Washington State

Bar News

Vol. 44, No. 5, May 1990

Golden Links in the Chain That Connects Mother, Home and Heaven, ed. Mrs. J.P. Newman, N.D. Thompson Publishing, 1890, p. 164.

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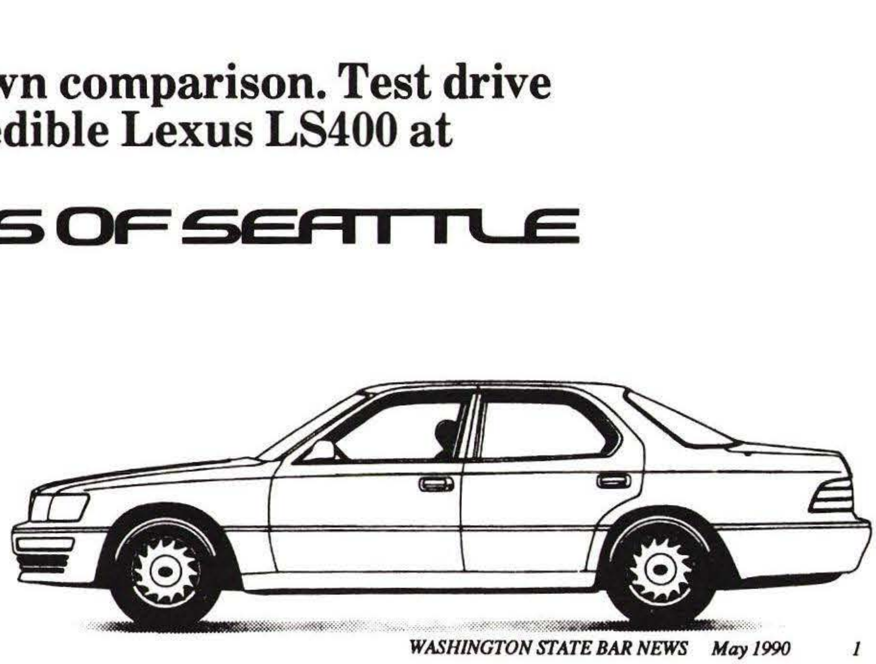

Washington State Bar News
Vol. 44, No. 5, May 1990

The Secret of a Happy Home, by **Marion Harland**
The Christian Herald, New York, 1896, Frontespiece

FEATURES

DEPARTMENTS

ART CREDITS

The *Bar News* thanks Bar staff member **Jeff Barreca** for the loan of some of his antique volumes which contain the old engravings decorating our cover and family law feature articles. Individual credits appear with each illustration.

WSBA Telephone Numbers

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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.

New Licensing Process for Reporters

Editor:

Under recent legislation now codified as Chapter 18.145 RCW, people who wish to use the title of "shorthand reporter," "court reporter," "certified shorthand reporter," or "certified court reporter" must get a certificate from Professional Licensing Services, Court Reporter's Section, P.O. Box 9649, Olympia, WA 98504, (206) 586-4565.

The necessary forms can be obtained from the above address. Further information can be obtained by calling Judy Riker at the phone number shown.

Attorneys should remind working reporters of these processes as soon as possible lest they be temporarily prejudiced by delay. The sections of greatest immediate interest to reporters are RCW 18.145.080 and 110.

Reporters with two years' experience in the state of Washington prior to September 1, 1989, must submit an application which includes references in support of the claim of experience, and an application fee of $150, *before September 1, 1990*, or lose the privilege of certification without examination.

People with less than two years' experience in Washington, as of September 1, 1989, who have completed court reporting school or who have been licensed in another state or have some other professional certification, can apply for temporary certification which gives them a year to pass the Washington state examination and continue their profession. Successful completion of the examination qualifies anyone for the title.

BRUCE L. TONKS
Attorney Member
State Shorthand Reporters
Advisory Board
Seattle

Try It, It's Cheap

Editor:

Copies of the completely updated 1990 RCW, Digital Edition, are currently being circulated. As before, a limited number of copies of the system are being made available for "overnight" loan. This year, users have the option to obtain their own copies directly, by reimbursing our cost for a copy of the disks and shipping.

A demonstration system, comprising Washington's U.C.C. (Title 62A RCW) and search software, is available for $2.16 including sales tax and postage. The two-disk demonstration system requires an IBM or compatible computer with a 5¼" floppy disk drive, 640 Kb RAM, DOS 2.11 or later, and one Mb hard disk space.

For further information, contact Washington Digital Law Library, P.O. Box 6092, Bellingham, WA 98227-6092.

JEFFREY JON BODÉ
Director, Washington
Digital Law Library
Bellingham

Are We Getting Enough Information?

Editor:

I am pleased to note that the Supreme Court is probably going to require us to place our bar number on pleadings.

Since we are a progressive bar association, I do not feel that this is adequate. There should be a requirement that the following information also be placed on the pleadings.

Date of Birth
Date of Admission to the Bar
Social Security Number
Mastercard or Visa Card Number
A modified Oath of Loyalty to the State of Washington

They should further establish a committee to establish the penalties to be applied, for example:

A sanction on a simple omission
A temporary suspension on five omissions
Disbarment on ten omissions

What penalty should be applied on an accidental or intentional misuse of someone else's bar card number?

PAUL M. WILLIAMS
Edmonds

Nominations Sought for State Bar Awards

by John J. Michalik
WSBA Executive Director

It is my pleasure to use this month's column for a very special purpose: a request for nominations for a series of awards for service to the profession and the public.

Although "service" is a true hallmark of the legal profession, the efforts of lawyers in a variety of contexts are often taken for granted and frequently go without the recognition they deserve. For some years now the State Bar Association has presented its Award of Merit for exceptional, long-term service on continuing projects or for truly extraordinary contributions. Last year, in recognition of the variety of efforts which lawyers, law firms, and organizations exert in many areas, the State Bar's Board of Governors established five additional award categories. I am extremely pleased to use this column to solicit membership input and nominations for these awards. The awards in question are described below. They cover a variety of areas and types of contributions. Nominations should be sent to my attention at the State Bar Office by June 15, 1990. All nominations, in each category, will be carefully considered by the Board's Awards Committee. While the awards in question are "annual" in nature, it also needs to be noted that the Board has established the policy that presentation of these awards is not "automatic" and that they will be given only in instances where there are truly deserving recipients.

Award of Merit. The State Bar Association's highest honor, the Award of Merit was first given in 1957. In general, the Award of Merit has been given in recognition of long-term service to the Bar and/or the public, although in some cases it has also been presented in recognition of a single, extraordinary contribution or project. The Award of Merit is given to individuals only and has in the past been presented to lawyers and nonlawyers.

The President's Award. Designated to be presented for special accomplishments or service to the State Bar Association during the term of the serving president. More than one such award may be presented during a given year.

Board of Governors' Award for Professionalism. To be awarded, if at all, to a member of the State Bar Association who exemplifies the spirit of professionalism in the practice of law. With acknowledgement to Dean Roscoe Pound, "Professionalism is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession."

The Angelo Petruss Award for Lawyers in Public Service. This award is named in honor of the late Angelo R. Petruss, a senior assistant attorney general who passed away during his term of service on the Board of Governors. Selection criteria are based upon a demonstrated significant contribution by a lawyer in government service to the legal profession, the system of justice, and the public.

Outstanding Judge Award. This award may be presented to a judge, from any level of court, for outstanding service to the bench and bar. Nominations are actively solicited from State Bar members to recognize a judge who has made a special contribution to the legal profession.

WSBA Pro Bono Award. To be presented to a layperson, lawyer, law firm, or local bar association for particularly outstanding efforts to develop or expand a pro bono program. The award is based upon overall efforts and *not* upon a single lawyer's or law firm's number of pro bono hours or amount of financial contribution.

In considering potential nominations for these awards please remember the June 15 deadline for submission. The Awards Committee will consider all nominations and will make semifinal selections or recommendations to the president and the full Board of Governors, who will make final selections. Awards will be announced and presented at the 1990 State Bar Convention in Spokane this coming September.

John J. Michalik

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On to Spokane - 1990

James A. Vander Stoep

Each Washington lawyer should attend the 1990 WSBA Convention, September 13, 14 and 15, in Spokane -- for some very practical reasons. In recent years, the convention has lasted five days. This year we have telescoped it into three days, Thursday, Friday and Saturday, to attract busy lawyers.

The CLE seminars are arranged in a sequence that will allow you to get up to 16 hours of CLE credit with careful scheduling.

Spokane Center now includes not only the former World's Fairgrounds on the north side of the Spokane River, just above the falls, but other major community facilities are just across a courtyard and just west of the Spokane Sheraton, which will be the headquarters hotel. Spokane Center has indeed become the heart of the Inland Empire, and enjoys first-class management. There will be nationally known speakers at the luncheons, the usual full array of activities for spouses, and entertainment for children.

Spokane weather is clear and warm in mid-September, and the county's pine, tamarack, and harvested wheat fields provide some of the most vivid fall color contrasts in the state.

Over 60 commercial exhibitors will occupy 17,000 square feet of space and display state-of-the-art support services, computer systems, and facilities needed for an efficient practice. The WSBA will host a luncheon on Thursday, and the cocktail hour beginning at 5:15 p.m. Friday, in the exhibit area. The social hour will begin with the raffling of four $400 prizes.

The goal of your convention committee has been to make the 1990 Annual Meeting break even -- which has not always been the case in the past. To do so, the committee has compacted activities and added attractions, reflecting your input from the April 1989 All-Member Survey. This is a meeting tailored to you! It is an opportunity to meet, greet, and share with colleagues having the widest perspective and experience in the profession. It is an opportunity to shop for the support systems you need, get the CLE hours you may not have, and enjoy entertainment. These three days "away from the office" will make you a better lawyer.

Why don't you mark September 13-15 on your calendar for "Spokane - Bar Convention?"

JA Vander Stoep

The Dissolution Decree Goes to

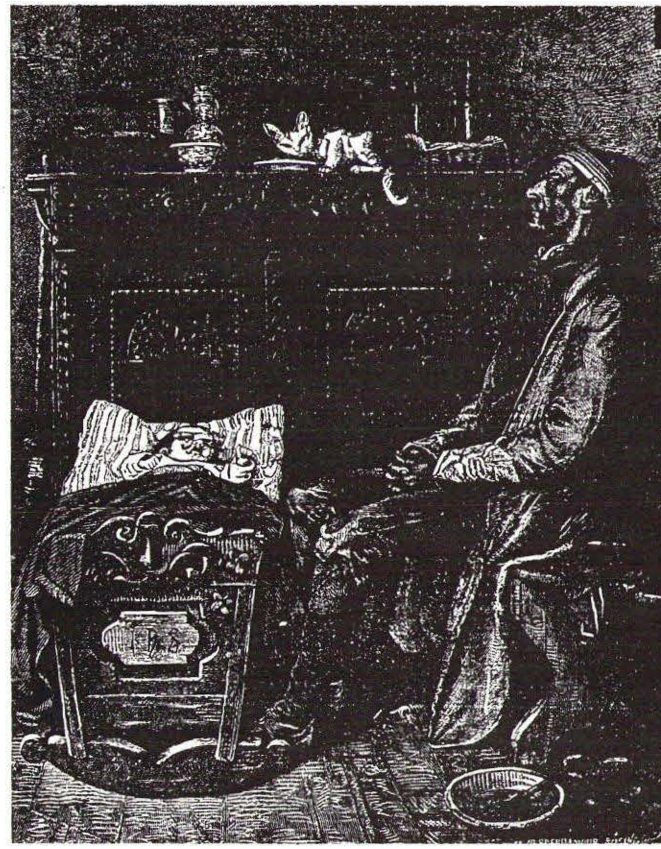
There are few cases that bring out the bitterness and hatred between the parties that divorces do. Most commercial and bankruptcy attorneys will do anything in their power to avoid handling one; most family law lawyers feel the same about bankruptcy. However, divorcés and their progeny are frequently a part of bankruptcy proceedings.

It is important to understand that Title 26, RCW, is designed to foster state law purposes. It contains statutes relating to community property, dissolution actions, and child support. Title 11, U.S.C., is a federal law which is commonly known as the Bankruptcy Code. It takes state law concepts of property and applies them to the creditor/debtor relationship which is being adjusted in the bankruptcy proceedings. It is impossible to completely reconcile these two laws; the best that an attorney can do is understand how one will affect the other.

As one commences the study of this subject, it is important to remember, as the U.S. Supreme Court has pointed out, that the subject of domestic relations belongs to state, not federal, law, *Sims v. Sims*, 175 U.S. 162, 20 S.Ct. 58, 44 L.Ed. 115 (1899), and that there is no federal law of divorce, *DeSlyva v. Ballentine*, 351 U.S. 570, 76 S.Ct. 974, 100 L.Ed. 1415 (1956).

In Washington, property owned prior to marriage and acquired by gift or inheritance is the separate property of the owner. RCW 16.16.010 and .020. Property acquired during marriage is assumed to be community property. RCW 26.16.030. These definitions can be changed by a community property agreement pursuant to RCW 26.16.120, by a premarital agreement, or by the commingling of separate and community assets. *Mumm v. Mumm*, 63 Wn.2d 349 (1963).

Section 541 (references to "Section" are to the Bankruptcy Code unless otherwise indicated) defines property of the bankruptcy estate, generally, as all property the debtor has a legal or equitable interest in along with the interest of the debtor and spouse in community property under sole, equal or joint management of the debtor; this definition is



Highways and Byways to Health, Vol. III, by Chas. A. Goff, Planet Book Houses, Philadelphia, 1889, p. 229.

broad enough to include the separate property of the debtor as well as community property of the couple, even if only one spouse files.

A bankruptcy petition can be either an individual filing, Section 301, or a joint petition, Section 302, if both petitioners are married. The debtors can protect some of their property by electing federal exemptions, Section 522(d), or state exemptions, generally Title 6, RCW. Both spouses must elect the same type. RCW 6.15.050(7). The election by a party of the federal exemptions may mean the loss of the state homestead for the other spouse, even if the spouse does not file bankruptcy; see *In re Homan*, ___ B.R. ___ (9th BAP 1989).

The Bankruptcy Court is a unit of the U.S. District Court; it can hear only matters arising out of or relating to proceedings under Title 11, U.S.C. Its jurisdiction is found in 28 U.S.C. §157 *and* the reference order from the District Court; the bankruptcy courts in Washington appear to have the maximum jurisdiction permissible. State court actions can be removed to the federal courts in a bankruptcy proceeding, 28 U.S.C. §1452, and be remanded back to state courts. Bankruptcy Rule 9027(e).

When a bankruptcy is filed, certain things happen. The first is that an automatic stay of proceedings goes into effect, which generally halts any action against the debtor or property of the estate. Section 362. This stay remains in place until it is lifted, the debtor receives a discharge, or the property is no longer property of the estate. This stay does not protect co-debtors except for consumer debts in Chapter 12 and 13 cases.

The filing of the petition is a bright line. It determines which property and liabilities are subject to the proceedings and which are not. Generally, everything before filing is covered by the bankruptcy case; everything after filing is not affected. Post-petition earnings are not property of the estate in a Chapter 7 case, Section 541, and probably not in a Chapter 11 case, see *Norwest Bank Worthington v. Ahlers*, ___ U.S. ___, 108 S.Ct. 963 (1988); they are for Chapter 12 and 13 cases, Sections 1207 and 1306.

The filing of the petition sets the date which determines what transfers can be set aside. There is a 90-day period prior to the filing in which payments to or for the benefit of a creditor, on an antecedent debt, which allows the creditor to receive more than it would have in a Chapter 7 case, can be set aside; the 90-day period extends to one year for payments to insiders. Section 547. The granting of a security interest to secure an antecedent debt is a preferential transfer. There are no extra protections because the payment was on a nondischargeable debt.

Section 548 allows the trustee to set aside transfers which qualify as fraudulent conveyances. Section 544 allows the trustee to have the status of a bona fide purchaser and set aside transfers that have not been properly perfected.

In 1987, the Washington Legislature passed the Parenting Act of 1987, generally RCW 26.09 and 26.10. This law requires the parties to a marriage to develop a parenting plan for the children in a dissolution action. While this law is primarily designed to develop a relationship between the parties with respect to the children, it includes financial support in the definition of the parenting functions, RCW 26.09.004 (3)(f).

RCW 26.09.050 requires the court to determine the marital status of the parties, make provision for the support of any child, consider maintenance, make provision for the disposition of property and liabilities of the parties and make provision for the allocation of the children as federal tax exemptions. RCW 26.09.080 provides the factors which the court is to consider in dividing the assets and liabilities; it is important to remember that this section requires the court to divide all of the property and liabilities of the parties, both separate and community. The division of the liabilities is not binding upon the creditors as they are not parties to the action, *e.g., Dizard and Getty v. Damson*, 63 Wn.2d 526 (1964).

RCW 26.09.090 provides the factors to be used in awarding a spouse maintenance; while there is no right to alimony in Washington, *Edwards v. Edwards*, 65 Wn.2d 904, 400 P.2d 303 (1965), the courts are aware of the blurring of the line between maintenance and property division, see, *e.g., Thompson v. Thompson*, 82 Wn.2d 352, 510 P.2d 827 (1973), and *Kinne v. Kinne*, 82 Wn.2d 360, 510 P.2d 814 (1973).

Once the amount of child support is set, it can be difficult to modify with respect to previously due installments. RCW 26.09.170. It is possible to modify it with respect to installments coming due in the future. RCW 26.09.175. RCW 26.09.100, as amended in 1988, would imply that the support obligation should be reviewed at least annually. Past-due child support is an account receivable, *Hartman v. Smith*, 100 Wn.2d 766, 674 P.2d 176 (1984), which becomes an asset of the bankruptcy estate, Section 541.

In 1988 the Washington Legislature passed Chapter 275, Laws of 1988, RCW 26.19.001 *et seq*. The purpose of this law is to set uniform child support guidelines for dissolution actions and administrative proceedings. The basis of this law is that the children are entitled to the best support possible considering the financial situation of the parents.

It is important to note that the statute, RCW 26.19.020, only allows a deviation for "extraordinary debts that *have not been voluntarily incurred*," (emphasis added). The division of the assets and debts does not take into consideration the effects of the Child Support Guidelines. Thus, while Spouse A may get the family home and Spouse B saddled with all the debt, neither of these facts is factored into the child support guidelines; rather, they are based upon the total income of the parties.

Section 523(a)(5) provides that alimony, maintenance and child support payable to a spouse, former spouse or child are not dischargeable in bankruptcy.The assignment of a support obligation to a third party makes it dischargeable unless that assignment is to DSHS for entitlement to assistance.

The first question that an attorney is going to be concerned with when the bankruptcy notice arrives is whether the fees still owed are going to be discharged; the second is how the notice will affect what is owed to the client. In Washington the lawyer is primarily going to try to analyze whether a debt is a division of property or an obligation for support. The analysis should include *Stout v. Prussel*, 691 F.2d 859 (9th Cir. 1982), a per curiam decision, where the court was faced with a hold harmless agreement contained in a property settlement agreement, which also made a separate provision for support of the former wife. The court held that the obligation was dischargeable on the facts. This decision is cited more frequently than its holding would appear to merit.

The next major decision is *Shaver v. Shaver*, 736 F.2d 1314 (9th Cir. 1984), where the court found significant support for its decision in the earlier *Stout* decision. After the *Shaver* court stated that the bankruptcy court was not bound by the treatment of the obligation by the state courts, it went on to hold that the court must look beyond the language of the decree to the intent of the parties and the substance of the obligation. Factors to be considered include: 1) whether there is a provision for spousal support, 2) whether the property distribution is support when the circumstances indicate that the recipient spouse needs it, 3) the presence of minor children, 4) the imbalance of the relative incomes of the parties, and 5) whether the obligation terminates on the death or remarriage of the recipient. The decision did not state where a hold harmless agreement would fit in the list of factors.

The next major development was *In re Mac Donald*, 755 F.2d 715 (9th Cir. 1985), in which the court was confronted with a request by the former spouse for a lifting of the automatic stay to allow her to proceed with seeking a subsequent change in the amount of the support. Although it is not clear from the opinion, she apparently was attempting to reopen the original order setting support as opposed to seeking a subsequent change in the amount of the support. The court held that the decision to lift the automatic stay is a discretionary ruling which is reviewed for an abuse of discretion. The court observed that it is appropriate for the bankruptcy courts to avoid the family law area citing judicial economy, judicial restraint and deference to the state courts and their special expertise in the area.

This decision should be read in conjunction with *In re Calhoun*, 715

F.2d 1103 (6th Cir. 1983). In that case the court found that Congress had mandated that the bankruptcy courts fashion a federal law of domestic relations. It went on to hold that each debt assumed by one spouse or for which the spouse is to hold the other spouse harmless must be examined to determine whether it is in the nature of support. It can be read as standing for the proposition that the bankruptcy court has the ability to make a permanent change in the amount of the monthly support payment. While this decision has been criticized, it is probably nothing more than a court taking the *Shaver* and *Mac Donald* decisions and holding that part of the obligation is support and part of it is a property division.

In *In re Stringer*, 847 F.2d 549 (9th Cir. 1988), the court was faced with the first-impression question of whether the automatic stay provisions of Section 362(a) applied to a former spouse who obtained a monthly increase of $100 in child support. The court reversed both the bankruptcy and district courts which had allowed the increase to stand. This decision may make it difficult to obtain an increase in child support during a Chapter 12 or 13 case; it will also impact the attempt of DSHS to administratively set the amount of support. The decision probably does not affect motions seeking changes in custody of the children.

The question of whether attorney fees are a nondischargeable support obligation is a fact question. See *In re Gibson*, 103 B.R. 218 (9th BAP 1989), *Matter of Gwinn*, 20 B.R. 233 (9th BAP 1982), and *Matter of Catlow*, 663 F.2d 960 (9th Cir. 1981).

The courts have been reluctant to expand the nondischargeability umbrella much beyond the attorney for the spouse. The major exception is the guardian ad litem or attorney for the children in the dissolution action. The Ninth Circuit Bankruptcy Appellate Panel, an intermediate appeals court, has held the obligations to the guardian ad litem and doctors to be dischargeable. *In re Linn*, 38 B.R. 762 (9th BAP 1984). While this case is a minority position, it is being followed in Washington. Although no circuit court of appeals has ruled on this issue, it would appear that the *Shaver* decision would give an expansive reading to Section 523(a)(5) and hold the opposite way.

Section 522(f) of the Bankruptcy Code allows the debtor to avoid a judicial lien which impairs an exemption claim. In many cases, Spouse A is given the home and Spouse B is given a lien against it to equalize the property distribution. This lien frequently impairs the right of the debtor to claim up to $30,000 in property as the homestead exemption. The Ninth Circuit held *In re Pederson*, 875 F.2d 781 (1989), that this would be a judgment lien and that it would be avoidable in a bankruptcy proceeding.

Thirteen days after the *Pederson* decision, the Washington Court of Appeals decided *Hartley v. Liberty Park Assocs.*, 54 Wn.App. 434, 774 P.2d 40 (1989), rev. den. 113 Wn.2d 1013 (1989). In this decision, the court held that the spouse had been given an owelty lien, which it defined to be an equitable lien in the nature of a vendor's lien and superior to the claim of a homestead. While *Hartley* was not a dissolution action, it is clear that the Washington courts will try to protect divorce liens from the ravages of bankruptcy.

In an era of two-income families, a divorce has a severe economic impact. Where once there was enough money to support one household and pay the bills, there is no longer enough to support two households, pay child support, and keep the bills current. It is no longer enough for the judge or attorney to simply look at Title 26, RCW, and the Internal Revenue Code when dividing the property and awarding maintenance and child support. Policy decisions which avoid the forced sale of the family home and equalize property distributions with liens on real property must be reexamined. □

Peter H. Arkison is a Bellingham attorney whose practice emphasizes bankruptcy, on which he speaks and writes.

Benefits of Former Spouses of Military Personnel

by **Edwin C. Schilling III**

From 1987 until November 1989, I was the Assistant Staff Judge Advocate of the Air Force Accounting and Finance Center in Denver, Colorado. One of my responsibilities was acting as the approval/denial authority for over 6,000 cases under the Uniformed Services Former Spouses' Protection Act (FSPA). In addition to possessing a working knowledge of the act and regulation, the practitioner must assimilate a surprising amount of information about the military retired pay system to thoroughly protect a client's rights. When I saw how few attorneys understood this legislation, I decided to retire and open a practice as a consultant.

In the course of dealing with members, former spouses and their attorneys, questions frequently arose as to what military benefits, if any, the former spouse might be entitled to. The FSPA, in addition to authorizing direct payment of a portion of a military retiree's pay to the former spouse, extended some base privileges to certain former spouses. The extent of the privileges is found in the FSPA and subsequent amendments.

In the hundreds of calls I received from attorneys, none had thought to interject the benefit issue into the negotiation process. While there is no objective method by which a value can be placed on each benefit, attorneys representing the member could urge the court to recognize the nature and extent of the benefits in setting an equitable award. Counsel for the nonmember spouse could argue, of course, that the benefits are a matter of right under the act and should not be considered by the court.

It is important to realize that the nature of the entitlements cannot be extended by agreement or court order, and orders which purport to grant the former spouse a list of benefits that extend beyond the act are unenforceable and only serve to confuse the issue.

Woman in Girlhood–Wifehood–Motherhood, by Myer Solis-Cohen, 1906, p. 111.

Full Privileges — The "20/20/20" Former Spouse

Full benefits (medical, commissary, base exchange and theater) are extended to an unremarried former spouse when:

1. the parties were married for at least 20 years;
2. the member performed at least 20 years of service creditable for retired pay; and
3. there was at least a 20-year overlap of the marriage and military service.

Concerning medical care: if the former spouse is covered by an employer-sponsored health care plan, medical care is not authorized. However, when the former spouse is no longer covered by the employer-sponsored plan, military medical care benefits may be reinstated.

If a 20/20/20 former spouse remarries, eligibility for the benefits is terminated. If the subsequent marriage is ended by divorce or death, commissary, base exchange and theater privileges may be reinstated. Medical care cannot be reinstated.

This article summarizes the privileges granted and the criteria for entitlement to them; it is current as of December 1989.

Limited Privileges — The "20/20/15" Former Spouse

Divorces before April 1, 1985

A four-year renewable identification card authorizing medical benefits (no commissary, base exchange, or theater privileges) is awarded to an unremarried former spouse when:

1. the parties were married for at least 20 years;
2. the member performed at least 20 years of service creditable for retired pay; and
3. there was at least a 15-year overlap of the marriage and the military service.

Concerning medical care: if the former spouse is covered by an employer-sponsored health care plan, medical care is not authorized. However, when the former spouse is no longer covered by the employer-sponsored plan, military medical care benefits may be reinstated.

Divorces after April 1, 1985 and before September 30, 1988

These 20/20/15 former spouses qualify for medical benefits for two years from the date of the divorce, dissolution, or annulment or December 31, 1988, whichever is later. If the former spouse is covered by an employer-sponsored health care plan, medical care is not authorized. When the former spouse is no longer covered by the employer-sponsored plan, military medical care benefits may be reinstated. However, any reinstatement may not extend beyond the original two-year entitlement.

Divorces on or after September 30, 1988

These 20/20/15 former spouses

qualify for medical benefits for one year from the date of the divorce, dissolution or annulment. If the former spouse is covered by an employer-sponsored health care plan, medical care is not authorized. When the former spouse is no longer covered by the employer-sponsored plan, military medical care benefits may be reinstated. However, any reinstatement cannot extend beyond the original one-year entitlement.

Former spouses who were not at least "20/20/15" spouses do not qualify for any entitlements.

Private Health Insurance

Because it was recognized that many former spouses would be left without medical care, Congress mandated that the Department of Defense negotiate with the insurance industry to develop a plan that would provide continued coverage for former spouses who had been entitled to health care but were no longer eligible. The plan is designed to provide temporary coverage until (s)he becomes eligible to participate in some other health plan.

As a result, Mutual of Omaha has created the Uniformed Services Voluntary Insurance Plan (VIP). The government does not pay any part of the insurance, so coverage is higher and more restrictive than government care. Nevertheless, it should be considered as an alternative to other available coverage because it is a group plan and may be less expensive, and, more importantly in some cases, the qualified party who submits a timely application will be insured regardless of current health.

It is important to realize that the guaranteed insurability provision is in effect only if the former spouse applies within 90 days of the date the military health care terminates.

When representing the nonmilitary spouse who is not in the "20/20/20" category, assistance in the payment of the premiums by the military member should be considered as part of the negotiation for support. And those representing the military member should require that any obligation to pay all or any part of the premiums terminate as soon as the spouse becomes eligible for alternative coverage, for example through an employer or upon remarriage.

Information on VIP can be obtained from the medical benefit counselor at any military medical facility, or by contacting Mutual of Omaha Insurance Company, Attn: U.S. VIP Department, Mutual of Omaha Plaza, Omaha, NE 68175. □

__Edwin C. Schilling III__ is a retired Air Force judge advocate in private practice in Denver, Colorado. He advises lawyers, military members and spouses on military pay issues arising in domestic relations matters. He is a frequent speaker in divorce practice workshops and is a member of the family law sections of the American and Colorado bar associations, the Louisiana bar, and the Colorado Trial Lawyers Association.

Divorce, Money and You: Divorce and Your Financial Future

by: **Linda Fortner**, *CFP and*
Kathleen Cotton, *CFP*

Are today's divorcées going to become the bag ladies of the future? Statistics suggest they will if they don't prepare financially for the devastating effect divorce can have on their futures. Women still are running in last place in this country financially in terms of both net worth accumulation and income production. Three statistics are particularly indicative of the difficulties divorced women and their children face both in Washington state and at a national level.

- Twenty-five percent of white women and 55 percent of black women in the United States have in recent years fallen below the poverty line after their marriages ended.
- Between 1970 and 1980, the percentage of Washington families living below the poverty line and headed by women grew from 32 percent to 41 percent.
- In 1987, 51.5 percent of all poor families in the United States were headed by a woman with no husband present. In 4.8 percent of poor families, the householder was a man. Among all families with a female householder, 46.1 percent of those with children were in poverty.

This adverse economic reality for women and their children has occurred even though Washington community property laws reflect a policy of fair and equitable treatment for each spouse at the time of the divorce. A recent study, "Gender and Justice in the Courts," undertaken at the direction of the Washington State Legislature, found that gender bias does exist and is reflected in the decisions of the Washington state courts. Gender bias is present when decisions are made or actions taken based on stereotypes about the roles and abilities of men and women rather than an evaluation of each situation. For women specifically, the study found gender bias to be present when women who have been in marriages of long duration were granted only short-term "rehabilitative maintenance." The study also found that the real costs of childcare were ignored in setting child support awards.

Three myths or stereotypes concerning women's lives contribute to the problem of getting a truly fair and equitable settlement:

Myth: "Women have equal access to jobs and earning power."

Reality: In fact, women do not. College educated women may never receive as much income as their former husbands did with only a high school diploma.

Myth: "Spousal maintenance is akin to welfare and perpetuates female dependency."

Reality: When a couple makes a joint decision that one spouse — very often the husband — will develop skills, experience, or education to earn more than the other spouse, the study concluded that awards of property and maintenance should be tools to address the imbalance in earning power. Yet the reality in Washington is that women are awarded maintenance less often than the *national average*. Maintenance awards in our state tend to be awarded for a limited duration and then to only 10 percent of the divorced spouses.

Myth: "A divorcée will remarry."

Reality: The economic reality concerning female heads of households is bleak, as the number of female-headed households with incomes below the poverty line swells.

Golden Links in the Chain That Connects Mother, Home and Heaven, ed. Mrs. J.P. Newman, N.D. Thompson Publishing, 1890, p. 127

The following data describe the economic reality for women in our state:

- Women comprised 42.7 percent of Washington's civilian labor force. More than 50 percent of Washington women with children under age six are in the paid work force; 71 percent of all Washington single mothers are employed. (1983-1984 Census Data).
- Three out of five full-time female workers earn less than $10,000 per year.
- Full-time childcare costs in Washington range from $200 to $600 per month.
- The median income for Washington women over 65 was $4,887, one half the median income for men 65 and older.

Attention needs to be focused on the economic consequences of divorce, including important issues such as differences in earning power and professional degrees. Otherwise, divorced women may truly become the bag ladies of the future. □

Linda Fortner *is a certified financial planner, writes a monthly column for the* Kitsap Business Journal *and is co-founder of the Puget Sound Association of Predivorce Consultants.*

Kathleen Cotton *is a certified financial planner and author of* Financial Planning for the Not Yet Wealthy. *She is president of the Puget Sound Association of Predivorce Consultants.*

Victoria, British Columbia: April 20-21, 1990

Present: President Vander Stoep and the Governors. **Also present:** Robert Guile, Treasurer of the Law Society of British Columbia and Robert Johnston, Peter Leask, William Trotter, Benchers, and Ross Tweedale, Assistant Executive Director of the Law Society. **Further present:** Paul Bastine (Legal Foundation of Washington); C.C. Bridgewater (Prosecuting Attorneys' Association); Harold Clarke (WSBA/YLD); Frank Edmondson (Government Lawyers' Association); Cheryl Garland (Washington Women Lawyers); Lucy Isaki (SKCBA Trustees); Mike Larsen (SKCBA/YLD); John J. Michalik (WSBA Executive Director); Judge Dan Phillips (Magistrates' and District Judges' Association; Leland G. Ripley (WSBA Disciplinary Counsel); Judge Thomas Swayze (Superior Court Judges Association); Lindsay Thompson (*Bar News* Editor/ Clark County Trustees); Judge Philip Thompson (Court of Appeals); and Garry R. Zmolek (WSTLA).

After meeting in executive session Friday morning, accounts of which will be given in various of the Governors' individual newsletters, the Board convened in open session, and the President introduced his counterpart in the Law Society of British Columbia, Robert Guile, who is styled their Treasurer. Mr. Guile then introduced four members of the Law Society's board of governors, who are called "benchers." The Law Society members were present throughout the Board's deliberations and contributed remarks and suggestions on items of common interest as the agenda moved along.

Executive Director John Michalik told the Board he had made his annual trip to the state's law schools with the Board of Bar Examiners' chair, Frank Slack, to brief law students on things to come after graduation. He said filings for the four Board seats up for election this spring were still slow, though a number of filings were expected before the April 30 deadline.

Governor Jeff Tolman announced that this year's Poulsbo CLE and dinner will be held August 9. Outgoing Governor Paul Stritmatter of Hoquiam will receive the Small Town Lawyer Makes Good Award; other speakers will include former Washington Supreme Court Justice Robert Utter, Oregon Supreme Court Justice Robert E. Jones, and former Arkansas Governor Sid McMath, who makes people do extraordinary things rather than miss any of his speeches.

Giving Credit Where Creditors Are Due: The Board considered a proposed formal ethics opinion developed in part by the Rules of Professional Conduct Committee and in part by the Interprofessional Committee dealing with what a lawyer should do when a lawyer, with a client's consent, guarantees the payment of a creditor's claim not related to the expenses of litigation, and the client later directs the lawyer not to pay the bill.

The gist of the opinion was that once the client had agreed to payment of the bill, the client was no longer entitled to claim funds necessary to pay that bill as part of any disbursement to the client. An attorney's failure to meet such a commitment would be a violation of RPCs 4.3 and 4.4.

Governor Jim Turner thought the opinion needed reworking in light of existing statutes allowing liens to be claimed for medical services of certain types. Governor Lem Howell moved to send the matter back to the Rules of Professional Conduct Committee. But Governor Don Curran said the matter was a simple one, that the opinion expressed what every lawyer should have known since day one, and urged a vote. Jeff Tolman agreed, saying that the lien issue was a separate issue. The discussion then ranged over whether an ethics opinion should be a sort of syllabus on a particular area of law, adding in things like statutory references as cautions. Turner thought they should, noting that it did not deal with aspects of hold harmless agreements, either. John Slater mentioned various types of state and federal subrogation agreements which could be affected. The vote to refer the opinion back failed 2-7, Governors Howell and Turner voting aye and the other Governors voting no except Governor Ron Gould, who had not yet arrived. The subsequent motion to approve the opinion passed 8-1, Turner opposing.

CLE: To Schedule or Not to Schedule?: WSBA Continuing Legal Education Director Terry Foster appeared with the proposed 1990-1991 CLE program schedule. It was different from past submissions, he noted, in that formerly a great menu of potential offerings was made, from which the CLE staff would make the final cut. Now, in response to past Board members' comments, the CLE program schedule was just that -- a fairly precise listing of proposed offerings. Trouble is, Foster said, sometimes people will come up with ideas in the sections, and we'd like some flexibility to add meritorious programs if they come up without having to come back to the Board of Governors for approval each time. That's a good idea, the Governors thought, and unanimously passed a motion to that effect.

Then Governor Paul Stritmatter moved that when the Association sponsors an out-of-state CLE program, the expenses of speakers ought not to be paid for travel and lodging. He thought such expenses would price the events out of existence, and thought it a bad general policy.

But Governor Jeff Tolman said not covering such expenses would prevent younger lawyers and women lawyers from participating in CLE programs as speakers. Governor Don Curran said there was no need to change policies which had worked well for years and moved to table the matter for 90 days until /Washington Women Lawyers, the Young Lawyers Division and other like groups could be consulted. The motion passed 5-4, Governors Howell, Schultz, Bergsten and Stritmatter opposed.

Convention Report: After a midmorning break the Governors took up several late items not included in the agenda. Jeff Tolman said New Orleans jazz clarinet master Pete Fountain has been signed to play at the coming Association convention as a part of a Mardi Gras-oriented theme party, and that efforts are underway to invite Idaho lawyers to come over and have some fun and get some CLE credits while they're at it.

Awards: Governor Paul Stritmatter told the Board his committee on Bar Association awards is seeking nominations for the half-dozen or so honors given each year at the convention. Executive Director John Michalik's column, elsewhere in this issue, details the awards and related information.

Meditating on Mediation: Wayne Blair, who chairs the Association's Committee on Court Congestion and Delay, wrote to John Michalik suggesting that proposed Court Rule 39.1, pending comment before the Supreme Court, not be implemented at this time but tried out as an experiment though the Office of the Administrator for the Courts. The rule, published for comment in the advance sheets at 113 Wn.2d lvii, would require creation of mediation programs in each county. Questions had arisen about how to handle payment of mediators (the rule doesn't provide for it, but private services do), the training and quality of mediators, whether this should be a local-option rule, and whether the rule embodies the best way to approach case resolution. While the Committee had recommended some sort of look at mediation in rule form, the Court Rules and Procedures Committee had gone ahead and developed a rule, which the Governors had approved last summer and sent on to the Supreme Court.

Michalik said the Court Rules and Procedures Committee opposed making a change, since the rule had gone through all the hoops in good order, and summarized the content of letters the Court had received commenting on the rule. A general discussion followed, in which Governor Steve DeForest suggested that while such a plan works in federal courts, their caseload is much smaller, and that there seems to be a trend toward shifting more of the courts' responsibility for operation of the court system to the bar. There were suggestions that the mediation rule had not been drafted with an eye toward what it would cost litigants to have an extra settlement conference added to every civil case, with attorneys present and briefings required, and that just because King County has a problem doesn't mean the solution needs to be imposed on the whole state. A motion to recommend to the Supreme Court that the rule not be adopted until a trial program has been run was approved unanimously.

Disasters Revisited: The Board again took up the proposed Disaster Response Plan developed so the Association can try to help victims of mass disasters like airplane crashes from being preyed upon by out-of-state lawyers and insurance people. Last meeting, the problem with the plan was that having a "SWAT" team of lawyers go in to help with the plan on site was thought to expose the Association to vast potential liability. Reports were presented to the Board indicating there might be some risk of exposure. What to do?

Act now or study it some more were the favored choices among Board members. John Michalik told the Board information had been sent to Lloyd's seeking a quote on insurance. The President suggested that perhaps each team member could be required to carry his or her own insurance, but other members countered that the Association could be sued on its own for some aspect of the program -- training of members, for example. Governor Steve DeForest thought the exposure light: disasters happen rarely; we'll have some of the best lawyers in the state on the team; there's a practical limit to what kind of advice they could give on site. Governor Don Curran agreed and said the more pressing issue was whether the best lawyers would serve if their service would disqualify their firms from handling any cases arising from such a disaster on either the plaintiff or defense side. Governor Jim Turner raised some objections to the selection of team members.

After a fairly involved discussion, the Board approved an *omnium gatherum* resolution approving the concept of a team and the other elements of the plan, but making adjustments to it to reflect information to come on insurance coverage, to make different arrangements for appointment of team members, to look into the disqualification question, and to generally tidy the plan up for final consideration in July. The motion passed 9-1, Governor Gould strongly opposing on the grounds that the plan, if adopted without a full airing of the liability questions, could imprudently subject the Association to substantial and presently unknown liability.

A New Program, But No Dues Money Involved: Lawyers' Assistance Program Director Andrew Benjamin appeared before the Board to propose the creation of a nonprofit corporation which would develop a fund from which loans could be made to lawyers in the program who need inpatient and other treatment services the program cannot provide. He said past participants had already contributed $2,100 unsolicited for such a fund.

Proposed articles of incorporation and bylaws were reviewed. The board of the corporation would be the advisory board presently in place for the LAP. There was some discussion of technical points, and a tentative proposal to include law students who lacked funds to take the bar exam (that would be a pretty stressful experience, which could impair their eventual performance on it, Benjamin said) was ruled out by the board. Governor Curran wondered if the number of people the plan would help justified all the work required to get it going. But in the end the idea sounded pretty good, especially since there will be no apparent cost to the Association. The Board approved it 8-2, Governors Schultz and Slater opposed.

Wrap-up in Victoria: In other action, the Board heard a report on activities of the Law Society of British Columbia from its Treasurer, Robert Guile; heard reports on the recent meeting of the Superior Court Judges' Association from Governor Ron Gould, on the work of the Judicial Ethics Advisory Committee from member and Ballard lawyer Jay White, on the Legal Foundation of Washington from its president, Spokane lawyer Paul Bastine, and on the selection of an insurance broker to develop a proposal for an Association-endorsed malpractice insurance policy from Attorneys' Professional Liability Insurance Committee chair Harry Schneider. The Board voted to give Kirk-Van Orsdel, Inc., of Des Moines, Iowa, four to six months to develop such a plan.

The Board also rejected a proposal from MBNA America Bank to offer an "affinity" credit card as a member service, and okayed a proposal by the Young Lawyers Division to try and set up an "Operation Uplift" program in Washington. Developed in Minnesota, the plan encourages lawyers to encourage clients to "work off" or redirect some of their fees owed by volunteering for useful civic projects and programs.

Coming meetings: Walla, May 18-19; Port Ludlow, June 15-16; Moclips, July 20-21; Vancouver, WA August 17-18; Spokane, September 13-15 (Association Annual Meeting and Convention; note change of dates).

Erratum: Governor Ronald M. Gould did not attend the Western States Bar conference as reported in the April 1990 "Board's Work."

Nondisciplinary Notices:

Interim Suspension: Spokane attorney **John O. McLendon** (admitted 1969 was ordered suspended from the practice of law on February 27, 1990, based upon his conviction for first-degree theft, pending the outcome of disciplinary proceedings now pending against him. Interim suspension is pursuant to RLD 3.1 and is not a disciplinary suspension.

Disciplinary Notices:

Suspension and Censure: Bellevue attorney **Kenneth B. Rice** (admitted 1973) was ordered suspended from the practice of law on February 6, 1990 for a period of two years, with the effective date of suspension being July 1, 1988. The suspension order was based upon a hearings officer's findings that, following his 60-day suspension in 1985, Rice prepared and signed a false statement for submission to a court and failed to timely file a statement of compliance with RLD 8.3 with the Bar Association.

The reinstatement of Rice to the practice of law is conditioned upon a psychiatric report that he has no psychiatric or emotional problems which would interfere with his practice of law. Upon reinstatement, Rice will be placed on probation for two years pursuant to RLD 5.2(a), subject to supervision and continued treatment or counseling as determined by his psychiatrist.

In addition, Rice stipulated to a Censure for failing to recognize a conflict of interest in his representation of two clients.

Disbarment: Seattle attorney **Paul J. Layton** (admitted 1973) was ordered disbarred by the Supreme Court on February 23, 1990, pursuant to a stipulation following Layton's conviction of first degree theft. Layton stipulated that he had converted client funds to his own use and had committed other acts of misconduct.

In addition, Layton was ordered to make restitution of more than $11,000 to his clients.

Judicial Admonishment: Pacific County District Judge **Douglas E. Goelz** has been admonished by the Commission on Judicial Conduct by order dated February 2, 1990. The admonishment was issued pursuant to a stipulation and agreement pursuant to WAC 292-12-010(6) for violation of Canons 1, 2, 3(C)(1)(c), 3(c)(1)(d)(iii) and 5(C)(1) of the

Code of Judicial Conduct. The parties stipulated that while serving as a part-time District Court judge of Pacific County, Washington, on December 8, 1988, Goelz entered into a contract with the Pacific County Prosecutor's Office to act as an attorney handling paternity cases in Pacific County. The Commission found Goelz's conduct an inadvertent, though technical, violation of the Canons and cautioned him not to continue such conduct.

Judicial Admonishment: Asotin, Garfield and Columbia County Superior Court Judge **John M. Lyden** has been admonished by the Commission on Judicial Conduct by order dated March 2, 1990. The admonishment was issued pursuant to a stipulation and agreement pursuant to WAC 292-12-020(6) for violations of Canon 3(A)(5) of the Code of Judicial Conduct. The parties stipulated that a delay by Lyden in making a decision on a motion for reconsideration constituted a violation of Canon 3(A)(5) because he took more than 90 days to render the decision. The Commission found Lyden's conduct a technical, though inadvertent, violation of the Canons and cautioned him not to repeat such conduct.

Public Notices:

King County Courts Announcement: New King County Local Rule 4(a) & (b) directs that the Clerk of the King County Superior Court prepare and file an "Original Case Schedule" for specific civil/domestic cases filed after January 1, 1990.

When necessary, the original case schedule due dates may be amended. King County Local Rule 4(c) states in part that the party requesting the amendment shall prepare and present to the court for signature an amended case schedule, which the party shall promptly file and serve on all parties. The motion shall include a "proposed amended case schedule".

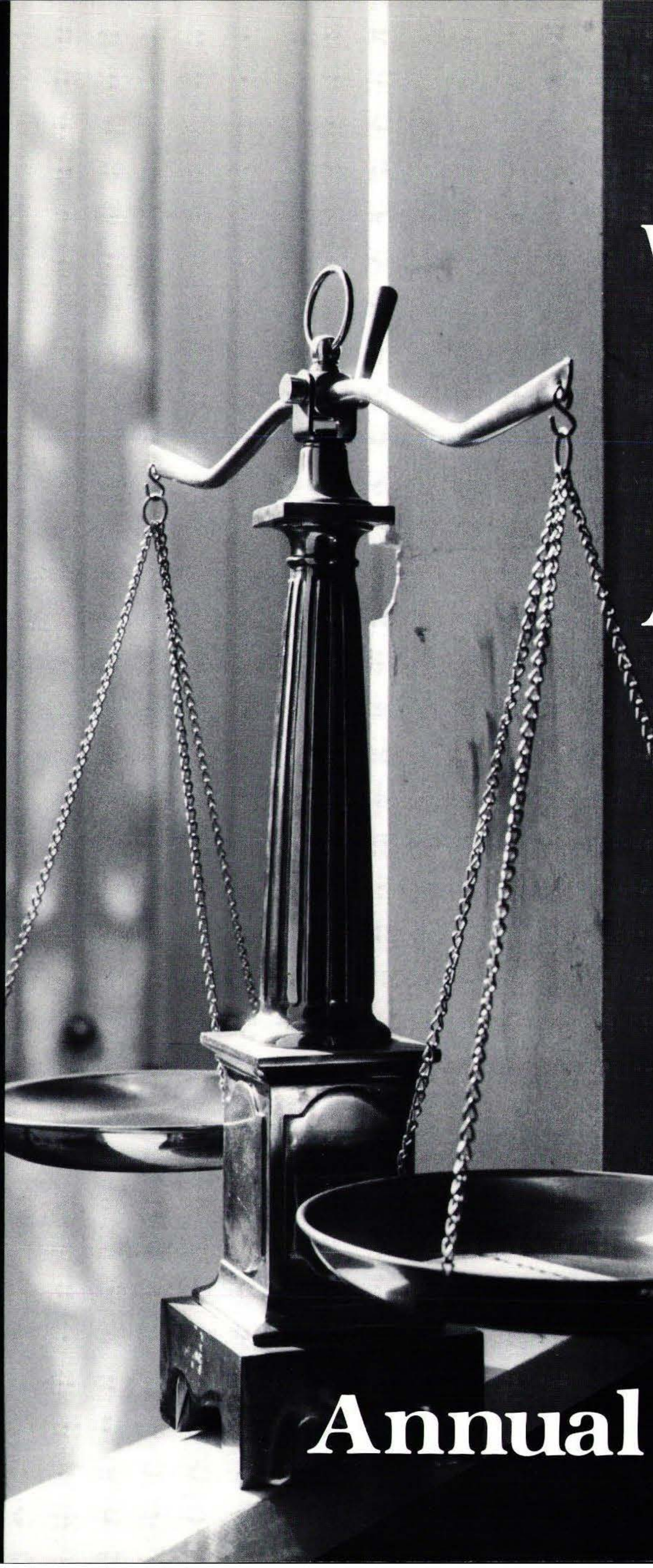
The following information will allow parties to calculate the due dates for: 1) any case to be filed on a future date; and 2) any due dates that must be amended for specific deadlines as described on the original case schedule.

All due dates are calculated based upon either the *File Date plus* a specified number of weeks or the *Trial Date minus* a specified number of weeks.

If the due date falls on a weekend, court holiday or judicial conference day, the due date will automatically move forward to the next judicial work day.

Standard Civil Case

Filing .... File Date (F)
Confirmation
of Service .... F plus 4 weeks



Washington State Bar Association 1990

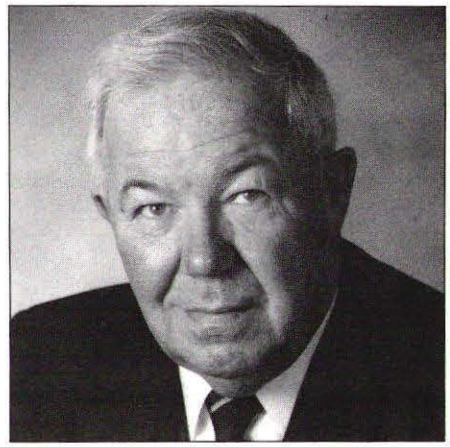
Annual Report

WASHINGTON STATE BAR ASSOCIATION

Washington State Bar Association

1990 Annual Report

Introduction



James A. Vander Stoep

By the winds of fate and circumstance it is my pleasure and honor to be the 100th President of the organization known as the Washington State Bar Association. In that capacity, and as we move into our Second Century, it is my duty and pleasure to report to you on the activities of your Association.

The activities and developments that I report on to you in the following pages are but the tip of the iceberg. It would take many more pages to provide even brief overviews of all of the activities this Bar Association engages in and all of the developments that have occurred in the past year. It would take volumes, not just pages, to go beyond brief overviews and provide full explanations of all of those activities and developments. However, with those caveats I am pleased to present this *Report* for your consideration and information.

Retrospectives: Commission on Judicial Conduct and the Report of the Novack Commission

At this time a year ago, and as reported upon by then State Bar President Betty Bracelin, the Association and each of us as lawyers were concerned with proposals potentially impacting judicial conduct/misconduct and the contingent fee system. A brief follow-up on those two issues is in order to complete the record.

1989 was a year of high "visibility" for the Commission on Judicial Conduct, stemming, in large part, from events occurring in August of 1988 when King County Superior Court Judge Gary M. Little took his own life on the eve of publication of newspaper stories concerning his alleged sexual misconduct before he became a Judge. The Commission and its processes came under heavy scrutiny, with many proposals advanced to "clarify" or "correct" what some perceived to be flaws in the system. As we all now know, the forces of compromise and reason prevailed; a Constitutional amendment was passed by the voters last fall which provides for some restructuring of the Commission and a controlled "opening up" of some of its processes. Our lawyer-legislators and many other persons, lawyers and nonlawyers alike, played major roles in achieving a review of the system and the implementation of changes that make sense, without giving in to overreaction and unnecessary major surgery-type approaches.

On another front, the Supreme Court determined not to adopt the recommendations of the Novack Commission relating to attorney fees. As you know, the Board of Governors had very carefully outlined and stated its opposition to these recommendations in a detailed report to the Supreme Court. We believe and know that that position was a major factor in the ultimate decision. Our opposition was also thoughtful in that we suggested to the Court a series of potential "alternatives" designed to clarify fee practices and provide better attorney and public education in fee matters. I am pleased to report to you that, while not required to do so, we have moved ahead with implementing a number of those"alternatives" and others will return to the Board's Agenda this spring. That, of course, is nothing more nor less than our acceptance of continuing responsibility in these areas.

Celebrating a Centennial

Last September in Whistler, British Columbia we marked quite a singular event in the history of the legal profession in this corner of the world: Our 100th Annual Meeting and Convention.

It was quite an event, as we marked the Centennial of what thirty-five lawyers started in Olympia at a point just prior to statehood for the then Washington Territory. The Whistler Convention had many highlights, including the premiere of our Centennial videotape program "I DO SOLEMNLY DECLARE...." That lasting historical tribute was a project headed by then Board of Governors' member Ed Shea of Pasco. Ed and those who worked with him on this 45-minute program proceeded with a fine historical eye and developed a high-impact program with relevance not only at the Convention but for years to come.

Since last September, "I DO SOLEMNLY DECLARE...." has been "on tour" -- with showings at various local bar association meetings across the state and many more scheduled this spring. It is a proud legacy for us as we move into our Second Century and as one of the achievements of the past year I doff my hat to Ed and his crew for a job well done in creating a new bit of our history.

Call to the Bar --Admissions

It is likely that the *active* membership of the Washington State Bar Association will pass 16,000 by the end of 1990 and that total membership (counting inactive members and judges) will exceed 18,000 by that time. This represents a continuation of the membership growth patterns of recent years and our Executive Director, John Michalik, predicts that the trend will continue and be basically "flat" for the next three or four years.

John's predictions seem to be borne out by the current statistics. For example, we had over 600 aspiring Washington attorneys sit for the Winter 1990 State Bar Examination this past February. That is a record for a Winter Exam and John tells me that 900 applicants for the coming July, 1990 Exam would not be a surprise.

The growth in our Bar (as noted in the graph accompanying this section) is substantial. That growth brings with it a series of pressures on individual, young lawyers seeking to make a living in their chosen careers, and on the profession as a whole in adjusting to member needs and developments. I also believe that this growth brings with it some often-ignored opportunities to improve the practice and the delivery of legal services. How we -- individually and collectively -- adjust to the pressures and opportunities will play a major role in defining the profession and the law in the 1990s.

Admissions by Year

1971	323
1972	415
1973	574
1974	545
1975	624
1976	778
1977	730
1978	769
1979	840
1980	835
1981	854
1932	793
1983	878
1984	963
1985	686
1986	1,078
1987	902
1988	857
1989	872

Pro Bono Services

Two years ago in these *Annual Report* pages then State Bar President Jack Dean presented a preliminary report on what he characterized as "the most important project" in his year as President: Creation of an effective, statewide pro bono program. "Cornerstones" of that program were to include central coordination and services support for local bar association efforts; a strengthened State Bar effort; and continuing financial support from IOLTA funds through the Legal Foundation of Washington.

Last year at this time my predecessor, Betty Bracelin, was able to report to you on the real progress that had been made in laying those "cornerstones". That progress included a networking relationship between the Association and the Foundation; the establishment of a WSBA staff position to provide direct assistance and support for local bar programs; the creation of totally new programs in a number of counties, including my home base in Lewis County; and the astounding growth in the number of Washington lawyers participating in formal pro bono programs --- with, for example, nearly 100% of the active practicing Bar in Benton and Franklin counties involved in pro bono activities and 80% participation rates not uncommon in other counties.

This year I am really pleased to report "the beat goes on" and the commitment remains strong. It was my pleasure and opportunity to testify at a hearing of our Washington State Senate Law and Justice Committee last fall which, among other things, was reviewing the concept of *mandatory* pro bono. Chief among the points I was able to make in support of our current, voluntary system was the tremendous level of participation we have across the state by lawyers willing -- at a level unmatched by any other profession -- to donate their services to aid the less fortunate. The figures are remarkable; we are approaching having 4,000 Washington lawyers involved in formal pro bono programs with, I know, countless thousands of other hours of lawyer time being donated informally to pro bono and other community services.

We must continue this effort and the State Bar Association must continue to be the leader. I am proud that we are doing just that in a variety of ways, two of which deserve some quick mention.

In November of 1989 the Board of Governors adopted a formal Resolution urging all WSBA members to increase their pro bono participation by spending at least 30 hours each year in providing "public interest legal service" -- defined as including not only direct service to the poor but also civic, charitable and public service activities that improve the law, the legal system, and the legal profession. This is a Resolution that the Board is committed to implementing and a call to service that each of us should take individually and seriously.

On a second front, we now have in place a special Domestic Relations Task Force charged with looking into ways and means of addressing the most critical area of unmet legal needs for the poor. Pro bono legal services in the family law area are lagging. Many of us have little practice experience in dissolution, support and custody matters and naturally shy away from taking such cases as pro bono volunteers. We must explore and define solutions here, ranging from simplification of procedures to, perhaps special training in "how to do" a pro bono family law case. I am confident that this Task Force will explore the alternatives. I am confident the Association will find solutions to the problems. And I am confident that we will continue, year-by-year, to build on our organizational and individual pro bono commitments.

Lawyers' Assistance Program

I do not think that there is any program we have developed in recent years that stands as a greater accomplishment and greater member service than our Lawyers' Assistance Program (LAP).

LAP is nothing more nor less than a direct member service: a program designed to provide professional, confidential assistance to those of our members needing help in times of personal trouble and crisis. It is a program which combines a professional staff, headed by lawyer-psychologist Dr. Andy Benjamin, with a working referral group of Peer Counselors -- volunteer lawyers who have been specially trained to be of immediate and continuing assistance to other lawyers who need their help.

Our LAP officially opened its doors in August of 1987 and is now well into its third full year of operation. The Program continues to respond to the needs of Washington lawyers at a remarkable pace. In its first year LAP served one percent of our active membership; no other similar bar association program in the country has come close to achieving this result in its first year. In the Program's second year the caseload increased by 41% and, very significantly I think, the percentage of total cases which were self-referrals (basically, attorneys voluntarily coming to the Program for help) rose to 65%. In the first two years combined, LAP served the needs of 347 Washington lawyers.

Numbers are, obviously, only a part of the story. As the Program has developed its base of service has expanded. I think many of us assume that those seeking help through LAP must necessarily be members with drug and/or alcoholism problems. In actuality those cases account for only about one-half of the total. A large percentage (56%) of the LAP cases involve mental problems -- depression, anxiety, stress, old-age impairment, etc. LAP has also provided assistance in cases ranging from Alzheimer's to anorexia to marital problems to frustrations of every nature. It really is hard to calculate the value and service given; particularly when you realize that without LAP many of the persons served would have continued through life without knowing where to turn for help.

A disturbing development that has arisen in the second and third years of the Program has been the increase in the percentage of basically indigent clients who also lack any health insurance. Currently, one quarter of the Program caseload consists of indigent lawyers. LAP is, because of this lack of funds and lack of health insurance, unable to refer these clients to other sources for help. In these cases our professional staff provides the direct services needed to help these lawyers. This "indigency factor" is perhaps symptomatic of the sorts of depths that impairments of various types can create. While we should be proud that we have the staff to meet that challenge and provide the direct assistance, the burden is enormous and growing.

In process, under study by the LAP Steering Committee, is a potential solution to the indigency problem: creation of an independently financed, revolving loan fund to provide financial assistance to indigent clients in order that they can afford the services that they need. I expect this proposal to reach the Board of Governors this spring and I personally view this as another opportunity for us on the LAP trail.

As we explore that opportunity we should not lose sight of the fact that, as in so many other areas, this Association is by *any* gauge or measure the nationwide leader in lawyers' assistance programs. We continue to serve as the model, and our staff continues to provide consulting and organizing services to other state and local bars establishing programs on our model.

Being the "model" is great. Even greater -- by far -- is our continuing commitment, opportunity and now our accomplishment in helping to restart and clear up the lives of our brothers and sisters during dark and trying personal times.

In Washington -- as in all other states -- "impaired" lawyers are often involved in the discipline process and are the cause of many demands on client indemnity programs. The Lawyers' Assistance Program has in many instances intercepted and headed off lawyers who would otherwise probably become involved in one or both of those areas. The benefit is not limited to the lawyer and the profession -- it extends to family, clientele and the public at large.

When I have the pleasure of talking with a lawyer who is truly pleased to serve as a peer counselor and assist a lawyer through the difficult times that parallel those that the peer counselor personally experienced -- it is a moment that makes one proud of the Program.

When I get letters and phone calls from lawyers around the state who personally attest to the benefit they have received from LAP -- I know it is beneficial and most worthy.

Association Finances

The present financial position of the Washington State Bar Association is strong. This *Annual Report* includes the financial statements for fiscal 1988 and 1989, as audited and examined by our independent auditors, BDO Seidman. I believe that those financial statements are basically self-explanatory in terms of the strong and clear picture they paint. As you will note, the auditors have given the Association an unqualified-opinion letter, reflecting, as you know, their satisfaction with the State Bar's financial methods and procedures, the presentation of the financial statements, and other matters reviewed in such an independent audit process.

I would like to draw your particular attention to the *Statement of Revenues, Expenses and Changes In Fund Balances* contained in the audit. This represents a capsule picture of all Association revenues and expenses for the fiscal year and is particularly revealing in terms of marking our continuing financial progress. As you will recall, fiscal 1987 and fiscal 1988 were years in which the Association incurred some fairly substantial operating "deficits". The deficit at the end of fiscal 1988 was some $164,035. During 1989 we made what any observer would characterize as a remarkable reversal -- not only wiping out that deficit but also generating an added surplus of some $152,348. That $316,383 "swing" is the result of tremendous efforts by the Bar Staff and by the Board of Governors Budget Committee, as chaired in 1989 by Julie Weston. The bottom line of all of this is a strong financial base for the future. We have weathered what, for us, were a couple of "down" financial years and have, while moving through that process been able to stabilize our situation without in any way affecting the quality of our programs and services; to the contrary the period is marked not only by financial stability and strength but also by program growth and development.

Washington State
Bar Association
Statement of
Expenses by Activity
Fiscal Year Ending
September 30, 1989

Revenue-Producing Activities	
Continuing legal education	
Seminar and program operations	$1,459,821
Mandatory CLE	109,082
Bar examination and admissions	494,248
Bar News	381,520
Sections	372,599
Convention	163,817
Resources	107,483
Lawyer referral service	88,571
Other Activities	
Discipline	786,099
*Public affairs	421,230
*Office expense, miscellaneous activities and special projects	310,321
Committees	180,244
Legislative program	153,067
*Spot audit program	147,873
*Lawyers' assistance program	142,540
*Young lawyers division	100,241
Pro bono/local bar programs	74,859
Conferences and meetings	74,654
*Legal intern/law clerk programs	57,097
Court rules	54,293
*Clients' security program claims	51,748
ABA & western states	33,335
	$5,764,742

*These asterisked activities each produce a certain, relatively minor amount of income.

There is another, nonaudit statement that is of interest and that is the *Statement of Expenses By Activity* set out below. This Statement sets forth the various major activity areas of the Association and the total costs attributable to each. This represents a combination or totaling of direct and allocated overhead expenses (where appropriate) to specific activities. For example, on the *Statement of Revenues, Expenses and Changes In Fund Balances* you will find bar examination and admissions expenses listed at some $337,892 for fiscal 1989. That, however, covers only direct (printing, facilities rental, etc) expenses in that area and does not take into account items such as allocable rent, salaries, postage, etc. When those allocations are made, the result is the total figure appearing in the *Statement of Expenses by Activity* -- presenting a picture of the overall Association financial commitment in any given area, such as bar examination and admissions. Again, the *Statement of Expenses By Activity* is a nonaudit statement -- while our independent auditors review the basis for allocations made and the reasonableness of those allocations, they do not test the figures in the same manner that they do the required audit statements.

Service to the Profession

Theodore Roosevelt once said that "Every man owes part of his time to the profession in which he is engaged." A return of service and contributions to the common good are hallmarks of any profession and none more so than ours. I am impressed, as I travel the state as your President and as I consider the activities of this Association, with the enormous amount of time and effort that lawyers put in to what we do as an Association.

In that regard, consider for a moment just the following few "facts and figures":

*The Association has 29 standing committees, involving over 600 volunteer lawyers in a variety of important areas. It is estimated that over 13,000 volunteer hours are donated each year in connection with standing committee meetings and activities.

*337 WSBA members serve as volunteer Special District Counsel in our disciplinary system, and another 250 serve as arbitrators in our Fee Arbitration program. Each of the 19 WSBA Sections and, of course, our very active Young Lawyers Division has an internal committee structure and a series of activities involving the participation of hundreds of lawyers and a commitment of time which, frankly, is staggering though incapable of calculation.

*In our Continuing Legal Education program (which continues to be one of the foremost post-graduate legal education programs in the nation) over 700 lawyers and their support staff annually donate in excess of 50,000 hours at an estimated, conservative value of over $4 million.

*One of the real strengths of our Lawyers' Assistance Program rests in the 80 volunteer Peer Counselors, who not only have donated the time to be specially trained in counseling but continue, across the state and on an "on call" basis, to serve those members in need of assistance.

Those are brief outlines of only five of the many areas where the efforts of the membership provide the fuel that makes the engine of this Association run. I think Theodore Roosevelt would be proud of Washington lawyers and the amount of time so many do return or put into their profession.

I share that pride but I also pose to each of you the question of how you have or will meet the professional obligation of which Roosevelt spoke. I sound the call again to get involved -- the opportunities, at the State Bar level and at the level of your local county bar association, are there for all.

Discipline

There are few areas of our responsibility and effort which are of as great importance to the profession and the public as the area of lawyer discipline. We expend a considerable amount of our effort and budget -- and all at our own expense through member dues -- in professional regulation.

This is necessary because of the volume and complexity of the problems we deal with. In 1989 we received 1,874 complaints against lawyers. That works out to over seven complaints received every working, business day. Those 1,874 complaints represented a 4.4% increase over the number of complaints received in 1988, continuing what has become a basically continuous upward trend in recent years.

Clearly, a significant percentage of the complaints received do not ultimately prove to involve lawyer misconduct. However, every one of those complaints is received and investigated. At times I and members of the Board of Governors hear from a member who has been asked to respond to a complaint which has been filed and which the member feels is, for whatever reason, so "spurious" as to be unworthy of attention. In cases like that we sometimes hear the refrain that "I can't believe you'd investigate this" or "Why wasn't this just thrown in the trash!" We don't throw them in the trash; we do investigate every one; and, in the final analysis, that is not only our duty but our obligation to the public and complainants.

I believe that the manner in which our Office of Disciplinary Counsel handles complaints received is both thorough and efficient. Given the scope of our resources I think we operate well and with due speed. I also am certain that complainants, for the most part, have an acceptable feeling of satisfaction that their concerns are fully investigated, regardless of either the genesis of the complaint or the disposition. In 1989 our Office of Disciplinary Counsel closed, by dismissal or through disciplinary action, 1,608 cases drawn from those complaints filed in 1989 and previous years. Given the numbers involved I believe that is a solid record and certainly reflects a system which is not burdened by the backlogs and delays which have hindered disciplinary systems in other states and subjected those systems to criticism and upheaval. No system is perfect, and in any jurisdiction the media, and others, will occasionally latch on to a case here and there where the result or the length of investigation time seem questionable or disproportionate. That is probably inevitable in any system processing as many items as we do but I am confident that our record stands the test across the board.

One final comment in this area. Given the number of complaints filed it is -- if you deal in pure averages -- the case that 12% of us can expect to be the subject of a complaint each year. If you fall in that category, deal with the situation coolly and directly and, above all, cooperate in the investigation and with State Bar Counsel. Failure to cooperate in such an investigation is in and of itself a disciplinary offense and a heedless and needless one.

Staff

This *Annual Report* that undertakes to report on the programs and activities of the Association would not be complete without reference to what makes it all go -- the staff.

Our Executive Director, John J. Michalik, was the CLE Director of our Association before he assumed his present position in 1981. He is extremely efficient and the only comment in his most recent evaluation that had a negative note was that he works too hard and does not take enough time off.

John supervises a staff of 59 employees, and they are the real key to the success of the Association. Ours is a smaller staff than those of our immediate neighboring states when measured by staff person per member of the Association, but it makes up for numbers by total dedication.

A Final Word ...or Two

In 1950, after passing the Washington Bar Examination, my wife Suzi and I moved to Chehalis where I associated with A.A. Hull and Grant Armstrong. The firm at that time was known as Hull & Armstrong and it traces its roots back to 1882. One of the firm's original founders was O.E. Harmon who, in 1889, stayed at home but sent his proxy with other Chehalis lawyers who attended the first and organizational meeting of the Washington State Bar Association in Olympia. As many of you know, A.A. Hull served on the WSBA Board of Governors from 1933-1939 and, for a six-month period, served as acting State Bar President. Grant Armstrong served as State Bar President in 1964-1965, following a three-year term on the Board of Governors.

With that bit of history in mind, I think I may be permitted to indulge in the proposition that I have a certain long-range perspective on the legal profession in this state and the Washington State Bar Association in particular. From that perspective or vantage point I can report to you that the "view" is strong and clear. This active and vital organization continues to be in the forefront as your voice; as your representative; as the provider of services to its members and the public; and as a performing leader in every phase of its activities. That, and so much more, are matters of intense pride to me and they should be to each of you.

In the 40 years that I have been a lawyer, this Bar Association has been served by an unbroken string of outstanding Presidents whose accomplishments in service to the profession and the public present an unrivaled record. There is no doubt but that it is the proudest achievement of my professional career to have joined the company of Hull, Armstrong and my 97 other predecessors and to have been given the opportunity to serve as your President. A greater honor no attorney could hope to receive.

James A. Vander Stoep
President

BDO SEIDMAN

1300 Dexter Avenue N., Suite 200
Seattle, Washington 98109
Telephone: (206) 284-2044
Fax: (206) 286-3159

Accountants and Consultants

Independent Auditors' Report

To the Board of Governors
Washington State Bar Association
Seattle, Washington

We have audited the accompanying balance sheets of the Washington State Bar Association as of September 30, 1989 and 1988, and the related statements of revenues, expenses and changes in fund balance and cash flows for the years then ended. These financial statements are the responsibility of the Bar Association's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with generally accepted auditing standards. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the Washington State Bar Association at September 30, 1989 and 1988, and the results of its operations and its cash flows for the years then ended in conformity with generally accepted accounting principles.

BDO Seidman

December 15, 1989

INTERNATIONALLY BDO BINDER

Washington State
Bar Association
Balance Sheets
September 30, 1989
and
September 30, 1988

Assets

Current:		
Cash, including certificates of deposit of $900,000	$1,273,601	$1,142,865
Trust account deposits	534	15,440
Receivables		
Trade	29,959	41,662
Interest	25,647	25,228
Other	13,845	9,815
Inventory		
Supplies	46,852	37,583
Deskbooks and manuals	147,865	106,897
Deferred costs and prepaid expenses	142,507	99,732
Total current assets	1,680,810	1,479,222
Property and equipment (Notes 1 and 2), net of accumulated depreciation and amortization	349,114	376,676
	$2,029,924	$1,855,898

Liabilities and Fund Balance

Current liabilities:		
Accounts payable	$ 387,442	$ 638,581
Accrued expenses	129,576	134,251
Trust account liability	534	15,440
Current maturities of obligations under capital leases and equipment contract (Note 2)	47,352	40,707
Current portion of deferred compensation (Note 3)	27,500	25,129
Unearned fee income	328,160	165,953
Total current liabilities	920,564	1,020,061
Obligations under capital leases and equipment contract, less current maturities (Note 2)	32,422	81,359
Deferred compensation, less current portion (Note 3)	211,416	238,916
	1,164,402	1,340,336
Deferred dues revenue	713,174	679,597
Fund balance (deficit)	152,348	(164,035)
	$2,029,924	$1,855,898

See accompanying summary of accounting policies and notes to financial statements.

Washington State
Bar Association
Statements of Revenues, Expenses and Changes in Fund Balance
Years Ended September 30, 1989 and September 30, 1988

Revenues:		
Membership dues	$2,877,632	$2,644,360
Continuing legal education	1,627,517	1,243,242
Bar examination fees	583,118	397,550
Sections	270,889	241,036
Bar News	255,525	265,572
Interest earned	127,675	102,036
Convention	118,194	125,424
Other income	101,053	85,299
Lawyer referral services	51,876	64,763
Bar journal directory	43,914	52,701
Young lawyers division	16,546	9,899
Clients' security program income	7,186	4,981
Total revenues	6,081,125	5,236,863
Expenses:		
Salaries	1,667,464	1,549,192
Continuing legal education	1,054,280	795,800
Payroll taxes and benefits	392,041	361,011
Rent and utilities	339,809	322,975
Bar examination and admissions	337,892	296,121
Sections	300,282	260,518
Bar News	264,506	252,719
Public affairs and public relations	216,698	171,110
Postage, printing and office expense	195,215	221,964
Convention	163,817	232,916
Conferences and meetings	139,802	164,861
Equipment rent and maintenance	120,828	97,466
Committees	84,429	107,104
Bar journal directory	77,706	77,345
Young lawyers division	71,145	77,247
Depreciation and amortization	63,784	58,728
Clients' security program claims	51,748	25,747
Professional fees	38,645	59,221
Discipline	38,239	55,736
Interest	34,637	40,463
Insurance	33,138	38,235
Legislative activities	32,119	38,793
Lawyer referral service	24,713	34,210
Lawyers' assistance program	21,805	17,620
Total expenses	5,764,742	5,357,102
Revenues over (under) expenses	316,383	(120,239)
Fund balance (deficit), beginning of year	(164,035)	(43,796)
Fund balance (deficit), end of year	$ 152,348	$ (164,035)

See accompanying summary of accounting policies and notes to financial statements.

Washington State
Bar Association
Statements of Cash Flows
Years Ended
September 30, 1989
and
September 30, 1988

Increase (decrease) in cash —

Cash flows from operating activities:		
Cash received from membership dues and other activities	$ 6,160,937	$ 5,250,926
Cash paid to suppliers and employees	(6,019,177)	(5,211,972)
Interest paid	(34,637)	(40,463)
Interest received	127,256	97,955
Net cash provided by operating activities	234,379	96,446
Net cash from investing activities:		
Acquisition of property and equipment	(36,222)	(32,741)
Net cash used by investing activities	(36,222)	(32,741)
Cash flows from financing activities:		
Payments on capital leases and equipment contracts	(42,292)	(36,773)
Payments on deferred compensation	(25,129)	(22,964)
Net cash used by financing activities	(67,421)	(59,737)
Net increase in cash	130,736	3,968
Cash and cash equivalents, beginning of year	1,142,865	1,138,897
Cash and cash equivalents, end of year	$ 1,273,601	$ 1,142,865
Reconciliation of revenues over (under) expenses to net cash provided by operating activities:		
Revenues over (under) expenses	$ 316,383	$ (120,239)
Adjustments to reconcile revenues over (under) expenses to net cash used for operating activities:		
Depreciation and amortization	63,784	58,728
Change in assets and liabilities affecting operations:		
Decrease (increase) in receivables:		
Trade	11,703	15,682
Interest	(419)	(4,081)
Other	(4,030)	1,716
Increase in inventory:		
Supplies	(9,269)	(2,429)
Deskbooks and manuals	(40,968)	(12,240)
Decrease (increase) in deferred costs and prepaid expenses	(42,775)	18,284
Increase (decrease) in accounts payable and accrued expenses	(255,814)	40,608
Increase (decrease) in unearned fee income	162,207	(24,972)
Increase in deferred dues revenue	33,577	125,389
Net cash provided by operating activities	$ 234,379	$ 96,446

See accompanying summary of accounting policies and notes to financial statements.

Washington State
Bar Association
Summary of Accounting Policies

Deferred costs

Deferred costs are primarily expenses associated with the production of seminar materials. Recognition of these expenses is deferred until the related seminars are presented, usually in the subsequent year.

Property, equipment and depreciation

Property and equipment are stated at cost. Depreciation is computed over the estimated useful lives of the assets, generally five to ten years, using the straight line method.

Deferred dues revenue

Dues revenue is recognized by the Bar Association ratably over the applicable calendar year membership period. Accordingly, dues collected during the Bar Association's fiscal year which relate to the fourth quarter of the membership period are included as deferred revenue in the financial statements.

Unearned fee income

Seminar registration fees are recognized as revenue in the year in which the related seminars are held. Unearned fee income relates to fees collected for seminars to be conducted in the subsequent year.

Income taxes

The Bar Association is an organization exempt from federal income taxes.

Cash flows

For purposes of reporting cash flows, the Bar Association considers all certificates of deposit to be cash equivalents.

Financial statement classifications

Certain amounts in the 1988 financial statements have been reclassified to conform to 1989 classifications.

1. Property and Equipment

Property and equipment consists of the following at September 30:

	1989	1988
Furniture and equipment	$ 642,987	$ 611,131
Leasehold improvements	9,750	5,384
Autos	18,943	18,943
	671,680	635,458
Less accumulated depreciation and amortization	(322,566)	(258,782)
	$ 349,114	$ 376,676

Depreciation and amortization expense totalled $63,784 and $58,728 for the years ended September 30, 1989 and 1988, respectively.

2. Lease Commitments and Equipment Contracts

The Bar Association is committed under various operating lease agreements for office space, equipment and an automobile, and under capital leases and an equipment contract for equipment and an automobile. Effective December 1, 1986, the Bar Association entered into a ten year noncancellable lease with two five-year renewal options for the use of new office space in Seattle. The Bar Association also entered into a two year lease for office space in Olympia, effective March 1, 1988. Terms of the equipment and automobile agreements vary from three to five years, expiring through 1991, and include interest rates which range from ten to twelve percent.

Following is an analysis of property under capital leases and equipment contract by major classes:

	Assets Balances at September 30,	
	1989	1988
Equipment	$177,088	$177,088
Automobiles	18,943	18,943
	196,031	196,031
Less accumulated amortization	(63,675)	(40,771)
Net property under capital leases and equipment contract	$132,356	$155,260

As of September 30, 1989, the future net minimum payments under capital leases and an equipment contract, and future minimum rental payments required under operating leases with remaining lease terms of one year or more are as follows:

Year ending September 30,	Operating Leases	Capital Leases and Equipment Contract
1990	$ 295,248	$ 54,059
1991	291,014	30,654
1992	304,768	3,761
1993	305,268	—
1994	305,268	—
Later years	661,414	—
Total minimum payments	$2,162,980	88,474
Less amount representing interest		(8,700)
Present value of net minimum payments		79,774
Less current maturities		(47,352)
Long-term obligation as of September 30, 1989		$ 32,422

Rent expense was $276,663 and $270,300 for the years ended September 30, 1989 and 1988, respectively.

3. Deferred Compensation

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

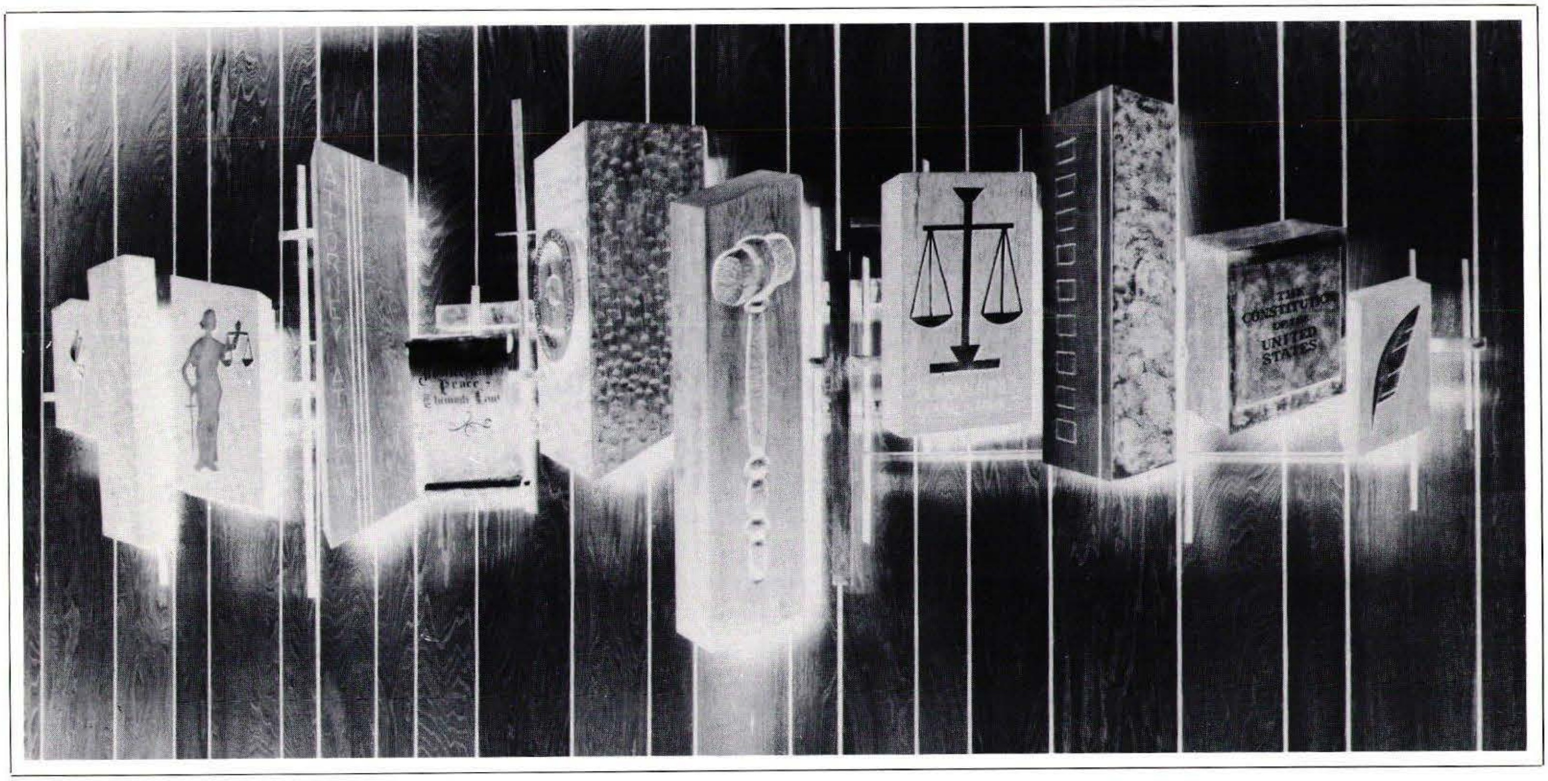
4. Fund Balance

In accordance with promulgations issued by its Board of Governors, the Bar Association has designated a portion of its fund balance in order to facilitate various Sections activities. At September 30, 1989 and 1988, designated amounts were $200,339 and $226,091 for Sections programs. Revenues (including interest income of $3,641 and $12,172 at September 30, 1989 and 1988) and expenses related to these activities were as follows:

	Year ended September 30,	
	1989	1988
Revenues	$274,530	$253,208
Expenses	300,282	260,518
Expenses in excess of revenues	$(25,752)	$ (7,310)

5. Supplemental Cash Flow Information

A capital lease obligation of $33,005 was incurred in the fiscal year 1988 when the Bar Association entered into lease agreements for equipment and automobiles.


Peace Through Law
CONSTITUTION
UNITED STATES

Contents

Direct Dial Telephone Numbers

Admissions
(206) 448-0563
Continuing Legal Education
(206) 448-0433
Legal Department
(206) 448-0307
Lawyers' Assistance Program
(206) 448-0605
General Information
(206) 448-0441

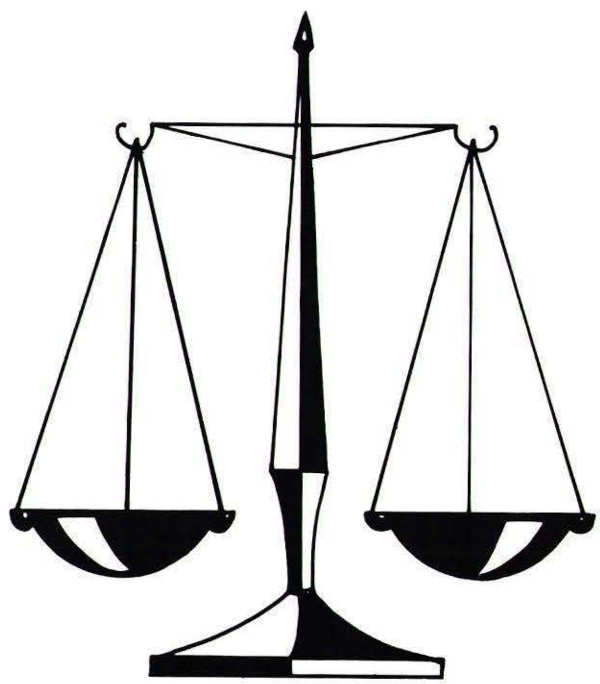
Washington State Bar Association Address

500 Westin Building
2001 Sixth Avenue
Seattle, Washington
98121-2599

May 1990

FOR ADDITIONAL COPIES CONTACT
THE WSBA PUBLIC AFFAIRS DEPARTMENT

Washington State Bar Association



Confirmation of Joinder/Issues	F plus 23 weeks
Status Conference	F plus 25 weeks
Disclosure of Primary Witnesses	T minus 22 weeks
Disclosure of Rebuttal Witnesses	T minus 16 weeks
Trial Confirmation/ Deadline for Filing of Jury Demand	T minus 14 weeks
Discovery Cutoff	T minus 7 weeks
Exchange of Witness/ Exhibit Lists	T minus 3 weeks
Deadline for Hearing Dispositive PreTrial Motions	T minus 2 weeks
Joint Statement of Evidence	T minus 1 week
PreTrial Conference (Preassigned Case Option only)	T minus 1 week
Trial	Trial Date (T)

Standard Family Law Case

Filing	File Date (F)
Confirmation of Service	F plus 3 weeks
Confirmation of Issues	F plus 14 weeks
Status Conference	F plus 16 weeks
Disclosure of Primary Witnesses	T minus 18 weeks
Disclosure of Rebuttal Witnesses	T minus 13 weeks
Trial Confirmation	T minus 11 weeks
Discovery Cutoff	T minus 5 weeks
Exchange of Witness/ Exhibit Lists	T minus 3 weeks
Joint Statement of Evidence	T minus 1 week
PreTrial Conference (Preassigned Case Option only)	T minus 1 week
Trial	Trial Date (T)

This simplified caseflow scheduling formula will make it much easier for persons to calculate the due dates for any of the caseflow events.

Reappointment of U.S. Magistrate: The U.S. District Court, Western District of Washington, is considering the reappointment of incumbent part-time Magistrate **Gerald L. Hulscher**, whose term expires August 31, 1990. Public comment should be sent to Bruce Rifkin, Clerk of the U.S. District Court, 308 U.S. Courthouse, Seattle, WA 98104 by June 1.

Recent Acquisitions, State Law Library:

Listed below are some of the new titles recently acquired by the State Law Library, and available for loan by telephone (206) 357-2136, or mail from Washington State Law Library, Temple of Justice, AV-02, Olympia, WA 98504-0502. A quarterly *Books Recently Cataloged* list, generally containing 100-200 new titles, is also available. Copies may be obtained by mail from the Washington State Law Library at the above address.

APPELLATE PROCEDURE

Cooley, John W. *Callaghan's appellate advocacy manual.* Deerfield, IL: Callaghan, 1989- . 2 vol. (loose-leaf) KF9050.C66 1989

CONDOMINIUM ASSOCIATIONS

Natelson, Robert G. *Law of property owners associations.* Boston, MA: Little, Brown, 1989. Pp. 779. KF576.N37 1989

CONDOMINIUMS

Poliakoff, Gary A. *The law of condominium operations.* Deerfield, IL: Callaghan, 1988- . 2 vol. (loose-leaf) KF581.P65 1988

MEDIATION

Rogers, Nancy H. and Craig A. McEwen. *Mediation: law, policy, practice.* Rochester, NY: Lawyers Cooperative Pub. Co., 1989. Pp. 861. KF9084.R65 1989

In re RCW 19.52.120(1): Legal Interest Rates

The average coupon equivalent yield from the first auction of 26-week treasury bills in April 1990 is 8.24%. The maximum allowable interest permissible for **May 1990** is therefore **12.24%**. Compilations of the average coupon equivalent yields from auctions of 26-week treasury bills appear on page 39 in the October 1987 *Bar News* for 1982-1984, and on page 37 of the June 1989 *Bar News* for 1984-1989.

(Items for inclusion in *Digest* should be sent to Lindsay Thompson, Editor, *Bar News*, 7414 N.E. Hazel Dell Avenue, Suite A, Vancouver, WA 98665. Deadline is the 15th of each month for the second issue following.)

FORMAL OPINION #184

A LAWYER IN GOOD STANDING MAY NOT EMPLOY A DISBARRED LAWYER IN CONNECTION WITH THE PRACTICE OF LAW

In 1978, Formal Opinion #171 was adopted which stated that "an attorney in good standing who hires a disbarred lawyer in any capacity could be subject to discipline for a violation of the [former] Discipline Rules for Attorneys." The Board of Governors is of the opinion that the Rules for Lawyer Discipline do not require an absolute prohibition against employing disbarred lawyers "in any capacity," and therefore believes that Formal Opinion #171 should be withdrawn. This opinion does not address the employment of suspended lawyers.

The Rules for Lawyer Discipline address the issue at RLD 1.1(h):

> A lawyer may be subjected to the disciplinary sanctions for actions set forth in these rules for any of the following:
>
> * * *
>
> (h) Practicing law with or in cooperation with a disbarred or suspended lawyer, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended lawyer, or permitting a disbarred or suspended lawyer to use his or her name for the practice of law, or practicing law for or on behalf of a disbarred or suspended lawyer, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended lawyer.
>
> * * *

This rule prohibits a lawyer from hiring or employing a disbarred lawyer in connection with or related to the practice of law. It does not prohibit a lawyer from hiring a disbarred lawyer in capacities not involving the practice of law. Thus, a lawyer may employ a disbarred lawyer in other, nonlaw-related capacities from such mundane tasks as mowing lawns or washing windows, to more sophisticated employment such as managing a business or property not related to the lawyer's practice of law.

This rule clearly prohibits a lawyer from sharing offices with a disbarred lawyer or having any arrangement with a disbarred lawyer which relates to the practice of law. A disbarred lawyer may not be employed as a paralegal or law clerk, may not be employed to do legal research or writing, or work as a law office secretary or other office employee. Neither may a disbarred lawyer be employed as an investigator, messenger or accountant in connection with a lawyer's law practice, because that would constitute a violation of the prohibition against "practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred...lawyer."

We recognize that other jurisdictions may have different rules regarding the employment of disbarred lawyers, (*see, e.g.*, Oregon Formal Opinion 505). We are of the opinion that the restrictions imposed by RLD 1.1(h) do not prohibit a Washington lawyer from associating with a lawyer or law firm which employs a disbarred lawyer or lawyers in a jurisdiction which permits it, nor does the rule prohibit a lawyer practicing law in Washington from being a member of a law firm with offices in such a jurisdiction.

Formal Opinion #171 is withdrawn.

Policy Statement of the Washington State Bar Association Board of Governors Concerning RPC 1.6 and RCW 42.17. Approved and adopted by the Board on March 17, 1990.

Rule 1.6 of the Rules of Professional Conduct prohibits lawyers, in the absence of client consent, from revealing the confidences or secrets of their clients. This Rule may at times prohibit a lawyer from revealing the identity of a client or the fact that the client is receiving legal advice.

The Public Disclosure Act, Chapter 42.17 RCW, requires lawyers and others who seek or hold public office to disclose the identity of governmental, corporate or other business clients from whom they receive $5,000 or more during a reporting period. The purpose is to avoid undisclosed conflicts of interest.

The Board of Governors of the Washington State Bar Association suggests that a lawyer seeking or holding public office generally may:

(1) Disclose the identity of those business, corporate and government clients whose attorney/client relationship is a matter of public record as a result of court filings, listing in Martindale-Hubbell or other publication, or is otherwise a matter of public knowledge; and

(2) Seek the consent of other business, corporate and government clients whose identity is required to be disclosed under the Public Disclosure Act.

To the extent that the identity of such clients cannot be disclosed and consent cannot be secured, or to the extent the above procedures would cause an unreasonable hardship, an application should be presented to the Public Disclosure Commission for complete or partial waiver of the disclosure requirement, specifying the basis for the hardship.

In this manner, both the requirements of RPC 1.6 and Chapter 42.17 RCW will retain their vitality for the benefit of such clients and the public alike.

May 1990

1 Washington Elder Law: The Basics and Beyond, Seattle. *Sponsored by*: National Business Institute, Inc. *For information*: (715) 835-7909. Also presented May 3 in Spokane.

3 Washington Elder Law: The Basics and Beyond, Spokane. See May 1 entry for details.

4 Real Estate, Parts I and II, Seattle. *Sponsored by*: SKCBA YLD-BTG. *For information*: Starlene Colwell, (206) 624-9365.

5 Fourth Annual Family Law Institute, Seattle. *Sponsored by*: UW School of Law. *For information*: (206) 543-0059.

5-6 WSBA Creditor/Debtor Section Midyear Meeting, Victoria, B.C. *For information*: (206) 448-0433.

11 Depositions: Tactics, Strategies and Problems, Coeur d'Alene, ID. *Sponsored by*: UW School of Law. *For information*: (206) 543-0059. Also presented May 12 in Yakima.

11 Point-Counterpoint: A Collegial Debate on Cutting Edge Issues in Workers' Compensation, Bellevue. *Sponsored by*: WSTLA. *For information*: (206) 464-1011.

11-12 Second Biennial Pacific Northwest Antitrust Institute, Salishan Lodge, Gleneden Beach, Oregon. *Sponsored by*: WSBA Consumer Protection, Antitrust, Trade Regulation and Unfair Business Practices Section, Oregon State Bar, et al. *For information*: (503) 620-0222.

12 Depositions: Tactics, Strategies and Problems, Yakima. See May 11 entry for details.

15 Pre-Divorce Financial Planning: Tools and Techniques to Aid in Developing and Evaluating Settlement Proposals, Silverdale. Also presented in Port Townsend (17), Seattle (23) and Everett (24). *Sponsored by*: Puget Sound Association of Pre-Divorce Consultants. *For information*: (206) 698-2484.

16 Judgment Enforcement, Seattle. *Sponsored by*: SKCBA YLD-BTG. *For information*: (206) 624-9365.

17 Pre-Divorce Financial Planning, Port Townsend. See May 15 entry for details.

17-18 Wetlands in Washington: Critical Land Use and Real Estate Development Issues, Seattle. *Sponsored by*: CLE International. *For information*: (206) 621-1938.

18-19 WSBA Board of Governors Meeting, Walla Walla. *For information*: (206) 448-0441.

18-20 WSBA Corporation, Business & Banking Section Midyear Meeting, Coeur d'Alene, ID. *For information*: (206) 448-0433.

19 Evidence for the 1990s — Emerging Issues in Law and Technology, Seattle. *Sponsored by*: UW School of Law. *For information*: (206) 543-0059.

21-22 Washington Legal Assistants Association Fifteenth Annual Convention, Seattle. Includes specialty sessions. *For information*: Duane Adams, (206) 223-6053.

23 Pre-Divorce Financial Planning, Seattle. See May 15 entry for details.

24 Advanced Workers' Compensation in Washington, Seattle. *Sponsored by*: National Business Institute, Inc. *For information*: (715) 835-7909.

24 Pre-Divorce Financial Planning, Everett. See May 15 entry for details.

29 WSBA World Peace Through Law Section Meeting, SKCBA Offices, Seattle. *For information*: Brian Linn, (206) 242-9876.

31-June 2 WSBA Environmental & Land Use Section Midyear Meeting, Vancouver, B.C. *For information*: (206) 448-0433.

June 1990

1 Damages: Winning Top Dollar Settlements and Verdicts, Seattle. *Sponsored by*: WSTLA. *For information*: (206) 464-1011.

1-3 WSBA Family Law Section Midyear Meeting, Yakima. *For information*: (206) 448-0433.

6 Marketing Management for Law Firms in Washington, Seattle. *Sponsored by*: National Business Institute, Inc. *For information*: (715) 835-7909.

7-9 Washington Association of Criminal Defense Lawyers Annual Meeting and CLE, Lake Chelan. *For information*: (206) 623-1302.

8-10 WSBA Real Property, Probate & Trust Section Midyear Meeting, Blaine. *For information*: (206) 448-0433.

12-16 Family Law Mediation Training, University of British Columbia. *Sponsored by*: Continuing Legal Education Society of B.C. *For information*: (604) 669-3544, fax (604) 669-9260.

15-16 WSBA Litigation Section Midyear Meeting, Lake Chelan. *For information*: (206) 448-0433.

15-16 WSBA Board of Governors Meeting, Port Ludlow. *For information*: (206) 448-0441.

22 Basic Corporate Practice Under the New Washington Business Corporation Act, Seattle. *Sponsored by*: UW School of Law. *For information*: (206) 543-0059.

July 1990

15-20 Canadian Institute for Advanced Legal Studies Conference, Stanford University, Palo Alto, CA. *For information*: Marie Capewell, Supreme Court of British Columbia, (604) 660-2760.

20 Economy & Efficiency in Trial Preparation, Seattle. *Sponsored by*: WSBA and WYLD. *For information*: (206) 448-0433.

20-21 WSBA Board of Governors Meeting, Moclips. *For information*: (206) 448-0441.

August 1990

17-18 WSBA Board of Governors Meeting, Vancouver, WA. *For information*: (206) 448-0441.

24-Sept. 2 WSBA Skills Training Course, Spokane. *For information*: (206) 448-0433 or Thomas Wolf (509) 838-8341.

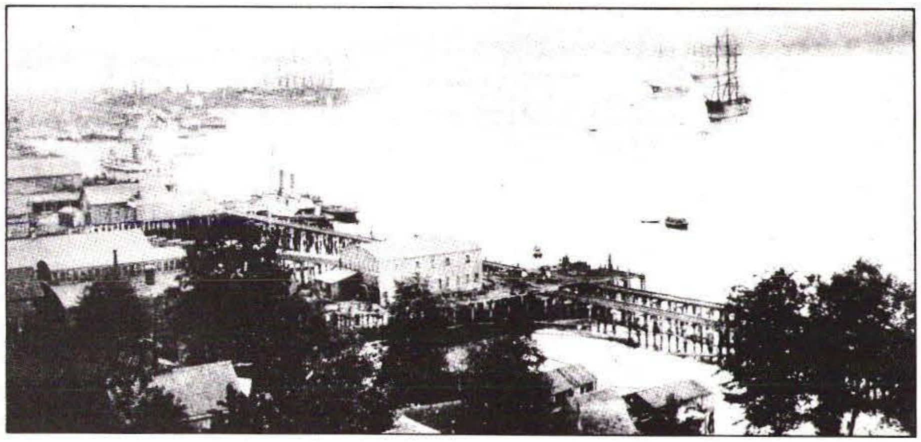
September 1990

13-15 WSBA Annual Meeting and Convention, Spokane. *For information*: (206) 448-0441.

THE BATTLE FOR THE TIDELANDS IN THE CONSTITUTIONAL CONVENTION

Part III

by **Charles K. Wiggins**



The Lobby Almost Succeeds: The Stalemate

Having adopted the harbors article, the delegates turned to the public lands article, which included the tidelands. As proposed by the public lands committee, Section 1 authorized the sale of any of the public lands of the state for full market value to be ascertained as provided by law.[76] The only dissenting vote was that of delegate Griffitts of Spokane, who offered a substitute providing that the tidelands would remain forever the property of the state.[77] Griffitts' substitute was decisively defeated and Section 1 was adopted, much to the disgust of the *Seattle Post Intelligencer (P.I.)*.

> Under this provision the second proceeding in the scheme of the grabbers will be entirely practicable. This will be to have the lands appraised and sold, giving the grabber (who will appear under one title or another invented to conceal his real character) the first right to buy at the *appraised valuation*. The fraud will lie in the provision contained in the emphasized words. Under the plan outlined the appraisement will be so "managed" as to give the lands to the grabbers for a small fraction of their value.[78]

The public lands article did not claim any state ownership in the tidelands, but simply prohibited waterfront owners from excluding right-of-way to the water whenever it is required for any public purpose or navigation.[79] Turner opened the battle on this section by proposing a substitute which declared the state's ownership in all of the tidelands, and disclaimed the 1873 grant of Elliott Bay to the Seattle & Walla Walla Railroad by providing that no official or private act "shall be permitted to prejudice the state in the assertion and maintenance of such ownership."[80] Seattle delegate Kinnear agreed with Turner that the Legislature had no power to grant this land to the Seattle & Walla Walla and that the convention had the power and right to correct the Legislature's error.[81] Tacoma delegate Stiles disagreed and vigorously debated Turner's position, citing U.S. Supreme Court case law and the 14th amendment.[82] Following a lengthy legal debate among the lawyer delegates, Turner's substitute carried by a vote of 36 to 33.[83]

Delegate Hoyt of Seattle triggered the next debate when he offered a section confirming all United States patents[84] purporting to grant land between the line of ordinary high tide and the meander line[85] of the United States survey.[86] The vote on this proposal was geographical, the western delegates in favor and the eastern opposed. Spokane delegate Moore protested that the matter should be left to the Legislature, and that the convention was not the place to decide individual land claims. Hoyt sarcastically responded that he was glad that Moore had instructed the convention on what it ought to do, but he thought that the convention had the power to confirm the patents and should do so because it was right. Hoyt argued that commercial interests in Seattle needed a resolution so that they could borrow money and build on thóse properties. He also argued that men have purchased land in good faith relying on their patents, and it was morally right to confirm the patents. Moore derided the "old settler dodge" protesting that a job was being foisted on the convention.[87]

Weisenberger of Whatcom County thought that the people from the Sound had as much knowledge of navigation as the eastern delegates "who were in the habit of sailing prairie schooners across the sagebrush deserts."[88] Weisenberger argued the importance of this section to the people of Whatcom (now Bellingham) whose business section is located on 12 acres of land covered by patents, all of which was on tidelands.[89] Speaker after speaker expressed his views. After long debate, Turner offered a compromise, permitting the Legislature to make laws to confirm and validate U.S. patents so long as the state should not part with the title to lands necessary for harbor purposes.[90] Hoyt opposed Turner's substitute on the ground that it would negate the basic purpose of validating patents on the Seattle waterfront, and Turner's substi-tute was lost by a vote of 26 to 39.[91] The debate concluded with a dramatic gesture by delegate Power of La Conner:

> Power capped the climax when he drew a musty government patent from his pocket and shook it with great dramatic effect in the eyes of the convention and wanted to know if the members would look upon that which contained the sacred signature and seal of the President of the United States and deliberately vote away the happy homes of the old settlers. That settled it and the convention endorsed the proposition by a heavy majority.[92]

In the following days, the delegates continued to amend and rework the tidelands sections of the public lands article. The *P.I.* reported that the disgruntled eastern Washington delegates had combined with the distruntled delegates who favored the rights of uplands owners, and that this combination would burden the article with amendments.[93] Reports of this combination raised serious concerns that the amendments would result in the defeat of the entire article. Mires observed in his diary, "the tidelands jumpers, corporations, et al. are weighing the report down with such amendments as will kill the report."[94]

The first amendment was to strike the provision that any law governing the sale of the tidelands must be enacted by two successive Legislatures.[95] Delegate Weir of Port Townsend again offered his section giving prior right of purchase to persons who had built improvements on tidelands, and this time Weir's proposal was accepted.[96] The *P.I.* opined that the support for Weir's amendment was "not honest," and would be withdrawn, leading to the defeat of the entire article on its third reading.[97] Griffitts of Spokane offered one final amendment in disgust: "If any of the lands of this state have not been given away in this article the omission to do so is unintentional on our part."[98]

The public lands article, including the tidelands section, came up for a final vote on Monday, August 19. The entire article was defeated by a vote of 35 to 34, with four members abstaining and two on leave.[99] Turner then moved the adoption of a new article which declared the state's ownership in the tidelands, disclaimed prior official acts purporting to give title, allowed anyone to assert his claim to vested rights in a court of law, allowed the Legislature to confirm United States patents, and prohibited the sale of harbor areas. Turner's substitute resulted in a deadlock of 35 to 35, thus failing to pass.[100] The convention then passed a separate article dealing solely with the school lands, and referred the tidelands article back to the committee on public lands.[101] McNeill of the Oregon Improvement Company reported to president Smith that the convention's action greatly enhanced the OIC's claim to the Seattle & Walla Walla grant, but McNeill feared that the game was not yet over:

> If an adjournment could have been forced at this point we have cause for great congratulation. But I feel sure from the howl of the press and the desire of the politicians to manufacture capital, additional articles of some character will be forced through the convention before it does adjourn.[102]

The Final Compromise

The tidelands deadlock continued for three days. On August 20, Stiles of Tacoma proposed that upland owners be given a priority right to purchase tidelands on which they had made improvements.[103] When Eldridge of Whatcom supported the measure, Moore demanded to Know whether Eldridge did not own a mill on Bellingham Bay. Hoyt ruled Moore's inquiry out of order,[104] but Moore bitterly denounced the efforts to "bring matters of equity before the convention for adjudication."[105] Stiles' measure carried, but the delegates still refused to pass the article.

On August 21, the delegates again voted down the tidelands article. E.H. Sullivan of Colfax proposed a substitute leaving all tidelands issues to the Legislature. Both Sullivan's and Turner's proposals were defeated. Power than proposed a substitute which confirmed all patents, asking for a vote on that issue alone. The delegates "continued to stand in with the old settlers," and Power's substitute passed. McElroy of Seattle proposed another separate measure, declaring state ownership of the tidelands, and this too passed.[106]

As the deadlock continued, it appeared the railroads might succeed in blocking any meaningful policy on the tidelands. But on the night of August 21, several eastern and western delegates hammered out a compromise. Mires wrote in his diary:

> Drank a good deal in evening with Fairweather, Booge, et al. In the evening I called at T.L. Stiles' rooms to discuss the advisability of passing something ref. to tidelands as he has been one of the vigorous opponents. Allen Weir was there also. We agreed on an article. Stiles drew it. Each agreed to not oppose it. I am to introduce it. ,Weir joined us on

several drinks of whiskey.[107]

The compromise measure declared the state's ownership and allowed any person to assert his claim to vested rights in the courts of the state.[108] When Mires introduced it on August 22, "a murmur of satisfaction went around the hall."[109] The compromise was pushed through before it could be amended. "So," observed Mires in his diary, "ended the great strife."[110] With the tidelands issues resolved, the convention adjourned that evening after the delegates had signed the engrossed constitution.

The final result was that the convention had declared state ownership of the tidelands, and had prohibited sale of the tidelands within the harbor areas which would be established by a harbor commission.[111] These provisions would serve to protect the needs of commerce in front of the cities, but only if the harbor lines were properly established and the tidelands which were sold were properly appraised.

Later History of the Tidelands

The first Legislature was overwhelmingly Republican, but was divided by the same conflicts regarding the tidelands which had so badly fractured the constitutional convention. The western representatives were divided between the interests of the upland owners (the jumpers) and those who had built improvements on the tidelands (the squatters). The eastern delegates were unsympathetic to either group.[112] The eastern delegates generally favored sale of the tidelands in an open auction. Alarmed by the prospect of competitive bidding, the upland owners and the improvers drafted a compromise procedure for sale of the tidelands. The tidelands would be appraised, then the upland owner would have the option to purchase at the appraised valuation, subject to a preference in favor of persons who had built bona fide improvements before passage of the act.[113] But the tidelands in front of the cities could still not be sold until harbor lines were drawn, and the Legislature provided for the appointment of a five-member commission by the governor.

Washington's first governor, Elijah P. Ferry, a former territorial governor, had represented the Northern Pacific Railroad, but showed commendable independence in appointing the Commission.[114] The post of Harbor Line Commissioner proved to be a political hot potato, and a number of prominent citizens declined Ferry's offer of a position, including George Turner, former territorial governor Miles Moore, former congressional delegate Thomas Brents and Judge Orange Jacobs of Seattle. Eventually Ferry was able to find five commissioners, surprisingly including William F. Prosser of Yakima, a delegate to the constitutional convention who had worked hard for permanent state ownership of the tidelands, and who was endorsed for commissioner by former delegates Stiles of Tacoma and Kinnear of Seattle.[115] The commission began its work in Seattle in late July 1890, in view of the extensive tidelands fronting on Seattle and the business interests eagerly awaiting the opportunity to develop the Seattle waterfront.[116]

But in 1890 intense railroad rivalries along the Seattle waterfront rendered all the more complex the task of drawing the harbor lines. James J. Hill, the great railroad empire builder of St. Paul, was eyeing Seattle as a terminus for his newly organized transcontinental railroad company the Great Northern. Hill had already connected St. Paul with Butte, Montana through his Montana Central Railroad. In 1980 Hill was laying out a railroad route to connect Puget Sound with the Montana Central, and hence with St. Paul. In a fruitless effort to prevent Hill's entry into Seattle, the Northern Pacific bought the Seattle Lakeshore & Eastern.[117] Hill's representative, Col. William Clough, hired Judge Thomas Burke of Seattle to organize a new railroad, the Seattle & Montana to provide Hill's entry into Seattle.[118] Burke prevailed upon the Seattle City Council to grant to the new railroad half of the right-of-way on Railroad Avenue. Having given 30 feet to the Seattle Lakeshore & Eastern, and 60 feet to the Seattle & Montana, this left only 30 feet remaining on Railroad

Avenue. This latest generous gesture triggered a bitter and protracted battle which would not be resolved for another decade.[119] With Hill dangling before their eyes a transcontinental railroad connection, Judge Burke and the Seattle City Council were all the more determined that the harbor lines must not interfere with Railroad Avenue and the development of the Seattle waterfront.

The Harbor Commission investigated harbor conditions in other states, both in California and on the east coast. The commission took testimony from civil engineers who had considerable experience in harbor lines and improvements.[120] The Commission listened patiently to the petitions of interested property owners of Seattle, who urged that the inner harbor line be placed in 50 feet of water at low tide, with the outer line in even deeper water:

> The object of the proposition was to place the inner line beyond any wharves or other structures upon the present line of deep water and virtually leave the entire control of the commerce of the city in the hands of those who now occupy the waterfront. In other words, the establishment of such a line would practically result in the absolute nullification of the constitution and of the acts of the Legislature on the whole subject.[121]

The Commission concluded that the entire 600 feet allowed by the constitution should be reserved on the Seattle waterfront, with the inner line between the high-tide and low-tide marks, and the outer line 600 feet beyond, out into deep water. On October 28 by unanimous resolution the Commission established by metes and bounds harbor lines in Elliott Bay reserving the 600-foot-wide harbor area: "These lines, as so located by us, included the space known as Railroad Avenue for about 2 miles, and also more or less of the space occupied by about 35 wharves, most of the wharves extending from the avenue mentioned to deep water."[122]

In order to prevent the Commission from filing maps permanently locating these harbor lines, Seattle lawyers Thomas Burke and J.C. Haines worked late into the night to prepare a petition for a writ of prohibition.[123] The petition, on behalf of Henry Yesler, sought to preclude the Commission from interfering with his operation of his wharf, and the King County Superior Court issued the writ of prohibition the following day. The Yesler lawsuit was followed by a series of similar actions which delayed the Commission but were ultimately unsuccessful. In July 1891 the state Supreme Court reversed the writ of prohibition and upheld the Harbor Line Commission. The decision, written by Justice Hoyt, who had presided over the convention, held that Yesler owned only the wharf, and not the land on which it stood, and his title was not clouded in any way by the harbor lines.[124]

Foreseeing eventual defeat in the state Supreme Court, Burke had commenced another action in federal court similarly enjoining the Harbor Commission.[125] This injunction as also doomed to defeat, this time in the U.S. Supreme Court:

> Burke won only the preliminary skirmishes and lost all of the major battles in his struggle with the Harbor Line Commission. But he won the war. The term of the Commission was to expire on January 15, 1893. The United States Supreme Court rejected jurisdiction on December 19, 1892, but there remained the other suits to be cleared up which could easily delay matters for the necessary time.[126]

Outgoing governor Ferry recommended the extension of the term of the Harbor Line Commission, but the new governor, John McGraw, appointed a new commission more sympathetic to the needs of the Seattle waterfront owners. The new commission located the harbor lines in front of Seattle in order to avoid existing improvements insofar as possible.[127]

The loss of the tidelands was unfortunate for the city of Seattle. In 1895, Virgil Bogue, a consulting engineer, developed a coordinated plan for the development of Seattle's harbor. He pointed out that the system of independent railroad franchises along the waterfront created an intolerable situation of duplication of facilities and needless expense. Bogue recommended that the greatest commercial success would result from public ownership and control of dock facilities and a single terminal company serving all railroads.[128] The Bogue plan was never implemented, and in 1910 the federal Commissioner on Corporations observed, "This situation on Railroad Avenue seems to make the provisions for public control of the waterfront of no effect insofar as this particular portion thereof is concerned."[129] Finally, enough interested citizens realized that it would be necessary to create a public port district, which resulted in the creation of the Port of Seattle. The Port's first business was to buy back from private ownership the tidelands which had been so generously and cheaply sold only a few years earlier:

> As an example of Judge Burke's wisdom in stripping the Harbor Line Commission of tideland property, the site for the east waterway terminal, consisting of block 375 and half of blocks 376 and 386, was purchased by the Port Commission from the Heffernan Drydock Company for $425,000. Little more than a decade before, the state had surrendered all of Seattle tidelands blocks 375, 376 and 378 for a total of $4,286.[130]

It is tempting, but simplistic, to blame the delegates to the Constitutional Convention for the disposition of the tidelands. As early as the adjournment of the convention, the *Seattle P.I.*, while generally approving the constitution, saw the tidelands policy as the chief mistake of the convention, predicting that it would "result in the hindrance of enterprise in many ways and in great loss to the state."[131] In reality, however, the delegates had probably reached the best compromise which could be achieved under the circumstances, in view of the heavy lobbying efforts, the complexity of the problem, and the division of opinion within the convention itself. As one writer concluded, "It cannot be claimed that the delegates allowed the sale of the tidelands, they merely allowed the Legislature to sell them. The fact that no constitutional provisions were made for their sale is a tribute to the integrity of the delegates to the convention."[132] □

Footnotes (numbering carried over from "The Tidelands, Part II," in the April 1990 *Bar News*):

73OIC Records, Correspondence: Interoffice, Box 46, Folder 39, McNeill to Smith, August 10, 1889.

74OIC Records, Correspondence: Interoffice, Box 46, Folder 40, McNeill to Smith, August 20, 1889.

75*Id.*

76*Journal of the Convention, supra*, p. 204, August 1, 1889.

77*Seattle P.I.*, August 15, 1889.

78*Seattle P.I.*, August 15, 1889.

79*Journal of the Convention, supra*, p. 204, August 1, 1889.

80*Id.*, p. 812.

81*Tacoma Morning Globe*, August 16, 1889.

82Id.

83*Seattle P.I.*, August 16, 1889.

84A government patent is, "the instrument by which a state or government grants public lands to an individual." *Black's Law Dictionary* (revised 4th ed. 1968).

85"The meander line is not a boundary line but exists for the purpose of defining the sinuosities of the bank or shore and for ascertaining the quantity of land remaining in a particular section or subdivision thereof or in a donation land claim after the segregation of the navigable water area. Numerous decisions by the United States Supreme Court and many state courts have held that meander lines do not constitute boundaries but are run only for the purposes set forth above, and that the line of mean high water or line of ordinary high tide, as the case may be, forms the boundary." M. Phelps, *Public Works in Seattle: A Narrative History of the Engineering Department 1875-1975*, pp. 65-66 (1978).

86 *Seattle P.I.*, August 16, 1889.

87*Id.*

88*Tacoma Morning Globe*, August 16, 1889.

89*Seattle P.I.*, August 16, 1889.

90*Tacoma Morning Globe*, August 16, 1889.

91 *Id.*

92*Seattle P.I.*, August 16, 1889.

93Seattle P.I., August 17, 1889.

94 Mires Diary, *supra*, Friday, August 16, 1889.

95*Tacoma Morning Globe*, August 18, 1889.

96*Id.*

97*Seattle P.I.*, August 18, 1889.

98*Tacoma Morning Globe*, August 18, 1889.

99*Journal of the Convention, supra*, p. 401, August 19, 1889. Strangely, the microfilmed editions of the *Seattle Post Intelligencer*, *The Seattle Times*, and the *Tacoma Morning Globe* are missing the report of convention proceedings for August 19. The entry in the *Spokane Falls Review* is atypically brief.

[100]*Id.*, pp. 402-03. Delegate Neace was on leave, and Kinnear and Hoyt were absent without leave, having returned to Seattle to attend to their political interests, being locked in a battle with former governor Watson Squires for control of the Republican Party. *Tacoma Morning Globe*, August 21-22, 1889. One wonders how matters would have been resolved if Hoyt and Kinnear had remained at their posts.

[101]*Journal of the Convention, supra*, pp. 404-05.

[102]OIC Records, Correspondence: Interoffice, Box 46, Folder 40, McNeill to Smith, August 20, 1889.

[103]*Tacoma Morning Globe*, August 21, 1889.

[104]Eldridge responded to Moor's charge the following day explaining that he was the part owner of a sawmill on the Sound, which had been built under territorial legislation. *Tacoma Morning Globe*, August 22, 1889.

[105]*Id.*

[106]*Seattle P.I.*, August 22, 1889.

[107]Mires Diary, *supra*, August 21, 1889.

[108]*Tacoma Morning Globe*, August 23, 1889.

[109]*Id.*

[110]Mires Diary, *supra*, August 21, 1889.

[111]Wash. Const., Art. XV, Sec. 1, Art. XVII, Sec. 1.

[112]Nesbitt, *supra*, p. 317.

[113]*Id.* at 318.

[114]*Id.* at 320-21.

[115]Nesbitt, *supra*, pp. 321-22.

[116]State of Washington, *First Report of the Harbor Line Commission*, p. 9, 1891.

[117]Nesbitt, supra, pp. 158-59.

[118]G. Quiett, *They Built the West*, p. 460, 1934.

[119]Nesbitt, *supra*, pp. 216-27.

[120]*First Report of the Harbor Line Commission*, p. 10, 1891.

[121]*Id.* at p. 13.

[122]*Id.* at p. 26.

[123]Nesbitt, *supra*, p. 327.

[124]*Harbor Line Commissioners v. State*, 2 Wash. 530, 1891.

[125]Nesbitt, *supra*, p. 333.

[126]Nesbitt, *supra*, p. 337.

[127]Nesbitt, *supra*, pp. 338-39; I.W. Prosser, *A History of the Puget Sound Country*, pp. 217-18, 1903.

[128]Nesbitt, *supra*, pp. 236-37.

[129]*Id.*, p. 242.

[130]*Id.* at p. 342.

[131]*Seattle P.I.*, August 23, 1889.

[132]J. Fitts, *The Washington Constitutional Convention of 1889*, p. 185 (Master's Thesis, University of Washington, 1951).

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Community property. Husband died, survived by second wife and leaving group term life insurance payable to child of prior marriage. Second wife claimed one-half insurance proceeds as community property. Evidence showed that for several years decedent and second wife did not share same residence, each had extramarital relations, and that surviving second spouse had illegitimate child. *Issue*: Did evidence establish that husband and second wife were living "separate and apart" for purposes of RCW 26.16.140 during time life insurance policy was acquired? *Held*: No, parties were not living "separate and apart." Their separation was relatively short, there was no separation agreement, and they continued to interact "positively" in various ways. (*Comment*: Court did not discuss RCW 48.18.440[2], which should have created presumption that surviving spouse consented to designation of child as beneficiary. — T.R.A.) ***Aetna Life Ins. Co. v. Boober***, 56 Wn.App. 567, 784 P.2d 186 (Div. 1, 1/8/90).

— *T. R. Andrews*

Personal property. *Held*, in what court says is case of first impression in Washington: Man who gives woman an engagement ring gives it on implied condition that if parties do not marry, woman will give ring back unless man unjustifiably breaks engagement. Here trial court made no finding as to whose fault it was that engaged couple did not marry. Therefore, there was no finding that man was at fault, and trial court erred in finding that ring belonged to woman. ***Spinnell v. Quigley***, 56 Wn.App. 799, 785 P.2d 1149 (Div. 3, 2/6/90).

— *W. B. Stoebuck*

Creditor-debtor law. Judgment debtor filed petition in bankruptcy within five court days following entry of judgment. Judgment creditor's attorney had not recorded judgment before petition was filed, with result that judgment creditor did not have perfected lien on excess value of judgment debtor's homestead property. In judgment debtor's action against attorney for malpractice, trial court dismissed action on ground that recording judgment within five-day period would have violated Civil Rule 62(a), which imposes stay on "proceedings" for enforcement of judgment for five days following its entry. *Held*: Dismissal reversed. Recording judgment is not proceeding for enforcement of judgment in violation of the rule. ***Smith v. Simonarson, Visser, Zender, Brandt and Thurston***, 56 Wn.App. 513, 784 P.2d 552 (Div. 1, 1/8/90).

— *M. D. Rombauer*

Real property. In 1963 defendant purchased land from plaintiff on real estate contract. Defendant paid first monthly installment but for 23 years never paid another installment, never paid taxes, and never occupied land. In 1986 plaintiff gave defendant notice of forfeiture and then began this action for forfeiture. Upon trial plaintiff relied on theory, not of forfeiture, but of "abandonment" of contract. Trial court entered summary judgment for plaintiff on abandonment theory. *Held*: Abandonment theory was correct, but remanded because there were issues of fact to be resolved. Appellate court discusses theory of "abandonment" of real estate contracts, a question of first impression in Washington. Court says this common-law theory is available in Washington, in addition to remedies provided in Real Estate Contract Forfeiture Act, RCW Chapter 61.30. RCW 61.30.020(1) preserves remedies "otherwise available to the seller or the purchaser." ***Schoneman v. Wilson***, 56 Wn.App. 776, 785 P.2d 845 (Div. 2, 2/1/90).

— *W. B. Stoebuck*

EAST KING COUNTY REPORT
by **RANDOLPH I. GORDON**

Is it just me? When Spring arrives, I suddenly feel this primordial urge to go...OUTSIDE. (There, it's said.) It seems that for months all my light is fluorescent and my air conditioned. The Great Outdoors takes on a different meaning when most of your extramural experience is walking through a parking garage and when your children think Nature is the manicured greenbelt between developments or the hedge along the fence line. We have become disconnected.

Wordsworth wrote: "Little we see in Nature that is ours." Now, *everything* we see is ours: the flora is sprayed, pruned, weeded and trimmed and the fauna is bred, spayed, declawed, clipped, and permitted to play with pin cushions on the sofa when not shedding. The environmental movement cannot survive too many generations who think Marymoor Park is savannah, Bridle Trails a rain forest, and Gasworks Park the world returned to its natural state. And danger lurks in the belief that the forces of nature are made manifest primarily by clogged gutters and the propensity of rainwater to run along the edge of the street. One day, some poor, disconnected soul is going to open the hatch on Spaceship Earth trying to get a breath of fresh air.

Here on the Eastside, the increasing human population is visibly subjugating the land. Yet, internally, we retain a connection to the outside world. Taking note of the fact that bank clerks made more errors on foggy days, the Bank of England at one time required that all important records and files be locked up on foggy days. Every office should be so equipped. And then, there are the warming days of late winter days when spring is in the air and all offices should be locked completely.

On one such day recently, the annual meeting of the Washington State Bar Association and East King County Bar Association was held at the Hyatt-Regency. Governor **James S. Turner**, representing the Eighth District for WSBA, introduced the

Board of Governors, president **James Vander Stoep**, and other worthies including executive director **John Michalik** and editor **Lindsay Thompson**. Governor Turner offered generous praise for his colleagues and, in anticipation of the conclusion of his three-year term this summer, noted that he found the experience of working with the other Governors to be one of the high points of his professional career. Also present was **Thomas J. Chambers**, who hopes to succeed Turner as the WSBA Governor for the Eighth District. Tom is an Issaquah resident and EKCBA member practicing in Seattle.

Few in that gala assembly noted the historic first meeting of this lowly and humble correspondent and cosmic commentator and the Exalted and Most Excellent, Master of Muses, Pope of Prose, His Eminence, the Editor, before whose exacting gaze passes this monthly report.

Two Eastside attorneys, active in the affairs of the Seattle-King County Bar Association, **Geoff Revelle** and **Steve Toole**, have been nominated for elected positions in SKCBA: Revelle as 2d vice president (a track that leads to 1st vice president, and thence to president); Toole as Trustee. Toole presently serves as secretary for EKCBA.

Additional inter-Bar activities include the annual EKCBA June Cruise around Lake Washington which, this year, will include members of the South King County Bar Association. The vessel, amply stocked with food and drink (and music) will leave the Kirkland dock at 7 p.m. on Friday, June 1, and return after dark sometime.

Let's hope it's nice...outside.

WHATCOM COUNTY REPORT

by **MICK MOYNIHAN**

At last the long wait is over. Denise is no longer pregnant. Since she has now given birth to a healthy baby boy, perhaps her calendars and those of the court will return to normal.

Every year the legal secretaries of Whatcom County host the "Bosses' Night," and this year was exceptional for the reason that it was probably the best one yet. The entertainment was very good, and **Rhonda Larsen** of Chmura and Chmelik won the hula hoop contest and the best '50s costume, which is interesting, since she could not have been alive in the '50s.

And even before the bubble gum blowing contest, **Ed Simmers** told everyone how many pieces of gum were needed and how it had to be prepared, and when his bubble lifted him off the ground and carried him to the ceiling, all the others withdrew, leaving Ed the clear winner.

The members selected **Tammy Quiram** as the Member of the Year, and that had an interesting note, as she had just resigned as **Hugh Lewis**' secretary to be the secretary for **Deborra Garrett**.

And when at last the moment arrived, the Boss of the Year was none other than **Bob Hughes**, noted patent attorney and clothes horse. Bob came dressed in his best '50s costume, but nobody noticed any difference.

And one final note. **Richard Kimberly** has moved his offices to "F" Street. The previous four addresses do not count.

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Experienced tax attorney seeks opportunity to help build or expand law firm tax, estate planning and general business departments. CPA, LL.M., WSBA member. Reply to Box 281, WSBA.

POSITION AVAILABLE

The Trust for Public Land, a national nonprofit conservation organization dedicated to preserving open space, has an opening in its Northwest Regional Office for an experienced real estate attorney. Responsibilities include legal advice to six project staff, drafting and review of documents (options, purchase agreements, conservation easements) and other legal matters pertaining to the acquisition and conveyance of real estate.

Send resumé and letter outlining your commitment to the protection of open space. Minorities are encouraged to apply. The Trust for Public Land, Smith Tower, Suite 1510, 506 Second Avenue, Seattle, WA 98104.

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Eisenhower, Carlson, Newlands, Reha, Henriot & Quinn seeks a banking attorney for its Seattle office with a minimum of two years' experience in commercial loan documentation, loan workouts and civil litigation. Also seeking tax attorney for Seattle or Tacoma office with a minimum of two years' experience. Send resumé in confidence to Patsy Strong, Hiring Coordinator, Eisenhower, Carlson, Newlands, Reha, Henriot & Quinn, 1200 First Interstate Plaza, Tacoma, WA 98402.

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Position available for litigation attorney with a minimum of two years' experience, preferably in maritime, commercial or insurance law. Resumés with references should be sent to Bradbury, Bliss & Riordan, 701 Fifth Avenue, Suite 5150, Seattle, WA 98104-7010.

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. $32 - three months; $55 - six months. Federal Reports, 1010 Vermont Ave. N.W., #408-WB, Washington, D.C. 20005. (202) 393-3311. Visa/MC.

Issaquah law firm seeks associate interested in general practice with some emphasis on litigation and family law. Applicant should have at least one year's experience. Competitive salary, nonsmoking office, involvement in all major decisions. Reply to Thomas, Whittington, Anderson, Bergan, Studebaker and Tuttle, Attn: Hiring Partner, P.O. Box 1304, Issaquah, WA 98027. All responses treated with strict confidentiality.

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Ronald LeRoy Riley: Anyone having knowledge of the will of Ronald LeRoy Riley, deceased, of Battle Ground, WA, please contact Ronelda Connors, 878 S. 1000 E., Orem, UT 84058. It was probably made in 1987.

Charles O. and Hope L. Clark: Seeking wills of Charles O. Clark and Hope L. Clark which may have been executed subsequent to November 28, 1983. Contact Gregory A. Lair of Jeffers, Danielson, Sonn & Aylward, P.S., P.O. Box 1688, Wenatchee, WA 98807. (509) 662-3685.

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