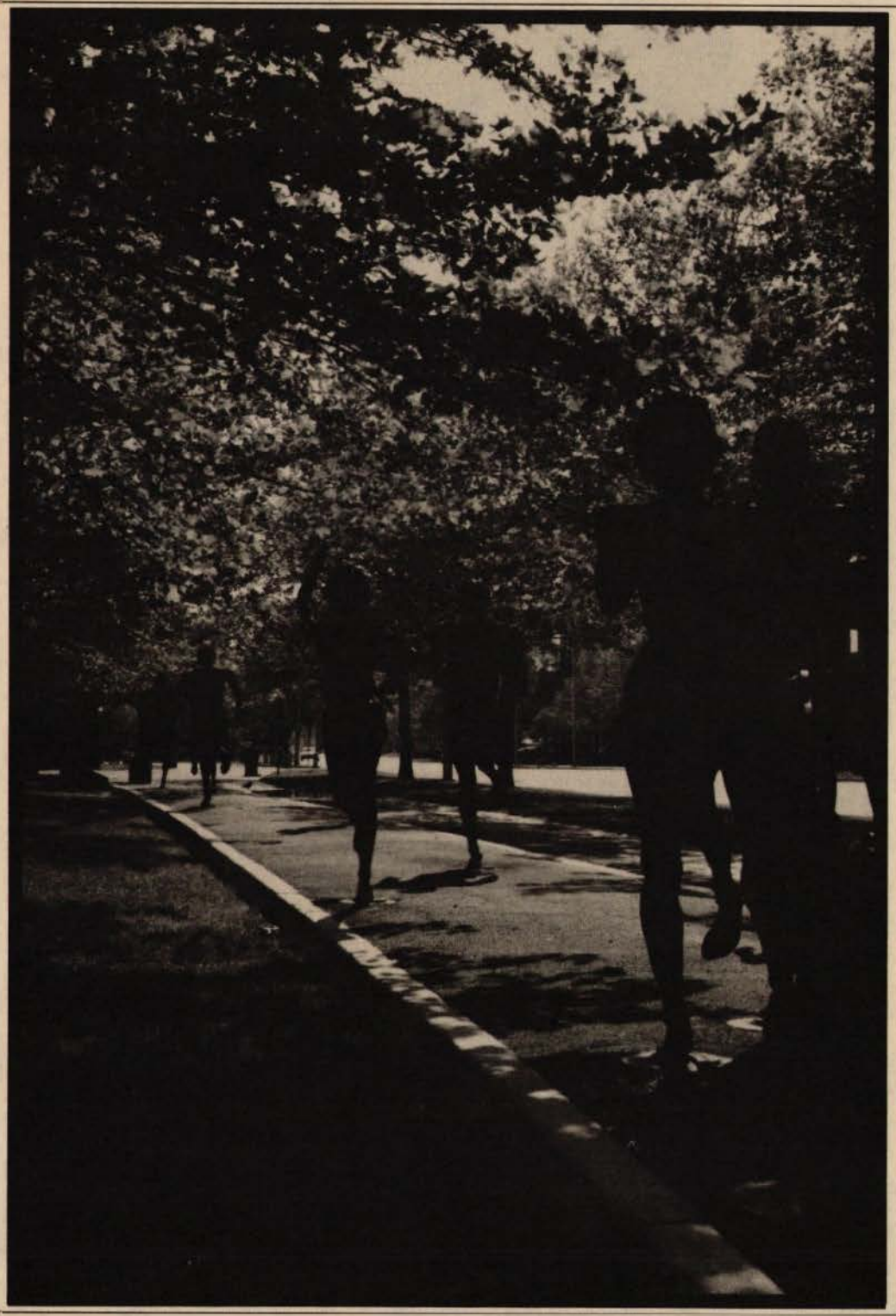
Washington State Bar News
Vol. 42, No. 7, July 1988



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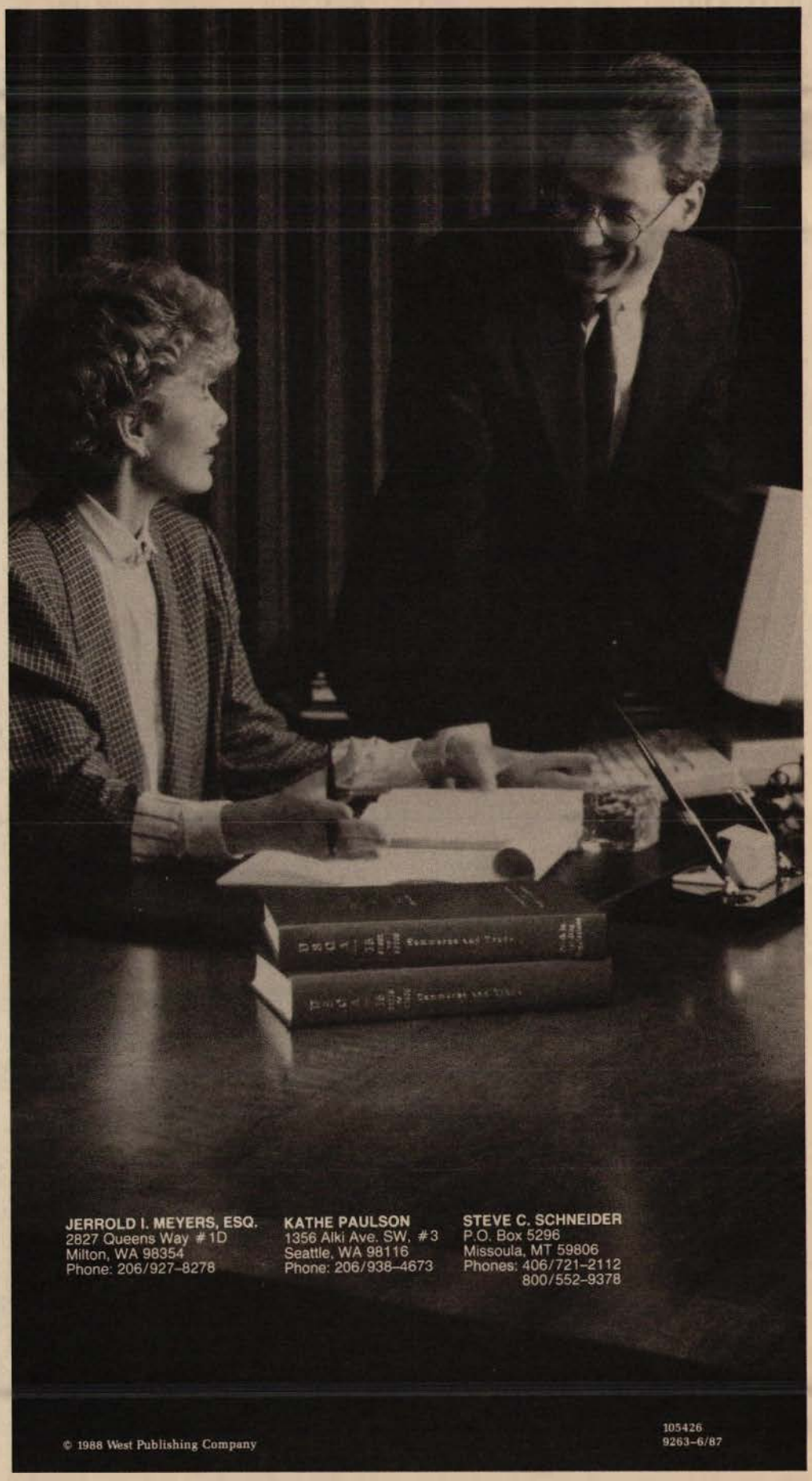

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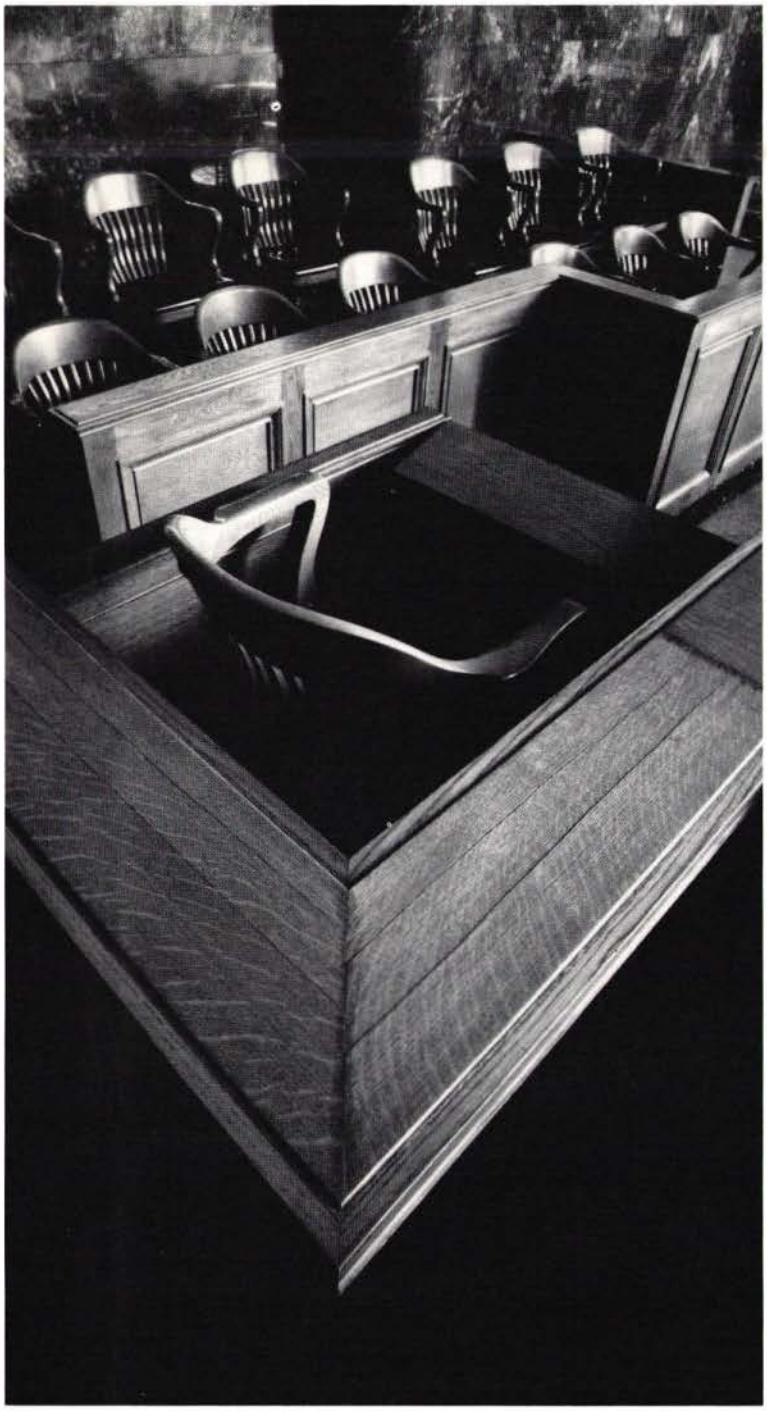

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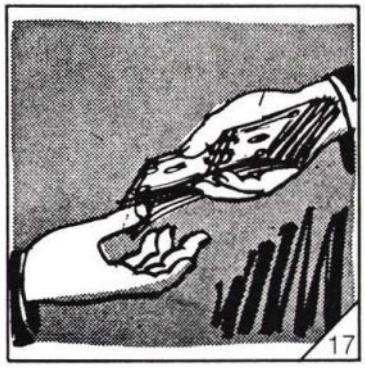

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Cover: "The Joy of Running Together" by **David Govedale** in Spokane. Erected in 1985 in honor of the Bloomsday Run, "the sculpture represents people of all ages and nationalities creating a positive symbol by acknowledging the larger spirit of our community and the world," reads the plaque in Riverfront Park.

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Published by
WASHINGTON STATE BAR ASSOCIATION
500 Westin Building 2001 Sixth Avenue
Seattle, WA 98121-2599
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Printed by United Graphics, Seattle

PUBLISHED the last day of the month before cover date. Editorial deadline 25th day of month for *second* issue following. Direct correspondence to *Washington State Bar News*, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599, telephone (206) 448-0441. All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or the Board of Governors. Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement. SUBSCRIPTION, included in active membership, is $12.00 a year for inactive members (WA State residents add $0.98 WA State Sales Tax), and $24.00 a year for nonmembers (WA State residents add $1.97 WA State Sales Tax).

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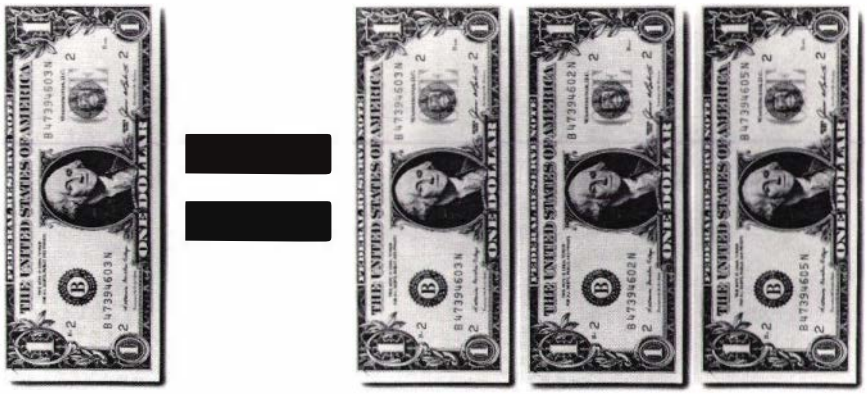

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Letters to the Editor of reasonable length are invited. Such letters should be typed and signed. The Editor reserves the right to select communications or excerpts therefrom for publication, and to edit any letter as may be appropriate.

Life's Too Short For Last-Minute Documents

Editor:

I am writing this "Letter to the Editor" as a way to discourage the common practice among attorneys of serving documents upon opposing counsel toward the close of the business day on a Friday afternoon. This practice is clearly designed to shorten the "practical time limits" in which opposing counsel can respond to the documents. It is also designed to heighten the stress level of the opposing litigant. Neither purpose is professional, nor should either purpose be encouraged by attorneys who, after all, are officers of the court.

In my own practice, I attempt to serve all documents on opposing counsel by Wednesday afternoon. It is only in a true emergency that I allow my staff to serve documents later in the week. In so doing, I may be losing an underhanded advantage, but at least I sleep better, knowing that I have not put my fellow attorneys through unnecessary stress and aggravation.

DAVID D. SMITH
Spokane

Debt Service Referrals Appreciated

Editor:

We wish to thank the many attorneys who are referring clients to us for help in resolving debt difficulties. These applicants wanted to pay their creditors, but did not know that Consumer Credit Counseling Service offers an alternative to bankruptcy.

Bankruptcy has doubled in the last decade. We are starting a campaign to increase the awareness of the serious impact this has on all of us. Again, thank you for your support.

PAT ZITO, Counselor
Consumer Credit Counseling Service
Seattle

Yes, We're All Still Here

Editor:

We need a correction of the information that was supplied under "Around the State," in particular the entry under Grant County on page 17 of the April 1988 edition of the *Bar News*.

The entry should have read "Michael R. Tabler and Jill I. Lunn have joined H. K. Dano, Brian J. Dano and Garth L. Dano as partners in Dano Law Firm in Moses Lake. . ."

Could you please make that correction for us as it has caused some concern among our fellow practitioners.

BRIAN J. DANO
Moses Lake

Are Legal Costs Too High?

We are getting bad marks from people who should be our best friends. I am speaking about the trial judges.

Their concern is the problem of attorneys' fees, a subject very much on the front burner. The Supreme Court has appointed the "Novack Commission" to make recommendations about the possible parameters of legal fees. The Court acted in part to prevent the Legislature from attempting to insert itself into controlling that part of our practice. I am certain that if required to do so, the Supreme Court would continue to rule that under the separate powers doctrine the Legislature has no power or authority to control any part of the practice of law. But we most certainly need to do our part to avoid such a confrontation.

A recent Louis Harris poll of trial judges reported that:

a) 92% said excessive legal costs are due to lawyers abusing pretrial procedure to drive up their bills.

b) Lawyers' abuse of discovery is the single most common cause of delays and skyrocketing litigation.

c) Typically, every possible stone of legal procedure is turned, instead of lawyers first making a cost-benefit analysis to determine what is actually useful and needed.

d) Many firms require associates to provide 2,000 or more billable hours each year. This burden either results in a "padding" of bills to meet an unrealistic goal or prevents the newer lawyer from developing a normal family lifestyle. Either case is wrong.

I recently received a letter from an experienced Seattle attorney who made this observation of the problem:

> In my judgment, the biggest problem is the extraordinary cost of litigation. I don't view this as a plaintiff's problem or a defendant's problem, but as a plaintiff's *and* defendant's problem. I am convinced that the American public will not continue to tolerate this extraordinary expense. The number of people that can afford to hire lawyers to defend them in a jury trial is, indeed, few. We can't have our courts open only for the insured or the very wealthy. Discovery is out of hand, the use of experts is out of hand, and the cost and length of time of litigation is, in my opinion, out of control. I wish that I could disclose a simple answer to this problem. I cannot. I do feel that the Bar Association must do so in the near future for the practice of law, as we know it, to survive.

I would like to close this with a simple solution to this complex problem, but there is none. I hope the Novack Report will be a constructive start. I also hope that those who follow me on the Board of Governors will continue to address this problem and help find a solution that will give us back the respect and good will of our very truest friends, the trial judges.

Study after study in recent years has reaffirmed the public's perception that the cost of justice is too high. Now our colleagues on the bench echo the same thoughts from an insider's viewpoint. What is *your* view on the subject? Are they right? Are they wrong? And if they are right, what do you think could and should be done about it? Put your thoughts on paper and send them to the editor of the *Bar News*. We need serious consideration, dialogue and action on this issue.

Where do you stand?

The New Uniform Fraudulent Transfer Act: An Overview

by **Kurt Becker**

Washington has joined 16 other states that have adopted the Uniform Fraudulent Transfer Act (the "UFTA"). The Washington Fraudulent Transfer Act (the "WFTA") was adopted in 1987 with some changes from the official draft. Wash. Rev. Code §§ 19.40.010-903 (1988). Effective July 1, 1988, the WFTA displaced the Washington Fraudulent Conveyance Act (the "WFCA").

The thrust of the WFTA is to reduce discrepancies between state law fraudulent transfer claims and the fraudulent transfer causes of action that may be asserted under section 548(a) of the United States Bankruptcy Code (the "Bankruptcy Code"), 11 U.S.C. §§ 101-1330. Creditors may assert such state law fraudulent transfer claims outside bankruptcy. In addition to her rights under section 548(a), the bankruptcy trustee or debtor in possession is subrogated to the rights of an actual creditor under state fraudulent transfer law through section 544(b) of the Bankruptcy Code.

Roadmap To The WFTA

The WFTA provides many more definitions in sections 1 through 3 than found in prior law. Most of them are new and improved versions of definitions found in the Bankruptcy Code. Section 3 defines the important term "value," and makes certain substantially contemporaneous exchanges into transfer for present value.

Section 4 of the WFTA specifies three causes of action on which present and future creditors may set aside transfers or obligations. Section 4(a)(1) details a cause of action for actual fraud. To guide courts in assessing actual fraud, section 4(b) codifies the so-called "badges of fraud" originating from common law cases that are used to establish intent to hinder or delay creditors. Section 4(a)(2) provides two traditional causes of action for constructive fraud when a debtor receives less than a reasonably equivalent value: (i) when a debtor is left with unreasonably small assets for her business or (ii) when a debtor engages in the transaction with a reasonable belief that she will incur debts beyond her ability to pay her debts as they come due.

Section 5 of the WFTA provides two causes of action for present creditors. Section 5(a) restates the present constructive fraud standard for avoiding transfers made or obligations incurred when a debtor receives less than a reasonably equivalent value and either is insolvent at the time of the transfer or is rendered insolvent by the transfer. Section 5(b) offers a new cause of action, discussed more fully below, for constructive fraud when there are preferences to insiders.

Section 7 of the WFTA provides a menu of remedies for creditors, including prejudgment attachment if procedures set forth in section 7.12 of the Washington Revised Code are followed. Section 8 provides defenses and insulates certain good faith transferees from fraudulent transfer suits. Section 8(b) establishes the liability of transferees in instances of actual fraud for a money judgment for the value of any asset transferred, substantially codifying the decision in *Deyong Management, Ltd. v. Previs*, 47 Wash. App. 341, 347 (1987).

Sections 6 and 9 do much to clarify accrual of causes of action and the limitations on WFTA claims. Section 6 of the WFTA defines when transfer occurs. Section 9 extends the statute of limitations to four years with two variations discussed below for insider preference and actual fraud claims.

Differences From The Former WFCA

Without dwelling on the evolution of fraudulent transfer law from the Romans and the Statute of 13 Elizabeth through *Twyne's Case* and the current draft of the UFTA, attorneys can familiarize themselves with a dozen of the more important changes that the WFTA makes to fraudulent transfer law:

1. Insider Preferences.

The Bankruptcy Code provides that preferential transfers to insiders occurring within the one year preceding the date of the bankruptcy petition may be set aside. 11 U.S.C. § 547(b). Debtors have sometimes used state insolvency law proceedings, such as bulk sales or assignments for the benefit of creditors, in attempts to delay the filing of a bankruptcy petition. By delaying the filing of a bankruptcy petition, debtors often hope to thereby remove certain transfers to insiders from the one-year preference window.

Creditors are then either forced (a) to file an involuntary petition in bankruptcy, thereby fixing the one-year preference period, (b) to rely on the trustee in the eventual bankruptcy to prove under section 544(b) of the Bankruptcy Code that the transaction is a fraudulent transfer, if state law provides a time longer than one year for such actions, or (c) in the case of a corporate debtor, to attempt to have a receiver appointed under Wash. Rev. Code § 23.72.030 who could then assert an action to collect

preferences paid from the corporate debtor during the four months prior to appointment. None of these remedies serve creditors in an efficient manner.

Under the WFTA, an individual creditor need not wait for a bankruptcy filing before attempting to set aside transfers to insiders. Section 5(b) of the WFTA provides grounds upon which an individual creditor can recover insider preferences that are similar to the grounds upon which a bankruptcy trustee could recover under the Bankruptcy Code:

> A *transfer* made by a debtor is fraudulent as to a creditor whose claims arose before the transfer was made if the transfer was made to an *insider* for an *antecedent debt*, the debtor was *insolvent* at that time, and the *insider had reasonable cause to believe that the debtor was insolvent.*

Wash. Rev. Code § 19.040.051(b) (1988) (emphasis added). In addition to the italicized elements, the transfer must be made within one year before the cause of action is asserted.

The WFTA specifies certain defenses in section 8(f), similar to the defenses under the Bankruptcy Code, available to insiders providing new value or receiving transfers in the ordinary course of the debtor's business. As mentioned above, value includes certain substantially contemporaneous exchanges. The existing case law under section 547(c) of the Bankruptcy Code should guide courts in the application of these defenses to the WFTA insider preference actions. The WFTA adds an additional, unique defense for insiders if a transfer is made pursuant to a good-faith effort to rehabilitate the debtor, and if the transfer secured present value given for that purpose as well as antecedent debt of the debtor.

It is important to recognize that section 5(b) of the WFTA varies from section 547 of the Bankruptcy Code in one respect. The UFTA was drafted to parallel the pre-1984 Bankruptcy Code studied by the committee of the National Conference of Commissioners on Uniform State Laws charged with revising the Uniform Fraudulent Conveyance Law. At that time under the Bankruptcy Code, to recover a preference made to insiders, the trustee had to prove that the insider had "reasonable cause to believe" that the debtor was insolvent. Congress removed this "reasonable cause to believe" requirement from the Bankruptcy Code in 1984, and such inquiry into an insider's state of mind is no longer relevant to the insider preference claim under the Bankruptcy Code. The WFTA, however, mirrors the pre-1984 Bankruptcy Code.

There is another difference between the Bankruptcy Code provision on insider preferences and section 5(b) of the WFTA. Only present creditors at the time of the transfer may recover under section 5(b). The trustee operating under the Bankruptcy Code asserts her rights under section 547(b) for the benefit of all creditors of the debtor.

2. *When Transfers Occur/Limitations on Actions.*

The WFTA extends the period for asserting actions for fraudulent transfers to four years from the time of transfer. There are two deviations from this pattern. First, a cause of action to set aside an insider preference under section 5(b) of the WFTA is extinguished if not brought within one year of the time of transfer. Second, a cause of action for actual fraud under section 4(a)(1) may be brought within one year of the time the transfer or obligation could reasonably have been discovered by the claimant. This codification of the statute of limitations for the WFTA offers a tremendous advantage over the uncertainty created by the former pattern of imposing on fraudulent conveyance claims the general statute limiting fraud causes of action to three years.

The time when a transfer or obligation occurs is critical for analysis of what time a cause of action accrues. By starting the running of the clock for fraudulent transfer claims upon the perfecting of an interest, the drafters of the UFTA hoped to stimulate those who might have liens against property to put others on notice of their claims. Accordingly, unperfected transfers are deemed to arise just before the fraudulent transfer claim is commenced. The fraudulent transfer causes of action do not begin to accrue until such claims are recorded. For real property, the claim arises when it is recorded properly in the real estate records. For assets that are personal property or fixtures, transfer is deemed to be made at such time as the transferee perfects its interest against subsequent judicial lien creditors. If applicable law does not allow perfection, the transfer is made when it becomes effective between the parties.

3. *Present/Future Creditors.*

The WFTA clarifies the approach of many courts under the WFCA by carefully distinguishing between Section 4—causes of action available to present and future creditors—and section 5—causes of action limited to present creditors. The new cause of action for insider preferences under section 5(b), for example, is limited to present creditors at the time of the fraudulent transfer. Under this pattern, causes of action for actual fraud and the more heinous forms of constructive fraud are open to the larger class of present and future creditors.

4. *Lack of Good Faith No Longer Part of Plaintiff's Case.*

The plaintiff pursuing transfers as constructively fraudulent was required under the WFCA to show that a transfer was made without the debtor having received a "fair consideration." The transferee's "good faith" was an element of whether a transfer was for a "fair consideration." Inquiry into the transferee's good faith is no longer relevant to the plaintiff's case under the WFTA.

As a practical matter, this change of language under the WFTA probably will not have a sweeping effect. Few courts split hairs between the concepts of without "fair consideration" and lack of "good faith." Courts ap-

plying the WFCA found fraudulent transfer liability when they believed that the debtor did not receive enough in a transaction.

Consistent with the pattern under the Bankruptcy Code, section 8(d) of the WFTA still allows the defendant in a fraudulent transfer action to demonstrate good faith as a defense. In many cases, such a "good faith" defense will be difficult to show under the WFTA since the court, in establishing *prima facie* liability, will have already concluded that the defendant did not give a reasonably equivalent value.

5. Codified "Badges of Fraud."

In order to assess whether a claim for actual fraud exists, courts have looked at certain factors in order to assess the intent of the debtor in transferring property. These factors are called "badges of fraud."

The WFTA codifies in section 4(b) a nonexclusive list of the badges of fraud that can be used to determine the actual intent of the debtor to "hinder, delay, or defraud any creditor" under section 4(a)(1). At a minimum, this list will reduce time spent researching the case law from which the badges emanate. Optimally, the statute's direction for the evidentiary value to be given the badges will diminish instances in which courts seize on one factor and summarily conclude that actual fraud has occurred. Courts are directed to consider the listed factors as relevant factors related to the debtor's actual intent, but the presence of any factor does not create a presumption that a fraudulent transfer occurred. Such conclusive presumptions are reserved for the four forms of constructive fraud set forth in sections 4(a)(2)(i), 4(a)(2)(ii), 5(a), and 5(b) of the WFTA.

6. Remedy of Appointing Prejudgment Receiver.

Section 10 of the WFCA permits a creditor with an unmatured claim to request a court to enjoin transfers and appoint a receiver to protect the property until the claim matures. No similar remedy was afforded creditors with matured claims under section 9 of the WFCA. The WFTA formally abolishes differences in remedy based on whether a claim is matured or unmatured.

7. "Feeding the Lien" Okay Under the WFTA.

As mentioned above, the UFTA copies many of the defenses to a preference action that are found in the Bankruptcy Code. One prominent Bankruptcy Code defense is absent from the UFTA: the two-point test for net improvement in position found in section 547(c)(5).

Under the Bankruptcy Code, future advances that enhance, during the 90 days in advance of the bankruptcy filing, a lender's security interest in inventory or receivables under an after-acquired property clause may be set aside. Under the WFTA, the lender may lend money

pursuant to an after-acquired property clause in hopes that the debtor will bolster the lender's collateral in accounts receivable and inventory. The increased security is not voidable under the WFTA if the lender obtains its added security pursuant to a good-faith effort to rehabilitate the debtor, and the lender gives present value for that purpose. The WFTA does not require that the new advance equal the amount of the improved position in after-acquired property. Such continued discrepancy between the WFTA outcome and the Bankruptcy Code result is unfortunate.

8. *Adequacy of Consideration Issues Addressed.*

The WFTA addresses several questions that arise most often in the context of measuring the adequacy of consideration under the constructive fraud provisions:

(a) *"Reasonably Equivalent Value" Substituted for "Fair Consideration."* In the various constructive fraud provisions under sections 4(a)(2) and 5(a) of the WFTA, the term "reasonably equivalent value" supplants the term "fair consideration" of the former sections 4-6 of the WFCA. "Reasonably equivalent value" is the phrase used in the constructive fraud provision of section 548(a)(2) of the Bankruptcy Code and now serves as the standard lexicon.

(b) *Executory Promises in the Ordinary Course of Promisor's Business Can Serve as Value.* With the power under the Bankruptcy Code to reject executory contracts, the issue has been unclear under the Uniform Fraudulent Conveyance Act as to whether executory promises supply fair consideration. In assessing reasonably equivalent value, section 3(a) of the WFTA excludes from the definition of "value" executory promises made other than in the ordinary course of the promisor's business. The negative implication of this drafting is that executory promises made in the ordinary course of the promisor's business will furnish reasonably equivalent value.

(c) *Assets Include Contingent/Unliquidated Claims.* The WFCA restricted the definition of assets to property that is liable for the debts of the debtor. The WFTA removes from the court's calculation of the available assets the determination of what property can be reached by creditors. In so doing, contingent claims against sureties or unliquidated tort claims may be counted in the assets of the debtor.

(d) *Insolvency.* Insolvency is measured by the balance sheet test common in bankruptcy law. "A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets, at a fair valuation."

Insolvency is presumed if the creditor can show that the debtor was unable to pay debts as they came due. Once a creditor establishes that the debtor was not paying its debts as they came due, the debtor may rebut the presumption by showing that it is more probable than not that it was solvent.

(e) *Unreasonably Small Assets to Business.* Transfers leaving a debtor with "unreasonably small [assets] in

relation to the business or transaction" and in which the debtor does not receive a reasonably equivalent value are constructively fraudulent. The frame of reference for the calculation is the nature of the debtor's business or the transaction itself.

The choice of the word "assets" in the WFTA is intentional. The UFTA rejects assessments of such fictitious concepts as "paid-in capital." Courts no longer need to determine which assets they should include in "capital" in evaluating whether what is left to the debtor is unreasonably small.

9. *Change in Ability To Pay Debts Standard.*

Section 4(a)(2)(ii) of the WFTA provides this traditional form of constructive fraud. Under the WFCA, this had been one of the least useful types of constructive fraud since creditors able to show the level of intent required to recover under this provision have little difficulty showing actual fraud. The WFTA changes such analysis slightly by deeming constructively fraudulent those transactions which the debtor "reasonably should have believed" would render the debtor unable to pay debts as they come due.

10. *Broad Definition of "Transfer."*

The word "conveyance" in the Uniform Fraudulent Conveyance Act was changed to avoid any suggestion that the statute was limited to real property transactions. Indeed, the definition of "transfer" in section 1(12) of the WFTA is derived from the pre-1984 Bankruptcy Code definition, and it sweeps almost all transactions that could have a prejudicial effect upon unsecured creditors within the purview of the WFTA.

11. *The Durrett Problem.*

Against the backdrop of this broad formulation of "transfer," the UFTA attempts to exclude certain foreclosure sales from the scope of fraudulent transfer law by rejecting the result in *Durrett v. Washington National Insurance Co.*, 621 F.2d 201 (5th Cir. 1980). Despite this attempt, real estate, and even Article 9, foreclosure sales may still be subject to fraudulent transfer attack. Unless such a sale is "regularly conducted" and "noncollusive," it may be set aside under the WFTA.

Applying the fraudulent transfer provisions of the Bankruptcy Act, *Durrett* held that a foreclosure sale at which the property was sold for 57.7 percent of its market value was a fraudulent conveyance. The so-called "*Durrett* rule" has been reformulated by later cases to apply to instances in which a foreclosure sale occurs at less than 70 percent of property's value.

The WFTA codifies the approach to this problem of the Bankruptcy Appellate Panel of the Ninth Circuit in *Lawyers Title Insurance Corp. v. Madrid (In re Madrid)*, 21 Bankr. 424 (Bankr. 9th Cir. 1982), *aff'd on other grounds*, 725 F.2d 1197 (9th Cir.), *cert. denied*, 469 U.S. 833 (1984). The BAP presumed that the price obtained in a regularly conducted, noncollusive foreclosure sale was adequate. Section 3(b) of the WFTA provides that, for purposes of the constructive fraud provisions of the

WFTA, a person gives value if the person acquires the debtor's interest in an asset in a "regularly conducted, noncollusive" foreclosure sale.

12. Defenses for Landlords/Article 9 Lenders.

Cases consistent with *Durrett* have set aside enforcement efforts concerning Article 9 securing interests and terminations of leases. Section 8(e) provides a defense to landlords who terminate a lease upon a default. A similar defense is provided to those who comply with Article 9 when they enforce a security interest. In addition, secured parties who foreclose under Article 9 will be protected if they obtain their collateral pursuant to a "regularly conducted, noncollusive" foreclosure sale. Nevertheless, such actions by landlords and secured lenders may be subject to attack under section 548 of the Bankruptcy Code, particularly since the WFTA now provides explicit defenses to such extensions of fraudulent transfer law.

For more information regarding the Uniform Fraudulent Transfer Act, *see generally* Alces & Dorr, *A Critical Analysis of the New Uniform Fraudulent Transfer Act*, 1985 U. Ill. L. Rev. 527 (1985); Kennedy, *The Uniform Fraudulent Transfer Act*, 18 U.C.C. L.J. 195 (1986). □

Kurt Becker *is an associate with the firm of Perkins Coie. He was graduated with honors from the University of Illinois at Urbana-Champaign in 1981 and from the University of Michigan Law School in 1986. He represents debtors and creditors in the area of insolvency, business reorganizations, and bankruptcy.*

Comparison of Bankruptcy Code/State Statutes on Fraudulent Transfer

Provision of Bankruptcy Code Permitting Suit	§ 548	§ 544(b) + WFCA	§ 544(b) + WFTA
Actual Fraud	§ 548(a)(1); prove common law "badges" to show intent; present and future creditors	§ 7; "badges" at common law used to show intent; present and future creditors	§ 4(a)(1) + § 4(b) codifies "badges"; present and future creditors
Constructive Fraud	§ 548(a)(2)(A); received less than "reasonably equivalent value"	§§ 4-6; without receiving "fair consideration"; § 3 incorporates lack of "good faith" into "fair consideration"	§ 5(a) + § 4(a)(2); received less than "reasonably equivalent value"
AND	§ 548(a)(2)(B)(i); insolvent or rendered insolvent	§ 4; made/incurred when insolvent/ rendered insolvent; present creditors	§ 5(a); insolvent at the time or became insolvent; present creditors
OR	§ 548(a)(2)(B)(ii); left with unreasonably small capital	§ 5; left with unreasonably small capital; present and future creditors	§ 4(a)(2)(i); left with unreasonably small *assets to business/deal*; present and future creditors
OR	§ 548(a)(2)(B)(iii); intended/believed unable to pay debts as matured	§ 6; intends to/believes will incur debts beyond ability to pay as come due; present and future creditors	§ 4(a)(2)(ii); intended/believed/*reasonably should have believed* that would incur debts beyond ability to pay as come due; present and future creditors
Time Limits	Made or incurred within one year of bankruptcy petition	Unclear; 3 years for fraud actions under Wash. Rev. Code § 4.16.080; accrual at discovery; doubtful when 3-year statute of limitations begins to run for constructive fraud actions	4 years from transfer or date obligation incurred for constructive fraud; 4 years from transfer or within 1 year of diligent discovery for actual fraud; 1 year for insider preference claims
Insider Preference	§ 547(b) of Bankruptcy Code; transfers within one year before bankruptcy petition; all creditors	Nothing comparable	§ 5(b); transfers made or obligations incurred within one year; plaintiff must show that insiders had reasonable cause to believe that debtor insolvent; present creditors

RESOLUTIONS

Filing Deadline For Resolutions To Be Presented At The Annual Meeting

Any ten (10) active members of the Washington State Bar Association may present a written resolution to the Board of Governors for possible consideration at the Annual Business Meeting. Such resolutions must be presented and filed with the Board of Governors at least twenty (20) days before the Annual Meeting. Any resolution must be accompanied by a written report explaining the resolution. The resolution and explanatory report together shall not exceed a total of one thousand (1,000) words. Resolutions are to be filed with the Board of Governors, Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599. The deadline for filing such resolutions and explanatory reports will be 5 p.m. on Monday, August 29, 1988 (the first business day following the twentieth day prior to the Annual Meeting).

According to the Bylaws of the Washington State Bar Association, proper resolutions and reports received by the Board of Governors at least sixty (60) days prior to the Annual Business Meeting are to be published in the *Washington State Bar News* prior to such Annual Business Meeting. The Annual Business Meeting of the Washington State Bar Association shall be held on the morning of Friday, September 16, 1988 beginning at 8:30 a.m. at the Hotel Vancouver, Vancouver, British Columbia. Proper resolutions and reports received by the Board of Governors by 5 p.m. on July 18, 1988 will be published in the August 1988 *Bar News*.

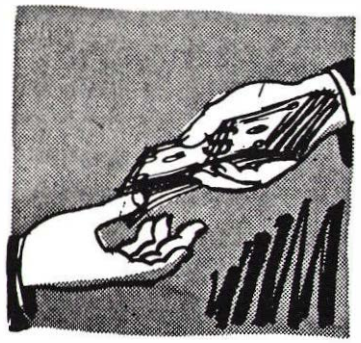
Referral To Resolutions Committee

The Board of Governors shall refer to the Resolutions Committee any resolution within the purposes of the Association as set forth in Article I of the Bylaws. If the Board of Governors finds the resolution is not within such purposes, then such resolution shall not be considered at any meeting.

Notice Of Public Hearing On Resolutions

As announced in the June *Washington State Bar News*, the Resolutions Committee will hold a public hearing prior to the Annual Meeting. The hearing is scheduled for 10 a.m. on September 7, at the offices of the Washington State Bar Association, at the above address. Upon completion of business that day, or at the Chairperson's discretion, the hearing will be adjourned to reconvene on September 14, 1988 at 4 p.m. at the Hyatt Regency Hotel, Vancouver, British Columbia. The advance public hearing session on September 7 has been scheduled in an effort to allow more time to those presenting views and in an effort to give the members of the Committee more time to consider the resolutions and to request any additional information which might be helpful to the Committee in making its recommendations on the resolutions to the membership. Proponents and opponents of resolutions are urged to attend the September 7 hearing if at all possible, and, if not, to present their views prior to that time in concise written form for consideration by the Committee at that hearing. Presence at or absence from the September 7 hearing will not affect any right under the Bylaws to present views when the public hearing reconvenes on September 14. At the reconvened hearing, preference in presenting views will be given to those with viewpoints which were not expressed at the September 7 hearing. Proponents and opponents will be given a reasonable opportunity to be heard at the advance session and at the reconvened hearing.

At the conclusion of the hearings on each resolution, the Resolutions Committee will recommend approval or rejection of any such resolution (with any amendment deemed appropriate).



Secured Attorney Fee Receivables

by **Lorelei Stevens**

Any service business needs a substantial cash flow to maintain overhead expenses. The practice of law is no different. Often, attorneys are concerned by the extent of *unpaid* accounts receivable for services rendered. A properly secured negotiable note, executed by the client in favor of the attorney, can, in appropriate circumstances, present an opportunity to realize a receivable by sale of the note. While ethical and representational issues may limit the extent to which such vehicles may be utilized, in an acceptable situation negotiable notes can be a useful firm receivables management tool.

In such instances a receivable broker commonly arranges the sale of these secured attorney fee notes in the marketplace. These transactions are unique because of the professional and personal attorney/creditor - client/debtor relationship. This article explores the manner in which a receivable may be realized.

Negotiable Instrument

When a note is used, it should be in negotiable form, in accordance with the Uniform Commercial Code. Key features are: (1) The note must be signed by the client; (2) it must contain an unconditional promise or order to pay a sum certain in money and no other promise, order, obligation, or power given by the client; (3) it must be payable at a definite time; and (4) it must be payable to the attorney, or order. The attorney must endorse and deliver the *original* attorney fee note at closing of the sale.

Collateral Documents

For *real estate collateral* a deed of trust is preferred, and it must be recorded at the county recorder's office. If *titled personal property* secures the debt (such as a mobile home, motor home, boat, car, truck, camper, or trailer), the attorney must be named as legal owner (lienholder); the client must be named as the registered owner, and the attorney must have possession of the original title and a security agreement must be signed. If the collateral is *personal property* such as a business, equipment, and inventory, a security agreement and a UCC-1 financing statement are required. The UCC-1 financing statement must be filed with the Department of Licensing. If fixtures are involved, a UCC-2 financing statement must be filed in the real estate records with the office of the county recorder in the county where the affected real property is located. If the collateral is a *note receivable* executed by the client's ex-spouse pursuant to a dissolution decree and secured by a deed of trust (commonly known as a "divorce lien"), the client may endorse the dissolution note by qualified endorsement (without recourse) to the attorney; the attorney must have possession of the original dissolution note; the client must execute an assignment of deed of trust for collateral purposes only in favor of the attorney, and it must be recorded at the county recorder's office. At the time of the sale, the attorney assigns all right, title, and interest in these collateral documents to the purchaser and delivers the originals.

Representations By Attorney And Client

Prior to the sale through a receivable broker, the attorney and client are required to sign a notarized document which contains the following: (1) verification of the principal amount due, the interest-paid-to date, the interest rate, the payment amount, the next payment due date, any balloon payment or cash-out provisions, due-on-sale clauses, and certification that the debt is not delinquent; (2) statement that the client has no present defenses, claims, and offsets against the balance due; that if there are such in the future, the client will lose rights to assert them against third parties; (3) the client acknowledges that the attorney may sell the note by way of a non-qualified endorsement (with recourse); (4) the client has been advised to seek the advice of independent counsel, with particular respect to waiver of potential malpractice claims; (5) the note amount represents reasonable attorney fees for services already rendered, not for future services, and any and all future fees and costs resulting from a future relationship between attorney and client will not relate to the debt due on the note or its collateral; (6) the client has not been nor will be charged any portion of the discount required for the sale of the note; (7) the client acknowledges that upon the sale of the note, the new note holder can enforce holder-in-due-course status in the event of default; (8) the attorney and client acknowledge that there would be a conflict of interest and the attorney would be unable to represent the client in the event of default; (9) the client acknowledges and agrees that the note, along with its collateral, will be offered for sale in the receivable marketplace and the terms of the debt will not be confidential between attorney and cli-

ent; (10) all previous fee agreements between attorney and client are superseded and replaced by the note and the collateral insofar as any conflict between the documents; (11) the client understands and agrees that a credit report may be ordered on the client.

Information About Superior Liens

The purchaser will require all evidence of indebtedness, including notes, modifications, and addendums, and collateral documents in connection with all liens which are superior to the attorney's collateral. A "statement of condition" from the debt holder(s) or servicing agent(s), indicating the principal balance(s) is/are current, along with evidence of good payment history, is essential. As superior lienholders rarely provide information without the client/debtor's permission, the client will be required to execute permission forms allowing the receivable broker to obtain the information.

Valuation of Secured Attorney Fee Receivables

The fair market value of these receivables is based upon: (1) *Present value of future cash flow.* There is no such thing as a "standard" percentage of discount. Values are derived from present value of future cash flow calculated on an annual *yield* basis (a/k/a internal rate of return). Discount and yield are not the same. The shorter the term and the higher the interest rate, the greater the value. The competition of the marketplace dictates the annual yield requirement. (2) *Value of collateral and priority position.* The fair market value of the *collateral* is a major factor in determining value. Also, the priority position (first, second, etc.) has a bearing on the yield requirement. As a very general rule of thumb, the amounts of superior liens plus the fair market value of the attorney fee note cannot exceed 80% of the value of the collateral, irrespective of the annual yield requirement. *Comment*: A new note is worth just as much as a "well-seasoned" note. However, it may take longer to market a new note to a private purchaser. Furthermore, a poor payment record may make the note unsalable.

Title Insurance

If the collateral is real property, the purchaser will require title insurance. The attorney may procure the title insurance at the time the note and deed of trust are executed and may transfer possession of this policy to the note purchaser, or the attorney may wait until the sale of the note and provide the title insurance at that time.

Fire/Hazard Insurance

The attorney should procure information about the fire/hazard insurance covering the collateral at the time of origination of the note. The attorney and the purchaser of the note will need to be named as loss payees on this fire/hazard policy, including a mortgagee's endorsement insuring the note holder free and clear of all claims and offsets of the insurer against the insured.

Secured Negotiable Note as Payment in Full for Attorney Fee

Occasionally, the client is the holder of a note or evidence of debt owing by a third party and assigns it, along with the collateral, to the attorney as payment in full for the attorney fee. The attorney then becomes the owner of this receivable. If the attorney is a cash-method taxpayer, the Internal Revenue Service may include this receivable as taxable income to the extent of its fair market value in the year the attorney accepted the receivable as payment. Therefore, in order to obtain cash and pay the tax, it may be prudent for the attorney to sell the receivable for its fair market value during the year the attorney accepted it as payment in full.

Since the debts from clients to attorneys result from, and therefore are a part of, a unique professional and confidential relationship, it is necessary for all the parties involved to take extra precautions relative to disclosure. Some of these precautions may not be necessary for the sale of seller-financed real estate contracts and notes secured by deeds of trust unrelated to attorney fees. However, the attorney should be cognizant of the requirements necessary to create a readily salable attorney fee note for the marketplace before attempting any sale. ☐

Lorelei Stevens is president of Wall Street Brokers, Inc. in Seattle and a past contributor to the Bar News.

The "Other" Interest-Bearing Trust Account Required by Rule 1.14 of the Rules of Professional Conduct— A Pooled Trust Account Is Not Enough

by **Leland G. Ripley**
Chief WSBA Disciplinary Counsel

In beginning to write what I hope will be a regular column on ethics issues for the *Bar News*, one of the problems I faced was how to pick issues to write about. While there are many which need to be discussed, I decided to start with one which has had an economic impact upon Washington state lawyers.

Any lawyer who handles client funds and has opened a pooled interest-bearing trust account (one where the interest is paid to the Legal Foundation of Washington) may have only begun to comply with the requirements of RPC 1.14. A lawyer who forgets the other type of account required by RPC 1.14(c), in addition to being in violation of the Rules of Professional Conduct, runs the risk of incurring financial liability to a client.

RPC 1.14(c)(1) provides that client funds which are either "nominal" or "expected to be held for a short period of time" are to be deposited into a pooled interest-bearing trust account.

RPC 1.14(c) imposes an additional requirement upon lawyers who handle client funds because it states that client funds which could be utilized to provide a positive net return to the client are to be deposited into a separate interest-bearing account for the particular client or a pooled interest-bearing account where the interest is allocated to the clients.

The obvious question, then, is how do you know when to use the pooled account where the interest is paid to the Foundation and when to use an account where the interest is paid to the client?

RPC 1.14(c)(3) explains how to figure out which account to use. The sole question the lawyer must answer is whether the client funds "could be utilized to provide a positive net return to the client." In deciding whether the return would be positive, the lawyer must consider (1) the amount of interest the funds would earn during the period they are to be deposited, (2) the cost of establishing and administering the account including a cost for the lawyer's services and the cost of preparing the necessary tax reports; and (3) the capability of the financial institution to calculate and pay interest to individual clients.

Obviously, this last factor is only significant if the lawyer is using a pooled account which would pay the interest to the clients. If this last factor is eliminated because a lawyer is setting up a separate account for the benefit of a single particular client, the lawyer must then make a reasoned judgment based upon the amount of client funds involved, and the time the funds will be held balanced against the cost of administering the separate account.

It is not possible to draw a "bright line" by which a lawyer can know when to deposit funds into an account which will accrue interest for the benefit of a client. As the amount of the client's funds increases, the requirements for a separate account becomes more obvious. For example $500,000 held for six days may bring a positive net return to a client while $10 held for six months might not.

RPC 1.14 imposes an obligation based, in part, upon the fiduciary relationship between lawyers and clients, upon all lawyers who handle client funds to think about and make a reasoned judgment on the need to put a client's funds in an account which earns interest for the client's benefit. Failure to make this analysis can mean not only that the lawyer has failed to comply with the Rules of Professional Conduct but also that the lawyer is liable to the client for the interest that the client's funds would have earned if they had been handled as required by RPC 1.14.

You can avoid this kind of disciplinary problem and financial liability by setting up a procedure where you determine whether each client's funds could be utilized to provide a positive net return to the client. This may require changes in office procedures; however, as a practical matter, the risk of incurring an obligation to repay your client the interest that the client's funds should have earned makes those changes a necessity. For example, one lawyer recently found that he had to pay a client the interest on almost $40,000 he had left in a pooled interest-bearing trust account for ten months!

Participants discuss the relationship between the State Bar and the Pro Bono Coordinators' network.

Monty Gray of Seattle is chair of the state pro bono task force.

Statewide Pro Bono Coordinators' Conference

by **Tony Vivenzio**

Representatives of programs involved in developing and coordinating the pro bono efforts of their local county bar associations met at Hidden Valley Ranch in Cle Elum on May 15 and 16. These "Pro Bono Coordinators" receive masses of requests for legal assistance daily: from clients, from social agencies, or—in urgent situations—from judges. Their job is to match low-income clients with lawyers who agree to handle these cases on a volunteer basis. The process takes different forms in different parts of the state: a pro bono coordinator may be employed in a bar association, a legal services office, a community action office, even a YWCA, but they all perform a vital function and share a common goal: to ensure that the poor will have access to the legal system by mobilizing and supporting lawyers who perform pro bono services. Participants had a variety of backgrounds: lay persons, attorneys and bar leaders, and came from a wide range of programs: from Bellingham to the Tri-Cities, and from Bremerton to Spokane. The WSBA sponsored this conference as part of its commitment to resolving the crisis in legal services to the poor.

The purpose of the conference was to strengthen individual local programs by sharing and developing resources in an organized statewide structure. The agenda included presentations on specific proposals for WSBA support, among them the development of a CLE-accredited comprehensive training program for attorneys providing pro bono services in family law; a system for awarding CLE credit to attorneys providing pro bono services; and the establishment of a resource center to provide forms, training, and recruitment materials to assist local program development. Workshops were held on the national status of pro bono services as presented at the ABA-sponsored National Pro Bono Coordinators' Conference held in April, alternative funding sources for local programs, computer applications in administering programs, the development of family law projects, and the group's relationship with the Legal Foundation of Washington (IOLTA) and the WSBA.

At the May 16 plenary session, the group formalized its organization and adopted the name "Washington Statewide Pro Bono Network." Committee assignments were made for the handling of logistics and preparation of the agenda for the Network's next meeting on October 16 and 17.

The success and high spirits of the conference were heightened by donations from local businesses who wanted to show their support: Busy Hand Ceramics, Cle Elum Mercantile & Soda Fountain, The Cottage Café, Glondo's Sausage Co., Hidden Valley Ranch, The Moore House, Marie Morris Ceramics, Pearl's Deli, and The Sunset Café of Cle Elum, The Roslyn Theater, and the Haviland Winery. These donations were coordinated by Michael Frederick, a volunteer with the Seattle-King County Bar Association, and Renee Daigneault-Hill of the Cle Elum Chamber of Commerce.

WASHINGTON STATE BAR **NEWSLINE**

The Board's Work

by **Lindsay Thompson**

LA CONNER COUNTRY INN, LA CONNER: JUNE 17-18, 1988

PRESENT: President Dean and all of the Governors. ALSO PRESENT: Rita Bender (Legal Foundation of Washington Board); Stew Cogan (SKCBA Trustees); Laura Inveen (Washington Women Lawyers); John J. Michalik (WSBA Executive Director); Mary Prevost (Government Lawyers Assn.); John Riley (Young Lawyers Division); Judge Jack Schofield (Court of Appeals Judges Assn.); Judge Thomas Swayze (Superior Court Judges Assn.); Lindsay Thompson (*Bar News* Editor); Robert Welden (WSBA Counsel).

NEWS FROM THE CAPAIGN TRAIL

Executive Director John Michalik told the Board runoffs were probable in each of the three congressional districts electing Governors. He sought and got permission to send out the runoff ballots immediately. Final results are expected in mid-July.

SUNSET FOR COMMITTEES?

Former WSBA President David Welts, chairing the Bar's Task Force on Committees, told the Board his group would be meeting with the heads of all WSBA committees to determine which ones serve valuable continuing functions and which should be eliminated. He said five committees looked like candidates for the block. In a general discussion on bar committees Governor Julie Weston of Seattle suggested bringing more people into the committee process as adjunct members. The ABA uses this method; adjunct members are part of the paper trail and can contribute to committees' work, but they don't attend meetings.

Governor Steven Reisler asked the Task Force not only to recommend abolition of committees, but how committees can be redefined to make them more effective. Governors Turner of Bellevue and Stritmatter of Hoquiam asked the Task Force to consider whether members of WSBA committees should be reimbursed at all for travel and lodging in light of Executive Director Michalik's comment that 90 percent of committee expenses are reimbursements for travel. Armed with these new questions, Welts will present a final report in July.

IOLTA FUNDS: A CHANGE IN THE RULES

Rita Bender of the Legal Foundation of Washington sought the advice of the Board on how to notify WSBA members of an amendment to RPC 1.14 and how to handle enforcement. After some discussion, the board directed that the amendment to RPC 1.14 be printed in this space to give members early notice that they may need to change their instructions to banks holding trust account funds. The text is as follows:

"(c)(1) A lawyer who receives client funds shall maintain a pooled interest-bearing trust account for deposit of client funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of ~~any transaction costs~~ **reasonable check and deposit processing charges which shall only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge**, shall be paid to The Legal Foundation of Washington, as established by the Supremem Court of Washington. **All other fees and transaction costs shall be paid by the lawyer**. A lawyer may, but shall not be required to, notify the client of the intended use of such funds.

"(c)(4) As to accounts created under subsection (c)(1), lawyers or law firms shall direct to the depository institution:

(a) To remit interest or dividends, net of ~~any service charges or fees~~ **reasonable check and deposit processing charges which shall only include items deposited charge, monthly maintenance fee, per item check charge and per deposit charge**, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the Legal Foundation of Washington (the Foundation)~~;~~. **Other fees and transaction costs will be directed to the lawyer;"**

COSTS CAUSE INFRACTION FRICTION

Court of Appeals Judge Ward Williams and Aukeen District Judge Darrell Phillipson presented a comprehensive revision of the court rules governing traffic and other civil infractions by the Governors' Task Force on that subject. Williams explained that the goal of the task force was to combine a high volume of case management with maintenance of the integrity of the courts. Most people's sole experience of the courts is at this level, he said, and it's important that the judges do justice and be seen to do justice.

While the proposed new JTIR covers a wide array of subjects, Judge Phillipson said the overall scheme was the creation of a "triangle" system for handling cases, in which the bulk are handled in proceedings more administrative and informal in nature, with those cases carried forward by parties becoming fewer in number and more formal and judicial in character. Phillipson reported an irreconcilable division in the Task Force over whether costs should be taxed in certain situations. This division was reflected in the Board as well. After some discussion of the merits, the Board voted to approve the proposed new rules, making the assessment of costs in favor of the prevailing party discretionary.

NEXT MEETING: July 15-16, 1988 at Eastsound, Orcas Island, Washington.

WRAP-UP IN LA CONNER

In other action, the Board:

- sent back for revision a proposal by the WSBA Disciplinary Counsel to let defaults be taken against lawyers who fail to answer disciplinary complaints, to bring the proposal more in line with the default provisions of the Civil Rules;
- considered at length WSBA members' comments on the proposed referendum bylaws changes and WSBA access to records policy statement and made some tentative revisions to the texts in light of those comments and governors' suggestions, with a vote on both planned next month;
- took action to reduce WSBA CLE department losses by approving a CLE Board proposal allowing assessment of a $25 processing fee against all organizations seeking CLE credit, effective in 1989. The fee is expected to generate $30,000 in the first nine months of 1989;
- approved the nominations of Ann Sandstrom, lay member and outgoing chair of the Commission on Judicial Conduct as well as long-time member of the Administrative Procedures Act Task Force, and former Governor and Legal Foundation of Washington founder Lowell Halverson as recipients of the WSBA Award of Merit for 1988;
- and heard reports from the Washington Women Lawyers' Association, the Superior Court Judges' Association, and the WSBA Interprofessional Relations Committee.

I.R.S. Requests Sufficient Notice of Real Estate Sales When Federal Tax Liens Involved

The Internal Revenue Service often receives notice of sales of property against which federal tax liens have been filed, very late in the closing process. This sometimes delays the closing of a sale. "In an effort to provide better service," says Pat Leigh, I.R.S. spokesperson in Seattle, "we want to get the word out that realtors, brokers, escrow agents, and attorneys should quickly analyze any sale with a federal tax lien present."

Request a lien payoff figure by sending a copy of the lien attached to a written request to: I.R.S. Special Procedures, Attn: Helen James, P.O. Box 1729 M/S 246, Seattle, WA 98111. If the proceeds from the sale will be sufficient to satisfy the debt to I.R.S., that is all that is required. A lien payoff figure can be provided in as little as three working days.

If there is any possibility that the federal tax lien will not be paid in its entirety, a partial discharge application needs to be prepared and filed expeditiously with: I.R.S. Special Procedures, P.O. Box 1729 M/S 245, Seattle, WA 98111. Instructions for preparing and submitting the application are contained in Publication 783. Request this publication from the I.R.S. Collection Division personnel at any I.R.S. office, or by writing Wanda Pizzini, at the above address. It is important that the applicant submit all the data requested in Publication 783. Processing time is usually 30-45 days.

Please do not contact I.R.S. about the status of a pending application until 30 days have elapsed from submission. Frequent follow-ups and/or unnecessary inquiries only disrupt the processing and unduly delay analysis by I.R.S. of the Government's interest in the property, Leigh says.

Did You Know?

The Adoption Resource Center of Children's Home Society of Washington provides a continuum of service to adopted persons, birth parents and adoptive parents. Developed to focus on the needs of those touched by adoption the center offers individual, family, and group therapy, educational classes, workshops, consultation to professionals around adoption issues, support groups, genetic background histories, and a resource room containing extensive adoption-related materials. With the exception of genetic histories, all services are open to the community.

The Adoption Resource Center is located at the Children's Home Society of Washington, 3300 N.E. 65th Street, Seattle, WA 98115. For more information call (206) 524-6020.

Washington State Bar Association chosen as site for National Conference on MENTOR Programs

by **Jo Rosner**

Assistant Director of Student Education

During the past five years high schools and law firms have paired up in a number of areas across the country in MENTOR, an exciting public-private partnership program. It has proven to be a valuable learning experience in law-related education for high school students, and it is considered one of the best ways to involve the legal profession in the enrichment of secondary education.

Because the existing programs generated such high interest, a conference was held this June for teams from bar/law firm/education committees interested in starting MENTOR in their own local areas. Part of the funding for team attendance was provided by a grant from the Office of Juvenile Justice and Delinquency Prevention (OJJDP).

Three organizations agreed to co-sponsor the conference held at the Westin Hotel in Seattle and were represented by Tom Evans, New York MENTOR founder and chair of the President's Commission on Public-Private Partnerships in Education, and partner in Mudge Rose Guthrie Alexander & Ferdon; Ed O'Brien, co-director of the National Institute for Citizen Education in the Law; and Jo Rosner, Assistant Director of Student Education for WSBA. Seattle was selected as the site for the conference, since WSBA Public Affairs Department efforts have made Washington state's MENTOR Program the first to be established on a statewide basis, with forty partnerships currently in place. Of course, the Pacific Northwest is also an outstanding tourist attraction.

The attendees learned from presenters that MENTOR has worked effectively with high school students of all abilities. It has also proven to be one of the easiest and best ways for law firms of any size (from sole practitioners to large corporate offices) to provide valuable pro bono service. Attendees learned that the time and funding commitment is not extensive, but that the rewards to all are considerable. As one Spokane, Washington teacher put it, "The MENTOR Program has truly been an exceptional learning experience for all students involved."

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

ICE CREAM FOR LAWYERS

Re: GREAT MIDWESTERN ICE CREAM

STATEMENT OF FACTS:

The Great Midwestern Ice Cream Company, Inc. is a closely held corporation doing business in Fairfield, Iowa. Great Midwestern ice cream is an all natural, super-premium ice cream sold coast to coast. This product has been proclaimed:

"The best ice cream in America." Brawley, *Here's the Scoop,* PEOPLE, June 4, 1984, at 85.; "The best commercial ice cream I have ever eaten." Ingle, *Here's the scoop on super-rich ice creams*, Tacoma News Trib., April 13, 1988, at D1, col. 3.; "A knockout." Hamlin, *They scream for Iowa ice cream*, N.Y. Daily News, July 15, 1987, at E22, col 1.; "Simply the best in the U.S." *The Best*, PLAYBOY, January, 1988, at 94.

Great Midwestern is the only super-premium ice cream made without eggs. It has a clean fresh dairy taste like no other.

ISSUE:

Is Great Midwestern Ice Cream the best ice cream ever made?

RULE:

When an ice cream is creamier and richer than any other, including those with phoney Scandinavian names, and when the ingredients used are the finest available, including pacific northwest berries, and further, when this ice cream repeatedly wins every national ice cream competition, the court will find a **rebuttable presumption** that this ice cream is the best ice cream *a coelo usque ad centrum.*

CONCLUSION:

Lawyers have a constitutional right to quiet enjoyment of ice cream.

Great Midwestern has satisfied its burden of proof by proving beyond a reasonable doubt that it is THE ice cream the legal profession should buy: It is the best product available and regular consumption results in increased billable hours. Choose another ice cream and *caveat emptor.*

GREAT MIDWESTERN ICE CREAM, *RES IPSA LOQUITUR*

Available in plain view in better stores in Seattle-Tacoma.

Personal Injury Practice and Red Flag Seminars

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

Personal Injury Practice: Strategic Fundamentals of Prosecuting and Defending and Personal Injury Case will be presented at three sites: in Spokane on July 22 (Cavanaugh's Inn at the Park), in Tacoma on July 29 (Sheraton), and in Seattle on August 5 (Sheraton).

Program chair **W. George Bassett** (Bassett & Morrison, P.S., Seattle) has lined up an excellent faculty. **Eugene M. Moen** (Chemnick & Moen, Seattle) will address the topic of "Client Interview, Attorney/Client Relationship, Investigation and Notice to Carrier"; **Daniel A. Raas** (Raas, Johnsen, Garrett & Stuen, Bellingham) will focus on "Written Discovery Before Trial"; **W. George Bassett** will address "Witness Preparation, The Gentle Art of 'Horse Shedding'"; **Lish Whitson** (Helsell, Fetterman, Martin, Todd & Hokanson, Seattle) will deal with "Taking and Defending Depositions"; **Joseph S. Montecucco** (Turner, Stoeve, Gagliardi & Goss, P.S., Spokane) will comment upon "Pre-Trial Motions and Sanctions"; **John P. O'Melveny** (Davies Pearson, P.C., Tacoma) will address "Settlement Evaluation and Negotiations; Mandatory Arbitration"; **Laura L. Jaeger** (Attorney at Law, Federal Way) will focus on "Coping with or Avoiding Gender Bias in the Courtroom"; **James S. Rogers** (Rogers & Darvas, Seattle) will deal with "Trial Tactics"; and **Wade E. Gano** (Thorner, Kennedy & Gano, P.S., Yakima) will provide a "Personal Injury Case Law Update."

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

The Red Flag Seminars will be presented in four sites around the state: in Tacoma (Sheraton Hotel) on August 5; in Spokane (Ridpath Hotel) on August 12; in Yakima (Towne Plaza) on August 19; and in Seattle (Stouffer Madison Hotel) on August 26.

Program co-chairs **Scott M. Kilpatrick** (Walstead, Mertsching, Husemoen, Donaldson & Barlow, P.S., Longview) and **Richard G. Wogsland II** (Attorney at Law, Clarkston) have designed a program that will focus on four major topics: "Settlements—Procedures, Practice Tips and Traps for the Unwary"; "Washington Superfund Legislation—Overview and How it Affects Every General Practitioner"; an "Update on Significant Legislation from the 1988 Sessions"; and "Avoiding Common Pitfalls in Real Estate Transactions Plus Recent Amendments to the Real Estate Contract Forfeiture Act."

Speakers include: **Richard T. Beal** (Oles, Morrison & Rinker, Seattle); **Chris Smith** (Director of Environmental and Resource Services, Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, Seattle); **James C. Waldo** (Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim, Seattle); the Honorable **Ronald G. Meyers** (Washington State House of Representatives); the Honorable **Gary F. Locke** (Washington State House of Representatives); **Andrew A. Guy** (Bogle & Gates, Seattle); **John M. Riley III** (Witherspoon, Kelley, Davenport & Toole, Spokane); and **Ned M. Barnes** (Witherspoon, Kelley, Davenport & Toole, Spokane).

For further information about this program, please contact Program Coordinator Karla Ellison at the WSBA, telephone: (206) 448-0433.

APPROVED COURSES
Washington State Bar Association

Current Issues in Secured Lending (1988 Creditor-Debtor Section Mid-Year)
9.50 credits

JUL	15 - 16	Silverdale (Silverdale on the Bay)

Personal Injury Practice
6.25 credits

JUL	22	Spokane (Cavanaugh's Inn at the Park)
JUL	29	Tacoma (Sheraton)
AUG	5	Seattle (Sheraton)

Red Flag Seminars
4.00 credits

AUG	5	Tacoma (Sheraton)
AUG	12	Spokane (Ridpath)
AUG	19	Yakima (Towne Plaza)
AUG	26	Seattle (Stouffer Madison)

Notes From the Academy

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

Community property. Married couple placed $11 million of community property in trust, with power in surviving spouse to appoint residue by trust or will. After husband died, surviving wife exercised the power, both by amendments to trust and by will, to cut off their son, in favor of her sister-in-law. *Held*: (a) Trust, though irrevocable, empowered surviving spouse to make amendments; so, trust amendments were effective. (b) Donee of power of appointment need not expressly mention the power when exercising it, so long as intent to exercise it is manifested clearly. Therefore, testamentary provision was also effective. (c) Gift of income to son's "wife, Barbara Lindberg" constituted gift to her personally that was not lost by virtue of her divorce from son prior to death of her former mother-in-law. (d) Gift of $150,000 to son was a "specific monetary bequest," and therefore son was entitled to interest on it from time it should have been distributed. (e) Trustee bank was not negligent in failing to procure assignment and collect proceeds of life insurance on life of surviving spouse, even though policies were listed as trust property, because trustee's duties with regard to policies attached only if policies were delivered to trustee or trustee was named beneficiary, neither of which occurred here. (f) Proceeds of life insurance on life of surviving spouse represented community property to extent premiums were paid with community funds. ***First Interstate Bank v. Lindberg***, 49 Wn. App. 788, 746 P.2d 333 (12/2/87).

— *T. R. Andrews*

Creditor-debtor law. Sheriff levied on apartment house, owned by two marital communities, under execution by assignee of separate judgment against husband of one of the communities. Two weeks later marital communities sold apartment house to limited partnership that paid $82,000 and assumed note. Sheriff then made sale on execution to levying creditor for $14,125 judgment and costs. There was redemption from sale by assignee of another judgment against husband; assignee had purchased judgment for purpose of redeeming. Limited partnership sued to quiet title after attempting to redeem. *Held*: Declining to address issues whether interest of judgment debtor husband could be sold to satisfy separate judgment against him, court concluded that it would be inequitable to uphold sheriff's sale. Court held that execution against real property was invalid where there was no showing of good-faith search for personal property or for separate property of judgment debtor. Court expressed disapproval of practices of speculators who acquire rights to uncollected judgments for sole purpose of executing against real property whose value far exceeds amount of judgment. ***Casa del Rey v. Hart***, 110 Wn.2d 65, 750 P.2d 261 (2/18/88).

— *M. D. Rombauer*

Planning and zoning. Landowner applied for rezoning and permit for planned-unit development. As condition of approval, county required that owner dedicate, without compensation, two strips of land for public roads. One strip was for commercial access across applicants' land to their adjoining neighbor's land, to facilitate neighbor's future development. Other strip was along boundary of applicants' land and was for possible future extension of public road that ran part-way along that boundary. *Held*: Both required dedications were unconstitutional and void as uncompensated takings. Dedications required as conditions to development approval are valid only "where the problem to be remedied by the exaction arises from the development under consideration." Here, applicants' proposed development did not create need for either road dedication. Court relies in part on ***Nollan v. California Coastal Comm'n***, ___ U.S. ___, 107 S.Ct. 3141 (1987). ***Unlimited v. Kitsap County***, 50 Wn. App. 723, 750 P.2d 651 (3/4/88).

— *W. B. Stoebuck*

Program Update

by **WSBA Lawyers' Assistance Program Staff**

What does the Lawyers' Assistance Program (LAP) offer for the distressed lawyer?

(LAP) is a confidential resource which assists lawyers in exploring and clarifying their problems. The lawyer, guided by a qualified counselor, decides which type of service will be most beneficial. Although LAP provides some short-term counseling, our primary function is to assess problems and make referrals to compatible professionals, treatment programs, and peer counselors. We began providing services last August.

During our first nine months of operation, 106 lawyers and judges received our assistance. Most of our clients are self-referred lawyers. They are usually in the early stages of impairment, the time when problems most readily lend themselves to successful treatment. Many clients have reported that they would not have sought assistance but for the fact that LAP's confidential services focus on lawyers.

How did the Lawyers' Assistance Program come into being?

This program has its roots in volunteerism. In 1976 the WSBA became one of the first bar associations in the nation to establish a committee on alcoholism that worked in conjunction with the local fitness committees. Members were lawyers concerned about identifying the early signs of alcoholism and working with the impaired lawyer before the matter became a discipline problem. Lawyers assisting other lawyers was a key to their success. LAP now supplements peer counseling with professional identification, evaluation and treatment of all types of impairment.

Why peer counselors?

Peer counselors are lawyers whose personal lives and professional experiences motivate them to assist fellow lawyers. Across the state, 75 volunteers act as peer counselors who are confidants. They offer empathy and reassurance while the lawyer is recovering. Trained and supervised by professional staff, they spend hundreds of hours providing free, directed counseling.

How do I become a peer counselor?

Call us. LAP's client load is expanding more quickly than we anticipated. Regular training groups are held in Seattle/Tacoma, Bellingham, Olympia, Wenatchee, Spokane, and Pasco. Later this year, another peer counseling group will be started in Vancouver. LAP reimburses counselors for travel expenses to the training sites and provides guidance in working effectively with lawyers suffering from the many different types of impairment.

How do I receive assistance from the Lawyers' Assistance Program?

Most people refer themselves. They call the LAP number and discuss their problem with one of our professionals. *Confidentiality is assured.* No one else need know about the request. An appointment can be arranged for further consultation.

LAP also works with third parties—judges, law partners, coworkers—who are concerned that a particular lawyer's impairment is interfering with job performance. Any services offered to the lawyer are voluntary and confidential.

Are there any costs?

Initial assessment and counseling services are free, as is peer counseling. Professional services by outside providers are usually covered by regular employee health insurance or other benefits. If they are not covered, LAP will find a professional to treat the lawyer on a sliding scale based upon the ability to pay.

Why not use the Lawyers' Assistance Program?

Stress can be positive or negative. It can inspire productivity or lead to exhaustion. Lawyers reporting a wide range of distress symptoms (*e.g.*, clinical depression, eating disorders, chronic procrastination, alcoholism, anxiety attacks, anger problems, etc.) have sought LAP's assistance. They have reduced, and are reducing, their distress while ending their isolation. One study found that lawyers who used a similar California State Bar program not only eased their levels of distress but, after treatment, registered marked income gains[1].

Problems are not a sign of failure but an opportunity for growth.
If you have a problem, please call us.

(206) 448-0605

Footnote

[1] Frances, R., Alexopoules, G. G. and Yandow, V., "Lawyers' alcoholism," *Advances in Alcohol and Substance Abuse*, Vol. 5 (1984), 59-66.

ATTORNEY-CPAs

The summer 1988 national convention of the American Association of Attorney-CPAs met June 30 through July 4. It featured 13 hours of CLE credit, a business meeting, a Seattle tour, a Victoria cruise and lunch at the Space Needle. On July 4, participants took the Tillicum Village Salmon Bake trip and watched the fireworks from the water on their return. The convention closed with the traditional, semi-formal dinner-dance at the Olympic Four Seasons Hotel.

EAST KING REPORT
by **DON GULLIFORD**

The East King County Bar Association and the Washington State Trial Lawyers Association hosted the Supreme Court at a memorable first visit by the Court for hearings at the Bellevue Community College followed by a reception and dinner at the Bellevue Athletic Club. All the lawyers and their spouses thoroughly enjoyed the evening together with the remarks by Justice **Vernon Pearson**.

Susan Rae Sampson has become associated with the firm of **Loren B. Combs**, Inc., P.S. in Renton. **Charles W. Miller** has joined LaBow Haynes/James' Bellevue office as marketing manager for commercial property and casualty.

GOVERNMENT LAWYERS REPORT
by **ROBERT J. FALLIS**

The Government Lawyers Bar Association is pleased to announce the election of new officers for 1988-1989: **Frank Edmondson**, president; **Rusty Fallis**, first vice president; **Nancy Krier**, second vice president; **Mary Jo Diaz**, secretary; **Jerri Thomas**, treasurer; **Mary Prevost**, WSBA liaison; **Helen Hannigan**, membership chair; **Don Bennett**, CLE chair; and **Deborah Lazaldi** and **Brian Peyton**, program co-chairs.

At GovLaw's May monthly luncheon meeting, the featured speaker was **Terry Sebring**, counsel to Governor Booth Gardner. Sebring spoke on "The Role of the Government Lawyer."

INTERNATIONAL

WEST GERMANY

Thomas Sieg, Captain, U.S. Army, recently completed three and one-half years as Senior Defense Counsel at the Army's Trial Defense Service field office in Grafenwoehr, West Germany. There he was responsible for defense and coordinating defense for a military population of 6,500 spread over 7,000 square miles. This summer Sieg joins the Army's Legal Services Agency in Falls Church, Virginia, where he will be handling appellate military law.

MICRONESIA
by **STEPHEN A. COHEN**

The Washington State Bar continues to make inroads into Micronesia, the Pacific Ocean area lying west of Hawaii, east of the Philippines, south of Japan and north of Australia and New Guinea.

Most of the Washington Bar members are located on the island of Saipan, capitol of the Commonwealth of the Northern Mariana Islands. In the Attorney General's office are King County lawyers **John Biehl**, **Richard Weil**, **Stephen A. Cohen** and **David Webber** and Douglas County lawyer **Ronald Hammett**. Thurston County lawyer **Keith Partlow** recently left the Attorney General's office to return to Boston. Other members of the Washington Bar practicing on Saipan are King County lawyers **Maile Huvar Bruce**, legal counsel for the Coastal Resources Management Office, and **Tim Bruce**, legal counsel to the Commonwealth Senate. **Brian McMahon** of King County is the Commonwealth Public Defender and **David Nevitt** of Pacific County, former Attorney General for the Federated States of Micronesia, is in private practice with the Carlsmith firm.

The state of Washington has other significant ties to the Saipan legal community. **Robert Naraja**, Assistant Attorney General, **Edward Manubusan**, Director of Public Safety and **James Sirok**, in private practice, are all graduates of the Gonzaga School of Law.

In the Territory of Guam, Clark County lawyers **Ken Orcutt** and **R. Happy Rons** are members of the Attorney General's office. King County lawyer **Bruce Turcott** is located on the island of Ponape where he is an Assistant Attorney General for the Federated States of Micronesia. King County lawyer **Dennis Coughlin** is in private practice in the Republic of Palau.

MASON COUNTY

Dianna Timm Adams of Belfair was honored in April by the Thurston-Mason County Attorney Referral Project's Award for Outstanding Service. The project has been matching volunteer lawyers with low-income clients since 1981. Adams, who's been on the project panel since 1982, has donated more than 100 hours of her time to project work.

PIERCE COUNTY REPORT
by **GEORGE S. KELLEY**

The new addition to the County-City Building is now open and functioning. Speaking for the bar at the opening ceremonies was **Mike McKasey**. Entertainment was also provided by a 22-member banjo band. After speeches by local politicians an open house and tour of the new facilities was held.

The new courtrooms, clerk's office and adjacent hallways are tastefully carpeted in crimson and grey hues, a nouveau WSU motif. Attorneys trying cases will note some courtroom deficiencies, such as the poor sight lines between far end of the counsel table and the witness stand. Also, the jurors' chairs do not recline, a design no doubt intended to keep jurors uncomfortable and awake. Judicial assistants and court reporters also suffer some problems in the design of their space. The judges, however, seem content with their expansive office views overlooking the bail bond and legal messenger offices across Tacoma Avenue.

His Honor **Arthur Verheran** cap-

tured boat-of-the-year honors at the Tacoma Yacht Club. This honor is awarded the boat with the best overall record in sailing races held throughout the year. Judge Verheran won the award despite two major collisions in one race which caused extensive hull damage. His boat was repaired in time to compete in the rest of the races. The record should show that the collisions were not the judge's fault.

Wayne Vavrickek and **Christopher W. Keay** have been named as partners in the firm of Rosenow, Hale and Johnson.

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

Office Moves. **Thomas H. Wolfendale** and **Jane Faulkner** are new associates at Preston, Thorgrimson, Ellis & Holman. **David S. Heller** has joined Perey Langley as an associate. **Stephen L. Nourse** has joined Carney, Stephenson, Badley, Smith, Mueller & Spellman as a partner; **Thomas F. Kelly**, **Stuart C. Allen** and **Michele Hitomi Hurley** formerly Michele Hitomi Johnson) are now associates there.

Paul Schell has joined Perkins Coie as of counsel. **Mark N. Thorsrud**, **Paul F. Cane** and **Patrick M. Paulich** have formed a firm with offices at 1111 Third Avenue. **Alex J. Barkis**, formerly a deputy prosecutor with Okanogan County, has opened his office in the University District.

Charles P. Curran (president, South King County Bar Association, 1976-1977), **Melvin L. Kleweno** (*Ibid.*, 1977-1978) and **Stephen L.** ("Cigar") **Johnson** announce the relocation of Curran, Kleweno & Johnson to the Kent Professional Plaza, and that **Douglas P. Becker** and **Joseph A. McKamey** have joined the firm as associates. **Daniel J. Ichinaga**, **Nancy L. Cahill** and **Steven T. O'Ban** have become associates of Ellis & Li, which has relocated to the First Interstate Center. **David C. Pearson** has become a partner in the firm of Siderius, Lonergan, Crowley & Pearson; **Solie M. Ringold** (formerly presiding chief judge of the Washington Court of Appeals) and **William E. Wall** are counsel to the firm.

James D. Dwyer, executive director of the Port of Seattle, will join Bogle & Gates in October as head of that firm's international trade practice. **C. Bartlette Stroupe** is a new associate at Cairncross, Ragen & Hempelmann. **Dennis D. Reynolds** and **Matthew T. Boyle** have become partners in Mitchell, Lang & Smith. **John M. Johnson** has become associated with Jackson & Richardson. **Bradley H. Bagshaw** and **Ragan L. Powers** have become partners in Helsell, Fetterman, Martin, Todd & Hokanson; **Roger L. Decker** and **Brian J. Farney** have joined the firm as of counsel. **Philip G. Hubbard**, **Lynn E. Hvalsoe**, **Mark R. Johnsen** and **Carol Lee Moody** have become shareholders at Karr, Tuttle, Koch, Campbell, Mawer, Morrow & Sax.

Judith R. Eiler and **Paula S. Prid-**

geon, both stalwarts of the golf links in south King County, have moved their offices to 533 South 336th Street in Federal Way. Longfelder, Tinker, Kidman & Flora have moved to the First and Stewart Building. (It is reported that one moving van alone was used just for the hairspray supply and jewelry of **Larry Longfelder**!). **Richard D. Reed** announces that he is moving up in Seattle legal circles: from the 10th floor of the Seattle Tower to the 21st floor.

Of Note. **Malcolm Moore** has been elected president, and **Janis A. Cunningham** has been elected a fellow, of the American College of Probate Counsel. **Alan H. Kane** has been elected to serve a two-year term on the Executive Committee of the Estate Planning Council of Seattle.

SNOHOMISH COUNTY REPORT
by **REBECCA CLARK**

The Snohomish County Bar Association suffered another loss with the sudden passing of **Ruth Ellen Wagner** on May 12, 1988. Wagner attended the University of Washington School of Law and worked as a deputy prosecutor for five years before going into private practice in Marysville. She was active in community and professional organizations, including her service as president of the Snohomish County Bar Association and participation on the state Human Rights Commission. Wagner, described as having a mind like a "steel trap," was a highly respected and admired attorney. Memorial services were held May 19.

Healers v. Stealers: The Snohomish County Bar Association scored a 61-51 victory over the local physicians in the Healers v. Stealers basketball game. The team included **Tom Bigsby**, **Jeep Carpenter**, **Brian Dale**, **Seth Dawson**, **Oz Dire**, **Kim Dupuis**, **Tom Gish**, **Thom Graafstra**, **John Haggerty**, **Todd Startzel**, **Bill Sullivan**, **Bill Tri** and **Grant Weed**. Bill Tri scored 26 points and Tom Gish was close behind with 19. The losing physicians donated $500 to Big Brothers/Big Sisters and the Boys Club. The annual softball game is scheduled for early June. To date, the Stealers are undefeated.

Sandra Shaw has recently joined the Lynnwood firm of Raich, Gese, Seather, Watts and Curran. Shaw, a prosecutor in Idaho for five years, will pursue a general civil practice.

THURSTON COUNTY REPORT
by **ALAN SWANSON**

The Annual Thurston County Bar Association Banquet will be held this August at the Olympia Country and Golf Club. New officers for the 1988-1989 term are: **George Darkenwald**, president; **Jack Hayden**, vice president; and **Rick Bartholomew**, secretary/treasurer. New board members are: **John Hoglund**, **Michael Hanbey**, **Steve Henderson** and **Rochelle Wienker**.

Though it will be old news by the time this column gets out, thanks are in order to **John Hoglund** and **Joe Lynch**, who co-chaired our annual People's Law Clinic, which this year was held on May 21 at the Capital Mall. About 30 of our best and brightest donated their time on a very warm Saturday to make this community service event a great success.

John Jarrett has associated with **Bill Pope** at Bill Pope & Associates. And **Harold Carr** has joined up with Frank Morris & Associates.

Correction: **Reiko Cushman** was surprised to read in our last report that she had accepted a part-time position with **John Sinclair**. Actually, she continues to work full time for the city of Olympia; it's assistant city attorney **Les Ching** who is now working part time with John Sinclair. Sorry 'bout that.

As we approach November, the political winds begin to blow a bit more heavily. The Thurston County Bar Association, in conjunction with Government Lawyers, will be hosting Attorney General **Ken Eikenberry** and candidate **Bill Erxleben** at our August luncheon.

Further, your deponent sayeth not.

WALLA WALLA COUNTY

Sidney Anderson has retired after 17 years on the board of Baker Boyer Bancorp in Walla Walla. After joining the Bar in 1940, Anderson moved to Walla Walla in 1950 and owned an auto dealership until 1956. That year he joined Baker Boyer, where he worked 22 years, retiring as a senior vice president and trust division manager. Active in Walla Walla civic affairs, Anderson has served on the boards of the Chamber of Commerce, Children's Home Society of Washington and Kiwanis Club and as a warden in his church.

DISCIPLINE

Disbarred

Tacoma attorney **Gary R. Clarke** (admitted 1983) was ordered disbarred April 13, 1988, pursuant to a Stipulation to Discipline. The Stipulation and Order of Disbarment were based on Clarke's conduct in making unilateral unauthorized alterations in documents filed with and approved by the Pierce County Superior Court, in particular, his own Declaration of Invalidity of Marriage and Property Settlement Agreement.

Yakima attorney **Charles C. Countryman** (admitted March 6, 1958) has been disbarred by order of the Supreme Court entered on April 27, 1988. That order followed an order of the Disciplinary Board adopting a hearing officer's decision that Countryman's conduct demonstrated that he was unfit to practice law, based upon findings of neglect of legal matters, misrepresentation to a client, failure to account for client funds, failure to withdraw when discharged, failure to cooperate, and other acts of misconduct.

Reprimanded

Seattle attorney **Jeremiah M. Long** (admitted 1956) was ordered to receive a Reprimand for his conduct in failing to promptly deliver a file to a client's new counsel after being discharged, and failure to cooperate in a disciplinary investigation. In addition, Long was ordered to pay costs in the amount of $1,238.96.

ET ALIA

UPS Reunion

Class of 1978 UPS law school grads: Ten-year reunion, Saturday, October 8, 1988, Columbia Tower Club, Seattle. Save the Date!

RE: RCW 19.52.020(1) Interest Rate

The average coupon equivalent yield from the first auction of 26-week

treasury bills in May 1988 is 7.05 percent. The maximum allowable interest permissible for **July 1988** is thus **12 percent**. For further details and past rates, see the October 1987 *Bar News*, page 39.

Inactive

Federal Way attorney **Hamilton B. Underwood** (admitted 1976) was transferred to inactive status on May 4, 1988.

1988 Corporate Counsel Directory Now Available

The *1988 Corporate Counsel Directory* contains up-to-date listings of over 160 companies with in-house counsel in Washington, as well as over 450 individual listings of corporate counsel and section members. Price for the directory for WSBA Corporate Law Section members is $5 + 41¢ (Washington state residents only); for nonmembers, $10 plus 81¢ tax. Supplies are limited! To order, send your check to WSBA, Attn: Penny Davis. Be sure to **specify *Corporate Counsel Directory***, and include your name, WSBA number and return address on your order.

Court Rules — Your Comments Wanted

When it reconvenes this fall, the Court Rules and Procedures Committee is scheduled to review the Rules of Appellate Procedure (RAP) and the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ). Members of the Bar are encouraged to send their comments and suggestions concerning these rules by October 15, 1988 to: Steven Rosen, Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

Grant County Arbitration Rules Adopted

Grant County has adopted a mandatory arbitration program, effective June 1, 1988. The new program applies to civil matters if the amount claimed by any party does not exceed $25,000 exclusive of attorney fees, interest and costs, or if the parties waive claims in excess thereof for purposes of arbitration. For more information contact the Grant County Superior Court, P.O. Box 37, Ephrata, WA 98823.

Seattle Municipal Court Revised Rules Now Available

Copies may be obtained in person from Cashier Window #5, first floor of the Public Safety Building or by mail. (Direct a check payable to Seattle Municipal Court, in the amount of $3, to Cashier, Window #5, Room 100, Public Safety Building, Seattle, WA 98104.) Estimated time of delivery is two weeks.

Federal Court Civil Rights Pro Bono Panel Members Needed

Attorney volunteers are needed to represent indigent clients in civil rights cases in Federal Court.

The Federal Court Civil Rights Pro Bono Panel is sponsored by the Young Lawyers Division of the Seattle-King

County Bar Association in cooperation with the U.S. District Court for the Western District of Washington. (Compensation for these pro bono services is limited by Federal Statute, and any awards are determined by the Court.)

Federal Court judges make the case selections. To be eligible for the panel, a client must be deemed without resources to obtain counsel. The Court clerk assigns these cases to a list of panel volunteers. Although case assignments are randomly made, volunteer case preferences are taken into consideration whenever possible. Attorneys are not expected to accept more than one case at a time. Panel members will receive training.

Interested attorneys should contact the Honorable John L. Weinberg, United States Magistrate, 103 U.S. Courthouse, Seattle, WA 98104, (206) 442-5774, to request a copy of the program plan, rules and an application form.

State Chief Justice Receives Gonzaga Law Medal

Gonzaga University presented its Law Medal for 1988 to Vernon R. Pearson, Chief Justice of the Washington Supreme Court, during the May 7 commencement for the university's Graduate School and School of Law.

Donald Kendall, co-founder and retired chief executive officer of Pepsico Inc., manufacturers of Pepsi-Cola, delivered the commencement address. Gonzaga conferred honorary doctor of laws degrees on Kendall and Lewis G. Zirkle, chairman of the board and chief executive officer of Key Tronic Corporation.

The Law Medal was established in 1962 to commemorate the 50th anniversary of the Gonzaga School of Law. The award was first presented to Archibald Cox. Later recipients include the late Judge Willard Roe of Spokane Superior Court; and Justices Robert C. Finley and William H. Williams of the Washington Supreme Court. Last year the Law Medal recipient was Lewis H. Orland, a former dean of the School of Law.

NOTICES ADVERTISING

Professional: WSBA members only. $40 per inch. Billed at publication. **Classified:** Members—$25 for 25 words, each add'l 25¢. Non members—$35 for 25 words, each add'l 75¢. Box number service—add'l $6. *Advance payment required.*

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

Submit double-spaced, typed copy on plain paper (no phone orders) to Attn: Ave Leavy, Classifieds, *Bar News*, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

PROFESSIONAL

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Bellingham (206) 676-5225
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Antonio Salazar, an attorney with twelve years' active experience in immigration matters, is accepting consultations and referrals in United States Immigration and Nationality matters.

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

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

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24 hours

Police Misconduct

Theodore Spearman, who has fifteen years' experience in governmental torts and related constitutional litigation under Title 42 § 1983, is available for consultation, referral or association.

Theodore Spearman
1613 Smith Tower
506 Second Ave.
Seattle, WA 98104
(206) 623-0900

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- AND THAT -

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FORMERLY PRESIDING CHIEF JUDGE OF THE
WASHINGTON COURT OF APPEALS

AND

WILLIAM E. WALL
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FOR SALE

Used law books—bought & sold—Washington-related law books our specialty—law library appraisals by qualified expert. John C. Teskey, Law Books/Law Library Services. Call Seattle, (206) 325-1331.

Concord Quartz—Men's Classic Strap Watch; 14 kt gold; Octagon style; date/second hand. $900. Call (206) 441-5318.

For sale: complete, up-to-date sets: West's *Washington Digest*, $1,000 and *Washington Practice*, $650. Call (509) 332-3300, Pullman.

Lovely, old (early 1900s), solid walnut traditional office furniture: executive desk, secretary desk, conference table, eight chairs and library table. Also, two-piece walnut parti-

tion, other miscellaneous chairs, etc. (206) 284-0997.

SPACE AVAILABLE/WANTED

Sixteenth floor Westin Building, Seattle. First-class view space. Partner-sized 13.5 × 15 office, $600 per month. Receptionist, library, word processing, kitchen. Free phone. Perfect for new lawyer. Referrals. Call Katharina Roth, (206) 447-8665.

Downtown Seattle, 32nd floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-/long-term leases. Receptionist, legal word processing/dictation, telephone answering, telex/facsimile, Kodak copier, mail service, law library, legal messenger. Contact Lillian Beegle, (206) 624-9188.

Lynnwood Executive Center: Prestigious office space available from 126 square feet to 200 square feet. Full service including secretarial, telephone answering, receptionist, law library, kitchen facilities, conference rooms, copying and facsimile service. Located in the Fisher Business Center adjacent to the Alderwood Mall. Space limited. Act now. (206) 774-4499.

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

North Olympic Peninsula—Office sharing space is available for one attorney in a three-office, newly renovated building in Sequim; rural but growing community two hours from Seattle. Contact Linn Rogers at (206) 683-7705, or Chris Shea at (206) 683-1129.

Pioneer Square: Large, attractive offices for an attorney and one or two secretaries available in beautifully restored brick building. Includes receptionist, telephone, copier, conference room, library, coffee service, work-out room, sauna. Contact Melinda, (206) 622-7050.

One or two first-class western view offices available in downtown Seattle. Conference room, library, receptionist, telephones. $750. Association with firm possible. Call (206) 622-3410.

Prestige office-sharing. Panoramic views in downtown Bellevue suites. Only two suites remaining. Furnished or unfurnished. The Eastside's largest law library. Full-time receptionist. Three conference rooms. Messenger service twice daily. *Eagle Eye Bulletin*. Private secretarial stations available. Complimentary covered parking for clients. Legal word processing, facsimile, telex available. Contact Shari Perkins or Ted Barr, (206) 451-3961.

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Bargain: Several offices available individually or in group. Class A building, financial area. Rent per office below cost with amenities and secretarial space. Call O'Deene, (206) 622-9428.

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Securities intern: J. D. seeks one-year internship/contract work in securities or corporate law. Rule 9 eligible. References. Nancy Palmer, 2211 N.E. 54th Street, #2A, Seattle, WA 98105; (206) 622-5541, after August 1.

POSITION AVAILABLE

Three-attorney central Washington law firm seeks attorney with minimum of one year's experience. To begin immediately. Send resumé to: Frederick, Beckley & Cooper, P.O. Box 858, Ellensburg, WA 98926.

Bellevue law firm seeks contract lawyers with over two years' experience for assistance with prepaid legal plan phone access. Compensation and working conditions negotiable. Contact Ralph Anderson of Trujillo & Peick, P.S., P.O. Box 97024, Bellevue, WA 98009-9724.

Downtown Seattle law firm seeks associate with experience in insurance defense. Please respond to Box 210, WSBA.

Successful, "av" rated, seven-attorney law firm with a downtown Seattle practice emphasizing general business and civil litigation wants to expand its business and tax practice and seeks one or more attorneys with business, tax, real estate, or estate planning experience and an established clientele for possible merger or consideration of principal or senior associate status. Send resumés or replies to J. E. Fischnaller, Reaugh Fischnaller & Oettinger, 3000 Westin Building, Seattle, WA 98121. All replies will be kept confidential.

Walstead, Mertsching, Husemoen, Donaldson & Barlow, P.S., a ten-attorney firm, has immediate opening for associate with minimum

one to two years' experience to practice general law and help develop satellite office. Send resumé to Administrator, P.O. Box 1549, Longview, WA 98632.

Trujillo & Peick, P.S., the provider attorney for the state of Washington for Prepaid Legal Services, Inc. seeks law firms for closed-panel membership throughout the state of Washington. For particulars concerning compensation and obligations, contact John C. Peick, (206) 462-0660.

Seattle office of law firm with growing litigation, maritime, commercial and insurance practice in Alaska and Washington seeks lawyer having at least ten years' experience. Commitment to integrated firm practice and ability to contribute to management essential. All responses confidential. Bradbury, Bliss & Riordan, 701 Fifth Avenue, #5150, Seattle, WA 98104-7010. Attn: Pat Middleton.

Olympia growth-oriented firm seeks one litigation associate with two plus years of experience in family law and general civil litigation. Send resumé to: Personnel Manager, P.O. Box 183, Olympia, WA 98507.

MacDonald, Hoague & Bayless of Seattle needs an experienced business attorney with excellent credentials and capacity to generate new business, as well as represent the firm's existing clients. The firm seeks applicants who place a high priority on practicing in a congenial, progressive environment with a high degree of responsibility and independence. All inquiries will remain confidential. Apply to: David M. (Mac) Shelton, 1500 Hoge Bldg., Seattle, WA 98104; (206) 622-1604.

Central Washington sole practitioner seeks an associate with minimum of one year's experience to handle general practice in a rural setting; criminal experience helpful. Respond to Box 213, WSBA.

Attorney—labor relations: Seattle-based labor relations management consulting firm seeks an attorney with a minimum of two years' experience in labor law. Salary commensurate with experience and work load. Excellent opportunity to team up with a thriving practice. Please send resumé to Box 212, WSBA.

Growing Seattle law firm seeks to hire associate with a minimum of two to three years' experience for litigation of property and environmental claims for insurers. Experience in at least one jury and one court trial, tried to judgment, required. Strong academic credentials and professional recommendations essential. Please provide transcript and writing samples. All inquiries will be kept strictly confidential. Send applications to Box 211, WSBA.

Attorney jobs—National and Federal Legal Employment Report: highly-regarded monthly detailed listing of hundreds of attorney and law-related jobs with U.S. Government, other public/private employers in Washington, D.C., throughout U.S., and abroad. $30 - 3 months; $53 - 6 months. *Federal Reports*, 1010 Vermont Ave., N.W., #408-WB, Washington, D.C. 20005. (202) 393-3311. Visa/MC.

Small firm in north King County seeks associate with good credentials and at least two years' experience in business and/or real estate law. Must have some clientele and ability to generate new clients. All inquiries confidential. Send resumé to Box 209, WSBA.

Southwest Washington sole practitioner needs associate. We are a progressive firm, heavily into computers and legal assistants, with plenty of work. Good partnership potential for the right person, plus the benefits of living in a friendly small town, with skiing and the beaches only an hour and a half away. Prefer over 30 with some civil litigation background. Will handle primarily family law and DWIs. Send resumé with references and tell me what your strong and weak points are, together with salary requirements. The Law Office of Stephen T. Carmick, P.S., P.O. Box 670, Chehalis, WA 98532. (206) 748-0226.

WILL SEARCH

Seeking will of Anna Hendrix, long-time IBM employee. Contact Robert A. Berst, 1902 IBM Building, Seattle, WA 98101. (206) 624-4220.

Seeking will of Clemence Georgette Hansen, deceased, long-time resident of Olympia, WA. Former names, Erickson or Ericksen, Swanson, Marc. Contact David D. Cullen, attorney, Cullen & Cullen, Suite 300, The Mottman Building, Fourth and Capitol Way, Olympia, WA 98501; (206) 786-5000.

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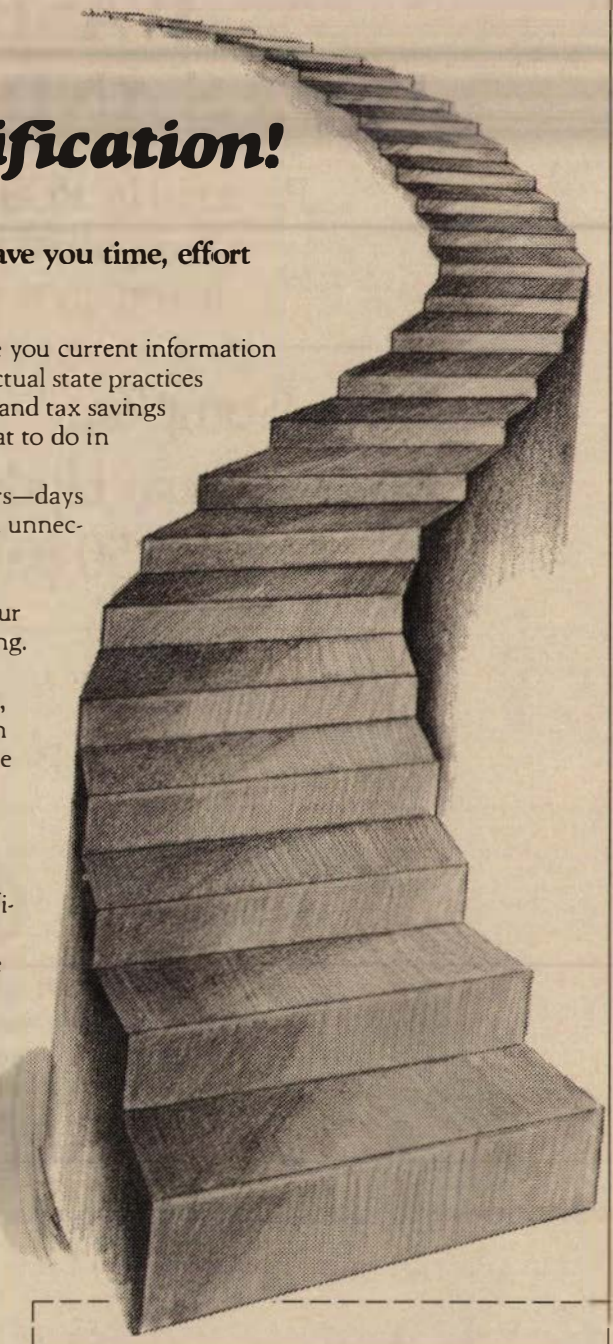

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Vol. 42, No. 7, July 1988

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