly attempts to do more than create a fund to enable the state to clean up sites. For example, it also addresses a water quality discharge permit fee program. The major thrust, though, is like its federal counterpart, the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601 *et seq.*, as amended, and for that reason "Washington Superfund"

is a good shorthand reference.

²An analysis of Initiative 97 is beyond the scope of this article. In general the initiative contains less definition and less specificity. As a result, it will be considerably more dependent on the DOE's rules and policies, and thus its impact on accomplishing cleanups is even less predictable than Washington Superfund.

³Initial appropriations from those accounts are \$14,681,000 to the DOE from the state account and \$18,685,000 to DOE from the local account for the biennium ending June 30, 1989.

⁴Washington Superfund does not expressly state its relationship with federal Superfund. As a result, sites will undoubtedly be complicated by the overlap of the two pieces of legislation.

⁵If a transporter selects a facility to which it transports the material and that facility could legally receive the substance, then the transporter may avoid liability.

⁶Petroleum continues to be taxed by virtue of Section 45.

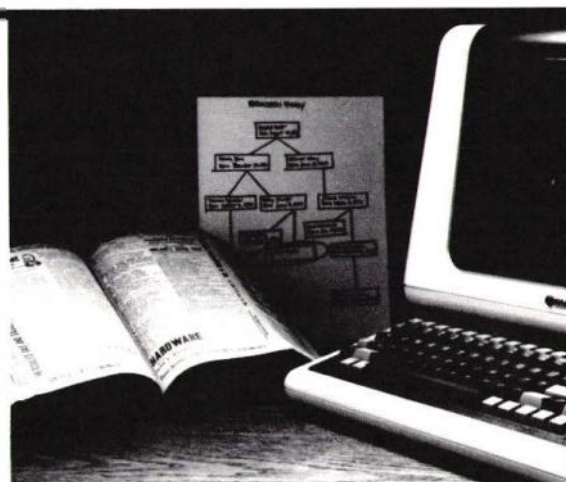
⁷WAC 458.20.252 adopted on an emergency basis December 29, 1987. □

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March Is Settlement Month in King County

For hundreds of litigants in King County, "I'll see you in court!" will be replaced by "Let's talk!" through a month-long effort intended to help relieve court congestion by encouraging litigants, insurance companies and plaintiff and defense attorneys to negotiate out-of-court settlement of civil lawsuits.

Called "Settlement Month," the plan is modeled after a similar concept in Columbus, Ohio and has been endorsed by key legal and insurance associations in King County. The local effort is spearheaded by Kenneth L. LeMaster, associate general counsel for SAFECO Insurance Companies, and leadership is provided by a 12-

member advisory board of attorneys and insurance experts.

Settlement month for King County is scheduled for March 1988. Attorneys and insurance companies will identify as many cases as possible that could benefit from negotiated settlement. Litigants will be contacted concerning their willingness to participate, and mediation dates will be scheduled in March.

All parties enter into mediation voluntarily. Litigants present their sides of the disagreement and an impartial, volunteer mediator works with them to find a mutually agreeable solution.

The Settlement Month proposal comes on the heels of the appointment of a 50-member King County task force charged with studying solutions to the court backlog.

Settlement Month has been endorsed by the Washington State Trial Lawyers Association (WSTLA), Washington Defense Trial Lawyers, the Seattle-King County Bar Association, the Washington State Bar Trial Practice Section, the Alternative Dispute Resolution Committee, and the Seattle Claim Managers' Council, representing 39 insurance companies doing business in Washington state.

In King County, a civil jury case takes 29.5 months from the formal request for a trial until the trial date. For a non-jury civil case the timeline is 18.5 months. By the end of December, King County Superior Court expects a backlog of some 75,000 filed and unresolved cases, up from a backlog of 52,000 on December 31, 1984.

Variations on Settlement Month have been tried in Columbus, Indianapolis and Washington, D.C., with astonishing results. In Columbus, Settlement Week saw the resolution of 27.8% of the 543 cases submitted to mediation, and numerous additional cases were settled later as a result of discussions begun during the week. In Indianapolis, 40.8% of 654 cases submitted were settled during the week, and in Washington, D.C., almost half of the 701 cases submitted were successfully concluded.

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Bulimia: A Consuming Passion

by A Metropolitan,
Large-Law-Firm Lawyer

I have always been a hardworking person: energetic, competitive, and dedicated to goals. Why, with this apparent arsenal of interpersonal strength, was I unable to go for an entire day without gorging myself with food and intentionally vomiting? I have now come to learn that the answer was simple. Bulimia, like alcoholism, is an addiction and I am bulimic.

Bulimia is an eating disorder characterized by recurrent episodes of binge-eating and purging. The usual method of purging is self-induced vomiting; however, laxatives, fasting, and severely restrictive diets are all methods others and I have used to eat excessively to avoid weight gain.

Contrary to popular belief, bulimia should not be viewed simply as an extreme method of weight control. Although desire for weight control is the usual reason people start bingeing and purging, bulimics become physiologically and psychologically addicted. I became so hooked that I rearranged or eliminated all activities to allow time for my daily encounter with bulimia. This became a response to all the stress in my life.

My disordered eating began early. In my teens it seemed like a harmless obsession with dieting. However, with the passing of each year, my disordered eating worsened. I experienced an episode of anorexia (self-induced starvation characterized by weight loss of at least 25% of one's normal body weight) in college without even realizing what anorexia was or what was wrong with me. I knew only that I was getting thin and that I had discovered a new-found sense of control over my life.

Eventually, I regained the lost weight; this put me back at my normal body weight. I again set out to become thin, knowing "you can never be too thin..." I promptly lost the weight but I panicked. What if I gained it back again? I resolved that this would not happen. An inner

voice I came to despise, said, "Don't worry, if you eat too much—just throw up." I thought I'd invented the wheel. From that moment on, for the next four years, I binged and purged numerous times every day. At first it was exhilarating. My stomach was empty but my mind said it was full. I had finally beat the system! Then, the obvious realization came. I was out of control. I could not stop.

During this dark period I was successful at work, often volunteered for several community organizations, and was married. My life looked absolutely wonderful—from the outside. There was just one major problem. I was dying inside.

Every day, I went to work, did my job and vowed that after leaving I would not stop at the grocery store or a restaurant. Every day I stopped. I kept detailed mental notes of which stores I had been to, so the clerks would not recognize me. Occasionally, a clerk would look in my overloaded shopping cart and comment, "Hope you have a fun party." I wanted to die.

My daily existence was a secret hell. It began with a search for cash. Did I have enough money to buy food? Would I be able to continue to hide my food purchases from my spouse? Would I have enough privacy? At some point, I quit trying to quit. I knew I would die young, and that seemed like the only solution.

When you are practicing bulimia your priorities change. I was no exception. An example: Most people I know rate restaurants according to the quality of food. I developed my own private rating system: One star for restaurants with an individual private bathroom stall; two stars if there was also a fan loud enough to muffle the noise of my retching. (Of course, I only went to the "best" restaurants.)

In addition to my bulimia I began abusing alcohol in an effort to curb my bingeing and to relieve the extreme depression and guilt. Not surprisingly, my efforts were unsuccessful, and I became unable to control my drinking. As the drinking progressed, I eventually came to realize that I was also an alcoholic. I have since learned that many people with bulimia are also alcoholics.

Bulimia exacted a price. I spent thousands of dollars on food alone. In fact, I've since mused that I have eaten enough food to feed a small country. I lost my self respect, honesty, and many relationships. Friends and bulimia do not mix. I was an isolated shell who had lost the ability to feel or cry. I also suffered physically. I was chronically dehydrated, experienced nightly bowel and leg cramping, frequently fainted, and was constantly troubled with swollen glands, throat irritation and bloated face, hands and feet.

Thanks to the ongoing help of recovering people, today I do not have to live in the clutches of addiction. Initially, I was helped by two attorneys who extended the hand of recovery when I was unable to help or love myself. My thanks would be incomplete without mention of the unconditional support and love of my spouse.

My purpose in sharing this private story is not to shock or offend. It is to offer hope to those with eating disorders, depression and alcoholism. Recovery is possible. There is help. All you have to do is ask.

What It Means

by WSBA Lawyers' Assistance
Program Staff

This continues the series about how lawyers develop, experience, and recover from physical and emotional impairment. The variety of distress that we have seen in our clients is quite diverse, although many share one characteristic: a beginning within a dysfunctional family. The distress is often not manifested until much later in life, when the demands of our profession begin to take their toll.

This lawyer controlled her chronic depression through a compulsive eating disorder. She experienced many of the typical signs of the accompanying depression, including:

- She felt that the important aspects of her life were out of control.
- She constantly was thinking about things she had to accomplish.
- She had trouble falling asleep.
- She often had to check and



doublecheck what she had finished.

- She was feeling hopeless about the future.

How many other Washington lawyers suffer from similar depressive symptoms which also may be combined with an eating disorder? The results from the Lawyer Ways of Living and Health Questionnaire, completed by a random 10% sample of Washington lawyers, suggest that approximately 1,200 lawyers (9.7% of the Washington Bar) now suffer from parallel symptom responses.

Peer support made the difference for the author. LAP provides effective, confidential services for lawyers who wish to treat their distress, end their isolation, and begin their recovery.

If this fact pattern sounds familiar, or if alcohol, depression, drugs, etc. have become the focus of your life, call us. LAP provides confidential, effective assistance. Pages 26-27 of the December *Bar News* list the 20 most frequently asked questions about LAP. We can assist you or a fellow lawyer. We are at (206) 448-0605.

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Trial Practice Section and Corporation, Business and Banking Section Mid-Years

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

The 1988 Trial Practice Section Mid-Year Meeting and seminars will be held on April 15 and 16 at the Stouffer Madison Hotel in Seattle. Chaired by **Jonathan B. Noll** (Foster, Pepper & Shefelman, Seattle), will also incorporate the Honorable Morell E. Sharp Memorial Luncheon featuring a special guest speaker on Friday, April 15.

The Friday seminar sessions will include the following topics: "Tort Reform—Is It Working?" with the plaintiff's perspective handled by **William S. Bailey** (Schroeter, Goldmark & Bender, Seattle) and the defendant's perspective handled by **C. William Bailey** (Lane Powell Moss & Miller, Seattle). **James S. Rogers** (James Rogers & Associates, Seattle) will comment on "Trial Tactics: Putting Old Myths To Rest." **Christopher L. Pickrell** (Assistant United States Attorney, Seattle) will comment on "Federal Government and 42 USC 1983 Claims." **Douglas S. Dunham** (Crane, Stamper, Boese, Dunham & Drury, Seattle) will deal with "State and Local Governments" as they relate to the doctrine of sovereign immunity. The Honorable **Barbara J. Rothstein** (United States District Court, Western District of Washington, Seattle) will provide comments for a topic entitled "A Federal Judge Looks at Rule 11 and Other Sanctions." "The 1988 Legislative Session—New Laws of Interest To Attorneys" will be handled by **Donald L. Law** (Law, Dominick & Hemstad, P.S., Olympia).

The Friday afternoon seminar sessions will include a presentation on "Modern Demonstrative Evidence" that will feature **John L. Messina** (Messina Duffy, Tacoma) as moderator. Other panelists helping with this presentation are Dr. **Christine Caverhill Schaefer** (Applied Graphics Systems, Inc., Seattle) and **Jay Syverson** (Demonstrative Video Services, Seattle). **Mark G. Honeywell** (Gordon, Thomas, Honeywell,

Malanca, Peterson & Daheim, Seattle) and **Karen Vanderlaan** (Helsell, Fetterman, Martin, Todd & Hokanson, Seattle) will address "Market Share Liability, An Emerging Doctrine." **Kelly N. Brown** (Irwin, Myklebust, Savage, Brown & Esser, P.S., Pullman) will speak on "Officers' and Directors' Liability—A Crisis?"

The Saturday portion of the program is devoted to a three-hour segment entitled "Discovery Hassles—What Would the Judge Say? (Revisited)." This will include demonstrations and commentary, and features **Barry M. Kaplan** (Perkins Coie, Seattle) as moderator. The faculty include the Honorable **John C. Coughenour** (United States District Court, Western District of Washington, Seattle) as commentator and **M. Margaret McKeown** (Perkins Coie, Seattle), **Kirk A. Dublin** (Preston, Thorgrimson, Ellis & Holman, Seattle) and **James L. Magee** (Graham & Dunn, Seattle) as panel members.

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

The 1988 Corporation, Business and Banking Section Mid-Year Meeting and seminar will be held at the Inn at Semiahmoo on Friday, Saturday and Sunday, April 29, 30 and May 1. Program Chair **Andrew H. Zuccotti** (Stoel Rives Boley Jones & Grey, Bellevue) has designed a program that will deal with "Recent Developments and Attorney-Client Relationships." There will be a buffet luncheon for all registrants and faculty featuring special guest speaker **Garry G. Fujita** (Washington State Department of Revenue, Olympia), who will comment upon "National Can & the B & O Tax."

Other speakers include: **Edward N. Lange** (Davis Wright & Jones, Seattle); Professor **Richard O. Kummert** (University of Washington School of Law, Seattle); **Joel D. Kuntz** (Stoel Rives Boley Jones & Grey, Portland); **Michael F. Rodin** (Preston, Thorgrimson, Ellis & Holman, Seattle); **Gary R. Duvall** (Merkel, Caine, Donohue & Duvall,

Seattle); Dale L. Carlisle (Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, Tacoma); James C. Carmody (Velikanje, Moore & Shore, Yakima); Suzanne M. Zahniser (Bogle & Gates, Seattle); Professor Robert H. Aronson (University of Washington School of Law, Seattle); Donald B. Myers (Stoel Rives Boley Jones & Grey, Seattle); D. Bruce Lamka (Davis Wright & Jones, Seattle); David F. P. O'Connor (Bogle & Gates, Seattle); Gary E. Fluhrer (Foster, Pepper & Shefelman, Seattle); Joan E. Robinson (First Interstate Bank, Seattle); Professor Douglas M. Branson (University of Puget Sound School of Law, Tacoma); Alan P. Vandevent (Weyerhaeuser Company, Tacoma); Tom A. Alberg (Perkins Coie, Seattle); and Kevin C. McMahon (Stoel Rives Boley Jones & Grey, Seattle).

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The Board's Work

by Carole Grayson



EXECUTIVE INN, PIPE: FEBRUARY 12-13, 1988

PRESENT: President Dean and all Governors except Steve Reisler of Seattle, absent on February 12.

ALSO PRESENT: Lindsay Thompson (Bar News editor-elect), Lowell Halverson (Legal Foundation of Washington), Mary Prevost (Government Lawyers), Kay Frank (SKCBA Young Lawyers), Laura Inveen (Wa. Women Lawyers), John Riley (WSBA Young Lawyers), C. C. Bridgewater (Wa. Assn. of Prosecuting Attys.), John McCutcheon (Superior Ct. Judges Assn.), Steve De Julio (SKCBA Trustees), John Michalik (WSBA Exec. Dir.).

LAP SURVEY WSBA executive director John Michalik reported that King County Superior Court Judge Frank Howard (now of the U.S. Bankruptcy Court) turned down the Seattle Times lawsuit against the WSBA which sought access to the data of the survey sent to 10% of Washington lawyers by the Lawyers' Assistance Program last year. Judge Howard ruled the Bar was not a state agency and that the Times had no common law right of access to judicial documents.

SKILLS TRAINING: 80 new lawyers **"LEARN BY DOING"** participated in a pilot WSBA skills training program September 14-23, 1987. In February, the Governors voted 7-2 to make an optional skills training program a continuing WSBA effort and to establish a committee to examine funding and further implementation. Voting against the motion were Governors Frank Hayes Johnson of Spokane and Ed Shea of Pasco. Shea felt that skills training should be handled by the free marketplace.

"Let's not lose momentum," responded Governor Julie Weston of Seattle. "We're the only profession to unleash untrained graduates on the market...We come out of law school and we don't know a damn thing except how to think." She preferred mandatory skills training in lieu of the Bar exam.

Governor Paul Stritmatter of Hoquiam wanted any program to be self-supporting. Tuition was \$350, and 20% of the enrollees received tuition waivers. A self-supporting program would have to charge enrollees \$600 per person.

The Governors heard from program administrators/practicing lawyers Larry Mills and Dave Swartling of Seattle and WSBA CLE director Terry Foster and assistant director Steve Rosen. The Governors also viewed videotapes of the pilot program.

The program, which included 60 volunteer attorney instructors, cost \$50,000, \$28,000 of that a grant from the Governors. Mills said the program could be self-sustaining, although he thought it "far better" to think of funding sources such as the WSBA, large firms with extant in-house training programs, and the Legal Foundation of Washington.

LAP: NO COMPELLED APPEARANCES The Governors voted 9-0 to follow the recommendation of the Lawyers' Assistance Program steering committee concerning proposed RLD 8.7 and an amendment to RLD 1.1(j) and ask that they be withdrawn for consideration by the Supreme Court, with review in one year.

Proposed RLD 8.7 would have created a mechanism through which a lawyer who appeared to have an impairment could

be compelled to appear at the Lawyers' Assistance Program. Various groups, including the Seattle-King County Bar Association Trustees and Young Lawyers Division and the National Lawyers Guild, had voiced due process objections.

Fewer than 5% of referrals to LAP would arise from the disciplinary process, and "very few" of these would follow up on treatment, said steering committee chair Patrick Comfort of Tacoma. The program is running and "might be harmed if further consideration of the rule is made at this time." "Key" to LAP's success, he said, is the "active encouragement of impaired lawyers" to get assistance.

COMING UP Items tentatively on the Governors' agenda for their meeting in Port Angeles on March 18-19: referendum and resolution processes, WSBA public affairs department, minorities in the legal profession, member access to WSBA records, and the WSBA client security fund.

GOVERNORS TURN DOWN On December 17, 1987, the
FENILI PETITION
FOR REINSTATEMENT Governors (Stritmatter recused himself) heard disbarred lawyer Ronald Fenili, now of Enumclaw, petition for reinstatement. Admitted to practice in 1970, Fenili was a lawyer in Clark County until his disbarment by stipulation in 1978 following convictions for three counts of second degree theft, a felony.

Fenili received a suspended sentence requiring, inter alia, inpatient and outpatient treatment in a residential treatment facility, and paid restitution of nearly \$10,000. From 1980-1982, he was the U.S. manager of Butterworth Legal Publishers. He worked for West Publishing Co. for four years, netting \$130,000 in 1986. Although he testified that he cannot see himself again practicing law, reinstatement would make him "feel whole."

Douglas Dunham of Seattle, counsel for Fenili, argued that his client had rehabilitated himself.

Thomas Schultz, Ed.D., treated Fenili at the treatment facility in 1979 and again saw him in October 1987. He testified by deposition that Fenili still had a narcissistic personality disorder with an overlay of alcoholism. Psychiatrist Andy Sands, who has treated Fenili since August 1987, agreed that Fenili was an alcoholic, but disputed the finding of a narcissistic personality.

Special Bar Counsel Jim Danielson of Wenatchee argued that a business venture by Fenili showed the same poor judgment as that which had caused his disbarment. Two years ago, Fenili and Phillip McCormick, a lawyer who is suspended for failure to pay dues and comply with CLE, began Seattle Custom Computers, allegedly as oral partners.

Fenili filed tax returns as a sole proprietor, with McCormick as employee. Fenili told the Governors that at no time was he aware of McCormick's WSBA status. A consumer complaint that the consumer had been sold what was purported to be an IBM PC-XT when it was not was disputed by Fenili.

Since being released from treatment about ten years ago, Fenili has received no treatment for alcoholism except for intermittent attendance at Alcoholics Anonymous meetings. He testified that, at the suggestion of Dunham, he began attending Alcoholics Anonymous more regularly in the past year. He and his brother, William, an Illinois attorney, are computerizing Illinois case law.

On February 5, 1988, the Governors entered their order, recommending that Fenili's petition for reinstatement be denied. The Governors' vote was 7-2, with Governors Julie Weston and Steve DeForest of Seattle dissenting and Governor Paul Stritmatter abstaining.

Advice By Prosecuting Attorneys To Prospective Witnesses

We have been requested by both defense and prosecuting attorneys to provide guidance as to what advice a prosecutor may ethically offer to witnesses regarding interviews with defense attorneys or investigators. The inquiries raise the issues of whether a prosecutor may advise a witness to refuse to be interviewed by the defense, whether a prosecuting attorney may encourage witnesses not to be interviewed unless a prosecutor is present and whether a witness may be advised of his or her right to be represented by the prosecutor or a person of his or her choice during the defense interview. We offer the following advice.

(1.) May a prosecutor discourage witnesses from talking with a defense attorney or investigator?

It is well established that neither the prosecutor nor the defense may obstruct an attempt by opposing counsel or their agent to communicate with a prospective witness. RPC 3.4(a) provides that a lawyer shall not:

unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a

document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;

Similarly, the American Bar Association's *Standards for Criminal Justice*, "The Prosecution Function" explicitly states the prosecutor's obligation:

A prosecutor should not obstruct communication between prospective witnesses and defense counsel. It is unprofessional conduct to advise any person to decline to give information to the defense.

Section 3.3.1(c), "The Prosecution Function", *ABA Standards for Criminal Justice*, 2d Ed (1980) at 3-37.

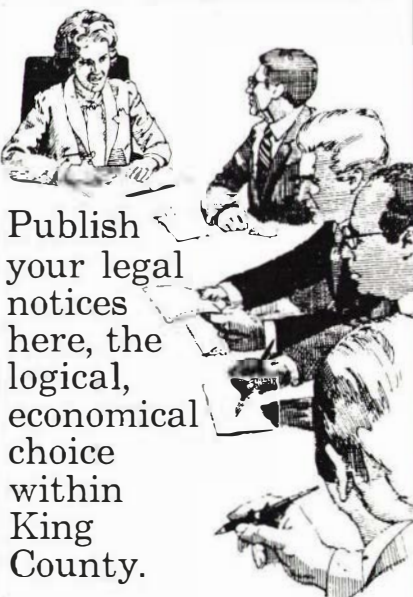
The comments to the *ABA Standards* enunciate the rationale underlying the standard, and suggest guidelines for prosecutorial conduct in contacting witnesses. Prospective witnesses are non-partisan; they should be regarded as impartial spokesmen for the facts as they see them. Because witnesses do not "belong" to either party, it is improper for a prosecutor, de-

fense counsel, or anyone acting for either to suggest to a witness that he not submit to an interview by opposing counsel. It is not only proper but it may be the duty of the prosecutor and defense counsel to interview any person who may be called as a witness in the case (except that the prosecutor is not entitled to interview a defendant represented by counsel). In the event a witness asks the prosecutor or defense counsel or a member of their staffs whether it is proper for a witness to submit to an interview by opposing counsel or whether he is under a duty to do so, the witness should be informed that, although he is not under legal duty to submit to an interview, it is proper and may be the duty of both counsel to interview all persons who may be witnesses and that it is in the interests of justice that a witness make himself available for interview by counsel.

Standards (Commentary), *supra*, at 3-38-39.

We believe this reasoning is sound and conclude that a prosecutor who

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discourages or otherwise obstructs witnesses from consenting to defense interviews would violate RPC 3.4.

We note that this ethical principle is embodied in CrR4.7(h) which provides:

(1) *Investigations not to be impeded.* Except as otherwise provided with respect to protective orders and matters not subject to disclosure, neither the counsel for the parties nor other prosecution or defense personnel shall advise persons other than the defendant having relevant material or information to refrain from discussing the case with opposing counsel or showing opposing counsel any relevant material, nor shall they otherwise impede opposing counsel's investigation of the case.

While the Committee may not render legal advice, we note that the Washington Supreme Court has held that conduct by the prosecution which interferes with defense counsel's ability to interview alibi witnesses is a violation of a defendant's constitutional rights. In *State v. Burri*, 87 Wn.2d 175, 550 P.2d 507 (1976) the prosecution held a special inquiry judge hearing and summoned

all of the defense alibi witnesses to appear. The prosecutor instructed the alibi witnesses not to discuss their testimony before the inquiry judge with defense counsel. The trial court's order dismissing the case was affirmed. The Supreme Court held:

A defendant is denied his right to counsel (U.S. Const. amend. 6; Const. art. 1, §22, (amendment 10)), if the actions of the prosecution deny the defendant's attorney the opportunity to prepare for trial. Such preparation includes the right to make a full investigation of the facts and law applicable to the case.

Id. at 180.

(2) *May a prosecutor encourage witnesses not to be interviewed unless a prosecutor is present?*

We believe that encouraging witnesses not to be interviewed unless a prosecutor is present constitutes obstructing access to the witness which is prohibited by RPC 3.4. The comments to Section 3.3.1(c) of the ABA Standards state:

Counsel may properly request an opportunity to be present at opposing counsel's interview of the witness, but he may not make his presence a condition of

the interview.

Standards (Commentary), supra, at 3-39.

The leading federal case on this issue is *Gregory v. United States*, 369 F.2d 185, 188 (D.C. Cir. 1966), cert. denied, 396 U.S. 865 (1969). The court stated:

... He (the prosecutor) did admit that he advised the witnesses not to talk to anyone unless he, the prosecutor, were present.

We accept the prosecutor's statement as to his advice to the witnesses as true. But we know nothing in the law which gives the prosecutor the right to interfere with the preparation of the defense by effectively denying defense counsel access to the witnesses except in his presence. Presumably the prosecutor, in interviewing the witnesses, was unencumbered by the presence of defense counsel, and there seems to be no reason why defense counsel should not have an equal opportunity to determine, through interviews with the witnesses, what they know about the case and what they will testify to. In fact, Canon 39 of the Canons of Pro-



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John Lyden of Clarkston assumed the superior court bench in December 1987. Lyden was appointed by Governor Booth Gardner to fill the spot vacated by the retirement and subsequent death of J. R. Jones.

CLARK COUNTY REPORT
by JOHN F. NICHOLS

Beagles, Beagles, Beagles...

The 1988 legal year was ushered in with the sixth annual Beagle awards. For those of you who have been out of the country for a few years or sequestered in your offices waiting for the I.R.S. to return your phone calls, the Beagles are awarded annually to members of the CCBA for dubious achievement in the field of Yellow Pages advertisement. This year the gala event was hosted by Cooksey's Tavern (newly remodeled, well, they do have a new sign) in the shadow of the neon "L" of the now defunct Lucky Brewery.

The theme for this year's Beagles was "Graphics, Photos and Torts"; highlighted by the "Torts R Us" display put on by those fun-loving Yellow Pages guys. Judge Barbara Johnson, in basic black and a string of pearls, was on hand to award the simulated porcelain or pewter statuettes. The "winners":

The Readers Digest Award (for the most info in the smallest space): **John Barlow**. This newcomer out of the Longview area gave a complete resumé together with a life history in a space the size of a business card. Frankly, I lost interest after Barlow's account of his seventh-grade debate team's schedule. What cinched the award was the fact that the ad appeared twice in the Yellow Pages.

The Conspicuous Consumption Award (for the least info in the most space): **Art Miller**. By the way, he only does injury accidents, but for some reason in two ads he has two different phone numbers.

fessional Ethics makes explicit the propriety of such conduct: "A lawyer may properly interview any witness or prospective witness for the opposing side in any civil or criminal action without the consent of opposing counsel or party."

The court held that the prosecutor's advice to the witnesses that they not talk to anyone unless the prosecutor was present was an impermissible interference with the defense preparation and denied the defendant a fair trial. See also *Coppolino v. Helpert*, 266 F. Supp. 930, 935-36, (S.D.N.Y. 1967).

Ethics Opinion 84-3 of the Alaska Bar Association reached the same conclusion.

A prosecutor or defense counsel may not mail a brochure to his potential witnesses which states that they should refuse to talk to the opposing counsel unless the lawyer or a member of his office is present for the interview and that they should not allow themselves to "be pressured into an on the spot interview." State policy, as evidenced by the statutory and disciplinary rules is to facilitate the process of interviewing witnesses by requiring cooperation, disclosure, and noninterference of both the prosecutor and defense counsel. Crim. R. 16(b)(1); DRs 7-102(A)(3), 7-103(B), 7-109 (3/9/84).

ABA/BNA Lawyers' Manual on Professional Conduct, Sec. 801:1202.

(3) May a prosecutor advise a witness of his or her right to be represented by a person of the witness's choice during a defense interview?

We believe it is permissible for the prosecutor to advise a witness of his or her rights as a witness. Those rights include the right, if the witness chooses, to have the prosecution present at a defense interview.

The commentary to §3.3.1(c), *ABA Standards*, "Prosecution Function," states:

Counsel may properly request an opportunity to be present at opposing counsel's interview of a

witness, but he may not make his presence a condition of the interview.

Id., at 3-39.

The Wisconsin Supreme Court adopted this commentary as a guideline for Wisconsin prosecutors, *State v. Simmons*, 203 NW 2d 887 (1973) and Illinois, *People v. Steele*, 124 Ill. App. 2d 761, 464 N.E. 2d 788 (1984); *People v. Fuller*, 117 Ill. App. 2d 1026, 454 N.E. 2d 334 (1983) and a number of federal circuit courts see e.g., *U.S. v. Bittner*, 728 F. 2d 1038 (8th Cir. 1984); *U.S. v. Rich*, 580 F. 2d 929 (9th Cir. 1978); *U.S. v. White*, 454 F. 2d 435 (7th Cir. 1972) have reached the same result.

In recognizing the right to provide this advice however, we caution that a prosecutor may not condition the interview on the prosecutor's presence or in any other way obstruct the ability of the defense attorney to properly prepare for trial. As the Ninth Circuit stated:

It is imperative that prosecutors and other officials maintain a posture of strict neutrality when advising witnesses of their duties and rights. Their role as public servants and as protectors of the integrity of the judicial process permits nothing less.

U.S. v. Rich, supra at p. 934.

We believe the best practice is for a prosecutor to include in the advice given to witnesses regarding their rights the essence of following from the commentary to the *ABA Standards* for the Prosecution Function.

... the witness should be informed that, although he is not under a legal duty to submit to an interview, it is proper and may be the duty of both counsel to interview all persons who may be witnesses and that it is in the interests of justice that a witness make himself available for interview by counsel.

Id. at p. 3-38-39.

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.

The Rand McNally Award (for best use of maps to describe multiple locations): Boyd, Kurtz & Swanger. From the ad it would appear that all three locations are located within four blocks of each other. Whatever happened to legal descriptions?

The Tourist Award (or, "When in Washington, speak the language"): This resulted in a tie between the Oregon firms of Connall & Lorenz and Zbinden & Curtis. Both offices refer to "DUI's." Whether this is a drunk driving violation or a statement on their ads is anyone's guess.

The F.B.I. Award (for photos most likely to be seen on post office walls): Dan "Hound Dog" Marsh and gang. This rogue's gallery of Dan, Higgins, Foster and Bennett is often used for photo lay-downs at the sheriff's office. It should be noted that with this award Marsh retires as the only four-time recipient. It is good to see that Dan took my advice from last year and switched from a public phone to a more private model.

The Dorian Gray Award (for photos that most resemble real people at some time in their life): Jim Sellers and Don Jacobs. These two appeared to have lifted their photos straight out of their respective high school annuals. Jim's wearing of his beanie and lettermen's jacket was a nice touch.

The Frank Lloyd Wright Award (for best use of office pictures): Schauer-
mann & Thayer in a very hotly con-
tested category. The winners' hand-
drawn version of their office/gas sta-
tion complete with stick figures of
Bill Thayer and Craig Schauer-
mann (he's the larger one with the bigger
briefcase), squeaked by Baum &
Etengoff and last year's winner, Hicks
& Hall. The former stayed with the
panorama of Vancouver, "a dynamic
community"; while the latter also re-
lied on last year's photo of their office
complete with the parking meters. It
was touching to have Jerry Hall lean-
ing against the meter with a change
belt.

The Barney Rubble Award and, for
this year, *The Beagle of the Year* (for
best use of animated graphics): This
was a very close selection. The early
favorite was last year's winner, Stan
Horak, who this year replaced his
"broken heart" with a Jarvik 7 artifi-

cial variety. The challenger, Tom Phe-
lan, used high-tech graphics to de-
pict cops in uniforms not seen since
Highway Patrol and an actual criminal
behind bars. This year the chal-
lenger won with his stunning scene of
a '59 Chevy colliding with a '58 Buick.
Big cash in that crash. Eat your heart
out, Spielberg.

So ended this year's event. Next
year the key word is "slogans." No
more tired and worn phrases that
don't pack the punch needed for the
eighties type of firm. Be there in '89.

COWLITZ COUNTY REPORT

by TERRY LEE

Arlen Sturm has joined the staff of
the prosecutor's office. Congratula-
tions to Kathryn Barnhouse on her
recent marriage. Don Dolon, the
highest-rated contender for Best-
Dressed Irishman award, has moved
into the Guinn, Cotterell, et al of-
fices. They appreciate the gourmet
coffee he brings. Dennis Ott, the
local version of Phil Donahue, has re-
cently relocated his office to 401 N.
Pacific in Kelso. The Law for the
Non-Lawyers community education
program has a regular attendance of
sixty-five-plus people. It's supported
by the local bar; thanks are given to
the following bar members for their
well-done presentations: Judge
Gerry Alexander, Judge Milton Cox,
Dean Jim Bond of UPS, Donald Frey,
Ann Mottett, Dennis Ott and Bob
Falkenstein.

KITSAP COUNTY REPORT

by JAMES K. SELLS

At the top of the news this month is
an historical move by Patrice Vlam-
ing. Pat has become the first attorney
ever to return to the prosecuting at-
torney's office from private practice.
Effective January 15 she is leaving
Buskirk & Anderson.

In a more traditional move, Drake
Messenbrink is leaving the pro-
secutor's office for a position with
Smith, O'Hare & Crane.

There will be a new presiding
judge in superior court this month,
with Judge Leonard Kruse stepping
down (up?) in favor of Judge Terence

Hanley.

The annual Bosses' Night celebra-
tion is upon us again. Time again for
cheap thrills, angry spouses and
failed breathalyzers. The theme this
year is the Big Band Era.

Newly announced officers for the
coming year are president, John
Mitchell; vice president, Karlynn
Haberly; Secretary, John Tracy and
Treasurer, Dave Hedger.

To facilitate reporting of future
changes in personnel at Shiers,
Kamps, Chrey & Alexander, we have
developed a form for use every month
in this report:

____ Steve Smith ____ has ____ (X) ____ left
____ joined the law firm of Shi-
ers, Kamps, Chrey & Alexander.
____ Jeff Cox ____ has ____ left
____ (X) ____ joined the firm of Shiers,
Kamps, Chrey & Alexander.

SEATTLE-KING REPORT

by JAMES L. VARNELL

Office Moves. Cohen and Kaplan
has merged into Lane Powell Moss
and Miller. Michael J. Cohen and
Kenneth B. Kaplan have moved
there as partners, and Gail E.
Mautner and Elizabeth Fitzhugh are
associates. Bruce W. Hilyer has
moved to Culp, Guterson & Grader
as an associate. Edgar L. Annan,
Michael M. Megaard and Jed W.
Morris have become principals in
Lukins & Annis; Pamela Richmond
and Linda Davidson Tompkins are
now associated with the firm. John
W. Hempelmann and Scott T. Bell
have joined Cairncross, Ragen &
Hempelmann as principals, and
Laura N. Cromwell, Terrence L.
Danysh, Craig T. Kobayashi, Paul
Sikora and Mary Simon have joined
as associates.

David A. Peters is an associate
with Stanislaw, Ashbaugh, Chism,
Jacobson & Riper. Edith Bowler-
Lind is serving as law clerk for King
County Superior Court Presiding
Judge Gerrard Shellan. Carney,
Stephenson, Badley, Smith, Mueller
& Spellman announces that: Donald
P. Marinkovich has become of coun-
sel; T. Jeffrey Keane has become a
shareholder; and Thomas G. Morton,
David W. Bever and Brian P. Ward
have associated with the firm. The

law office of **John W. Lundin** has moved to 710 Cherry Street.

Shidler, McBroom, Gates & Lucas announces that **Joel S. Summer** has become a shareholder, and the firm has relocated its Bellevue office to 1700 Rainier Bank Plaza. Stoel Rives Boley Jones & Grey announces that **Bradford Anderson**, **Richard L. Goldfarb** and **Gordon W. Tanner** have become partners. **Brian**

T. McManus is now a partner in Mundt, MacGregor, Happel, Falconer, Zulauf & Hall. **Ross A. Macfarlane** and **Mark R. Beatty** have joined Preston, Thorgrimson, Ellis & Holman as associates. **Trenholme James Griffin** has joined Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax as special counsel. **Judith T. Graves** is now associated with Van Eaton, Thomas, Phippard and Gorud. **Kel-**

ler, Rohrback has added three new associates: **Paulette Peterson**, **Gregory Knave** and **Kimberly Coster**. **Brent Daniel** has relocated to the Denny Building. **John Milne** is now associated with Bellevue's Inslee, Best, Dozie & Ryder.

Of Note. Four new judges have begun serving on the King County Superior Court bench: **Marsha J. Pechman**, **Steven G. Scott**, **Norma J. Smith Huggins**; Seattle District Court Judge **Joseph R. Wesley** (University of Washington Class of 1971) has replaced Judge **Robert Winsor**, who was elected to the Court of Appeals, Division I.

F. Lee Campbell of Karr, Tuttle was recently honored by Washington State Insurance Commissioner **Dick Marquardt** for Campbell's leadership of a committee recommending changes in Washington state tort law related to professional liability insurance. **Paige Miller** was sworn in as the newest Commissioner of the Port of Seattle. She is the second Yale School of Law graduate on the five-member Port Commission.

Judge **Jerome Farris** of the Ninth Circuit Court of Appeals was recently honored at a "surprise" dinner, which was originally intended as a diplomatic "roast," but which quickly turned into a procession of speakers acknowledging the richness of their experience of working with Judge Farris. The organizing committee included **John Cooper**, **Glen Garrison**, **George Finkle**, **Kenneth Kaplan** and **Larry Jordan**. An historical perspective was provided by the "dean" of Judge Farris's law clerks, **Bill Creech**, arriving from Denver, Colorado. Bill was there in the fall of 1969 when the State Court of Appeals commenced operation. Other long-distance attendees included **Claude Stern** from San Francisco and **Louis Touton** and **Brenda Sannes** from Los Angeles.

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**SNOHOMISH COUNTY
REPORT
by REBECCA CLARK**

The new officers of the Snohomish County Bar Association were elected

at the annual meeting, and as of February 1988 they are: **James Deno**, president; **H. Scott Holte**, vice president; **Charles French**, secretary; and **Sally Carpenter**, treasurer. **James Allendoerfer**, outgoing president, has done an excellent job in 1987, and we are certain that Deno will carry on the good work. At that same meeting, the bar association agreed that the annual dues of \$40 will no longer include the price of the yearly dinner dance. That event will now cost \$25 for two (bar member and other, significant or not).

Kathryn Trumbull has been appointed to the new court commissioner position for Snohomish County Superior Court. She served as deputy prosecutor for Snohomish County from 1974 to 1981; since 1981 she has been in private practice emphasizing family law. She is expected to assume the responsibilities of the office in early March.

Todd R. Startzel has recently joined the firm of Anderson, Hunter, Dewell, Baker and Collins as an associate, and **Todd Morrow** has associated with Cogdill, Deno, Millikan and Carter. **Mark Albertson** has joined the Family Support Unit of the Snohomish County Prosecutor and **James Ihnot** is a new member of the firm of Hansen and Robinett in Lynnwood. **Satwant Singh Pandher** announces the opening of his law office in Everett, emphasizing in immigration and nationality law. **Brian Phillips** has moved around the corner to 3223 Oakes, where he will office share with **Harriet Strasberg**. **Monte Wolff** has moved to 3112 Rockefeller, Suite A, Everett, and **James Bortner** is now at 3306 Wetmore Avenue in Everett.

SPOKANE COUNTY

Carl Maxey, Spokane attorney, above left, receives the Charles A. Goldmark Distinguished Service Award from **Michael J. Fox**, Legal Foundation of Washington trustee, and recent appointee to the King County Superior Court. Maxey is the second recipient of the Goldmark award, presented at a luncheon January 22, 1988, and given annually



to an individual or organization who best realizes equal access to justice for all.

Maxey was selected for the honor because of his career-long policy of devoting 20 percent of his time to pro bono services and because of his outspoken advocacy for civil rights. Since being admitted to practice in the early 1950s, he has figured in numerous cases involving issues of discrimination, free speech, and capital punishment. In 1982, he was honored by the Washington State Chapter of the ACLU with its William O. Douglas Bill of Rights Award.

WHATCOM COUNTY REPORT by MICK MOYNIHAN

In one of the closest elections ever held in Whatcom County, **Bob Hughes** was elected president for 1988. He ran unopposed, but he did wear his tie in honor of the occasion. **John Erickson** was not present, so he was elected vice president. A gentlemanly, yet close, election resulted in **Tim Slater's** being selected over **Frank Chmelik** for secretary-treasurer. Frank, in a light-hearted

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moment, was going to issue a press release indicating that he had won the race, but decided against it when he found out that nobody reads those things anyway.

Bruce Disend, Bellingham City Attorney, recently began his term as president of Kulshan Kiwanis, which means that for his one-year term he will not be sleeping in early on Thursday mornings.

And after November's elections, **Tim Carpenter** was handing out cigars, not because of any new family addition, but because his wife was elected Finance Director of the City of Bellingham.

YAKIMA COUNTY REPORT

by **RAYMOND V. GESSEL**
and **MARK KUNKLER**

Local personal injury attorney **Terrence P. Abeyta** has been asked by Callaghan and Company, national publisher of legal treatises, to write a chapter for a two-volume text regarding the handling of automobile accident claims.

Fred Halverson has been named a Fellow of The American Bar Foundation.

The law firm of Halverson and Applegate has hired two new associates; **Donald Boyd** and **Eric Holtman**. Boyd, a recent graduate of the University of Puget Sound School of Law, comes from a number of places but most recently from Redmond. Holtman, who is also from the law class of 1987, was graduated from New York University and hails from Mukilteo.

Kenneth P. Schmidt has become an associate for the firm of Hurst & Crossland. He has been an associate for the Moses Lake/Wenatchee firm of Calbom and Schwab.

With court dates being set well into 1989, a task force has been appointed by the county bar association to deal with court congestion. The task force has recommended that local attorneys assist in freeing up the court calendar by taking at least one criminal case to prosecute or defend on a pro bono basis. A request has also been made to add an additional superior court judge.

DISCIPLINE

Disbarred

Tacoma lawyer **Samuel J. Allotta** was disbarred by order of the Supreme Court on January 14, 1988. The Court followed the recommendation of a hearing officer and the Disciplinary Board based upon findings that Allotta had fabricated a document in an attempt to defend himself against a malpractice action and had falsely testified under oath in both the malpractice and the disciplinary actions.

Reprimand

Seattle attorney **Gary L. Wolfstone** (admitted 1974) has been ordered reprimanded following a disciplinary hearing. The discipline was based upon Wolfstone's conduct in failing to produce a client's original diary in response to a discovery request, and his direction to the client that she edit, by copying on blank

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paper, the entries from her original diary which were true and only bring those excerpts to her deposition. At the deposition and thereafter, Wolfstone failed to disclose to opposing counsel that only excerpts of the diary had been produced.

IN MEMORIAM

Robert T. Farrell, General Counsel for the Washington State Bar Association since 1982, died at age forty-two of acquired immune deficiency syndrome on January 16. He was born in Madison, Wisconsin, where his mother still resides. Farrell enjoyed a lifelong interest in music; he was a Whiffenpoof at Yale until his graduation in 1967. He taught English for two years in Japan and received his J.D. in 1973 from the University of Washington. He worked for Evergreen Legal Services until joining the WSBA Legal Department staff in 1976.

Farrell was active in the Seattle Men's Chorus. He retained his fluency in Japanese and last visited the

Orient, including Hong Kong, two years ago. An enthusiastic trade token and coin collector, Farrell owned the largest collection of trade tokens on the West Coast. He became an expert in tropical fish and, for the last two years, owned and operated Bob Farrell's Marine Fish.

Remembrances to the Northwest AIDS Foundation, 1818 East Madison, Seattle, WA 98122.

Civic leader **Lloyd Eyrich** of Newport died at 68 last November 20. A native of Columbus, Montana and a 1949 graduate of the Gonzaga School of Law, he established his Newport law practice that year.

Eyrich served as Newport city attorney for the past 36 years, as well as Pend Oreille County Superior Court commissioner and as district court judge pro tem. He was the current chairman of the Pend Oreille County Hospital District No. 1 board. He was active in the Spokane El Katif Shrine and Scottish Rite Temple; he was a past master of Newport Lodge #144 F & AM and past president of Newport Kiwanis.

Memorials may be made to the Newport Hospital Auxiliary, Newport, WA 99156.

Wheeler Grey died in Seattle on January 9, 1988 at the age of 79. A native of the Midwest, Grey was graduated in 1929 from George Washington University after attending Michigan State University. He was graduated from the Georgetown Law School in 1931 and was admitted to practice in New Jersey, Washington, and "the other Washington." Grey's half century of living in the Northwest culminated in his being a senior member of the law firm of Stoel Rives Boley Jones & Grey, where he practiced in corporate, banking and securities law. Remembrances to Alzheimer's Research at the University of Washington.

Bernard E. Newby, Jr. of Vancouver died in September 1987 in Vermont from injuries sustained in a bicycle-auto accident. Newby, 46, was admitted to the Washington Bar in 1968 and maintained a business, probate, and domestic relations practice.

SUCCESSFUL APPELLATE PRACTICE Begins in the Trial Court

Every trial lawyer knows that appellate success depends upon the record made in the trial court. Not all trial lawyers, however, know how to make a winning record.

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Similarly, at the appellate level, procedural traps for the unwary practitioner abound. For example: "there must be specific assignments of error before we will go behind the trial court's findings." *Dave v. Nastos*, 39 Wn. App. 590, 595, 694 P.2d 686 (1985).

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PARIS K. KALLAS, former staff attorney for the Washington Appellate Defender Association; successful appeals include *State v. Hicks*, *State v. Shriner*, *State v. Gore*, and *State v. Griffin*.

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(See related story on page 17)



Back, l to r: Judge **Joel Rindal**, Bellevue District Ct., president District & Municipal Judges Assn.; Acting Chief Justice **Keith Callow**, Washington Supreme Ct.; Judge **Norman Quinn**, King Co. Superior Ct., president, Superior Ct. Judges' Assn. Front, l to r: Judge **Herbert Swanson**, Div. I, Ct. of Appeals (who was sitting in for Judges **Edward Reed** & **Jack Scholfield**, who could not be present); Chief Justice **Vernon Pearson**, Washington Supreme Ct., BJA chair and **Patrick Comfort**, 1985-1986 WSBA president. (Not pictured: Judges **Reed**, **Scholfield**, **Harold Clarke**, **Christine Cary** and 1983-1984 WSBA president **Robert Redman**.)

Family Law Section



Kenneth W. Weber of Vancouver and **Bernice Jonson** of Seattle smiled for the camera after receiving the first-ever Outstanding Lawyer Award by the WSBA Family Law Section at the Bar Convention in the other Vancouver in September 1987.

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vited to attend the Washington Association of Legal Secretaries' seminar on March 26, 1988 at the Spokane Sheraton Hotel. Ann Rule, author and expert on serial murders, will be the featured speaker of the three-hour seminar. Registration is \$35 for members and students and \$50 for non-members. Mail registration to Terre Skelly, 4313 Northeast Perry Avenue, Bremerton, WA 98310, or call (206) 373-9407.

UPS Law School Grads

Save May 16, Monday evening, for the annual Alumni Dinner, to be held at the Columbia Tower Club, 75th floor of the Columbia Center in Seattle. Details will be mailed to you in April.

STATE LAW LIBRARY

Recent Acquisitions

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by telephone at (206) 753-6525, or by mail at Washington State Law Library, Temple of Justice, AV-02, Olympia, WA 98504-0502. A bi-monthly *Selected Recent Acquisitions* list, generally containing 150-250 new titles, is also available. Copies may be obtained by mail from the Washington State Law Library at the above address.

AIDS

AIDS and the law. William H. L. Dornette, editor. New York: John Wiley & Sons, 1987. Pp. 399.

DAMAGES

Evaluating and proving damages in business litigation. Berkeley, CA: California Continuing Education of the Bar, 1987. Pp. 63. (Program Material)

DEBTOR AND CREDITOR

Representing debtors in bankruptcy. Southern Methodist University bankruptcy law institute. Fundamentals of Chapter 11 reorganization. Edited by Lawrence P. King & others. New York: Matthew Bender, 1987. V.p.

DISPUTE RESOLUTION

Alternative dispute resolution and risk management: controlling conflict and its costs. Litigation and Administrative Practice Series Litigation Course Handbook Series #338. New York, NY: Practising Law Institute, 1987. Pp. 328.

DIVORCE SETTLEMENTS

Orenstein, Theodore P. and Gary N. Skoloff. *When a lawyer divorces: how to value a professional practice, how to get extraordinary remedies.* Chicago, IL: American Bar Association, 1986. Pp. 130.

DRUNK DRIVING

Cowan, Douglas L. and Stephen W. Hayne. *Defending DWIs in Washington.* Seattle, WA: Butterworth Legal Publishers, 1987. 1 vol. (loose-leaf)

PERSONAL INJURIES

Evaluating P.I. cases. October 1987.

Seattle, WA: Washington State Trial Lawyers Association, 1987. Pp. 327.

Personal injury defense techniques. Mark A. Dombroff, Editor-in-Chief. New York: Matthew Bender, 1987- . 3 vol. (loose-leaf)

TRIAL PRACTICE

Effective advocacy before trial: the path to successful litigation. Fall Trial Advocacy. Continuing Legal Education Material. Seattle, WA: Washington State Bar Association, 1987. V.p.

Preparing & examining expert witnesses in civil litigation. Berkeley, CA: California Continuing Education of the Bar, 1987. Pp. 123. (Program Material)

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Inactive

Redmond attorney **Fred B. Phillips** (admitted 1970) has been transferred to inactive status.

Interim Suspension

Wenatchee attorney **James E. Freeley** (admitted 1980) was ordered suspended from the practice of law pending the outcome of proceedings by Supreme Court order entered November 12, 1987.

Interim suspension is pursuant to RLD Title 3 and is not a disciplinary sanction.

Resigned

The Board of Governors of the Washington State Bar Association has accepted the resignation of Port Orchard attorney **Myron H. Freyd** as a member of the Association. At the time of the resignation, disciplinary proceedings were pending against Freyd. This notice is published pursuant to Rule 11.2(a) of the Rules for Lawyer Discipline.

Robert L. Butler Authorized for Readmission

On the recommendation of the Board of Governors, **Robert L. Butler** of Seattle, disbarred in 1981, was readmitted to the Bar Association by order of the Supreme Court dated January 20, 1988, provided he takes and passes the Bar examination. The Court stated that an opinion expressing its reasons will be filed at a later date.

Re: RCW 19.52.020(1) Interest Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in February is 6.41%. The maximum allowable interest permissible for **March 1988** is thus **12%**. (For further details and past rates, please see the October 1987 *Bar News*, page 39.)

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Boise forty-three-person firm seeks for its Boise and Pocatello offices associates with interest in a litigation practice; and for its Boise office associates with interest in a business practice. Strong academic credentials required. All replies confidential. Send resumé to: Hiring Committee, Hawley Troxell Ennis & Hawley, P.O. Box 1617, Boise, ID 83701.

Puget Sound Legal Assistance Foundation seeks applicants committed to serving low-income people for two staff attorney positions in its Tacoma office: One position requires experience or interest in housing, public entitlements, or family law, and admission to practice in Washington. The second position requires minimum five years' experience, admission in Washington now or at next Bar exam; prefer background in community development, health care systems, or other poverty law issues.

Resumés to John Bell, Puget Sound Legal Assistance Foundation, 813 South "K" Street, Tacoma, WA 98405. Minorities, women, and handicapped persons encouraged to apply. Equal opportunity employer.

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Portland firm seeks personable, dedicated associates with minimum one year's experience to work in firm's litigation, insurance, commercial and maritime practice. Send resumé and cover letter in complete confidence to the attention of Mr. John M. Cowden, Wood Tatum Mosser Brooke & Landis, 1001 S.W. 5th Avenue, 13th Floor, Portland, OR 97204.

Established, growth-oriented, medium-sized firm in Bellevue seeks an attorney with experience in real estate law, title insurance defense, lender litigation and "workouts." High academic and professional achievement are important, as are managerial and organizational skills. Please respond to Box 193, WSBA.

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Litigation Associate. Mid-sized Vancouver firm, Horenstein & Horenstein, P.S., seeks an experienced litigation associate. Contact:

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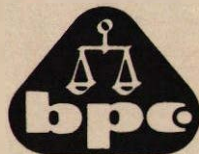
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