Washington State Bar News
Vol. 48, No. 11, November 1994

Annual Book Review Issue

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Positioning Your Firm
The Career Legal Secretary

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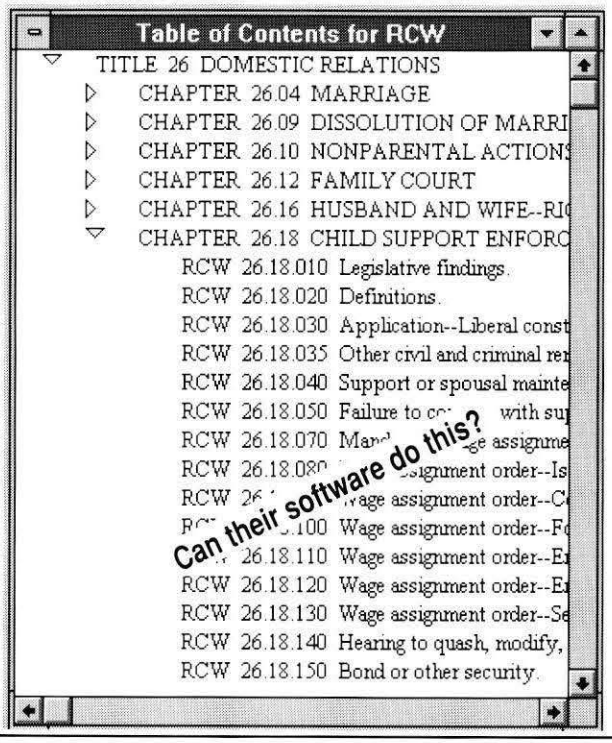

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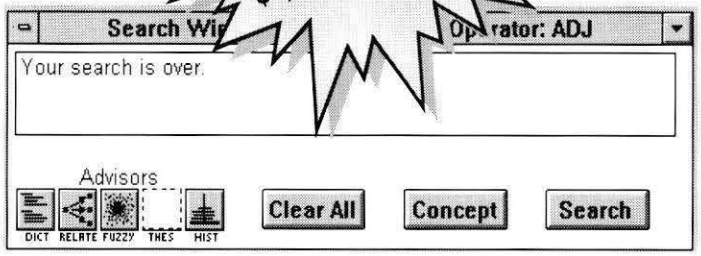

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BOOK REVIEWS

ART CREDIT: Reading a good book while "Waiting for the Interurban" in Seattle's Fremont neighborhood. Photo by WSBA Advertising Director **Jack Young**, decorated by Assistant Editor **Doree Armstrong**.

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DEPARTMENTS

Readers are invited to submit letters of reasonable length to the editor. They should be typed on letterhead and signed. The editor reserves the right to select excerpts for publication or edit them as may be appropriate.

You Don't Have to be Certified to be Good

Editor:

I read the article, "Help Wanted: How to Spot A Good Legal Secretary," in the September *Bar News*. It appears that the author is a promoter of the PLS certifying committee, which is understandable since she is its cochair. It is about as biased as an article would be for an automotive magazine being written by a Mercedes salesman.

I am not "accredited or certified." My experience of 13 years with a local, respected attorney speaks for itself (along with his recommendation). I currently work in another law firm which has several legal assistants/secretaries who have, for the most part, been here for years. One in particular has worked for her boss in excess of sixteen years. I would find it hard to believe that an accredited or certified legal secretary is any more qualified than us or numerous other assistants/secretaries in the county.

As far as I know, few legal secretaries in Skagit County have become accredited or certified. As for myself and many of my friends in this profession, we have no desire to become accredited or certified. This does not have any reflection on our competence or knowledge; it is just a different set of values.

CATHY L. YOUNG
Sedro Woolley

A Voluntary Bar Will Be A Good Thing

Editor:

I read with interest the debate between Joe Erickson and Rick Ockerman (*Bar News*, August 1994) on whether to maintain the WSBA as a unified bar. It is always very discouraging to see attorneys—who should understand the tremendous desirability of personal freedom of association—advocate the use of state coercion to further their own perceived political goals.

Mr. Erickson apparently believes that a mandatory bar does not project the image of a trade association. I submit that a mandatory bar projects the image and fact of a trade association with the full imprimatur of the state of Washington. Inside that mandatory union exist many members not represented by the Association in many of its warm and fuzzy programs and political positions. Unlike voluntary associations, these attorneys have no ability to sever their connections with, and disclaim the positions of, the union. What kind of "community" is that?

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Actually, the "community" this created is a lot like the East Berlin "community" before the Wall was torn down. This is exemplified by the pittance allocated to the *Keller* decision functions, and the need to make an affirmative application for return of the pittance. The return of the money is appropriate, but, in terms of public perception, the refund does not remove a dissenting member's implied endorsement of WSBA positions. Is it worse to be out $3.33, or to be taken as having endorsed one or more positions deemed incorrect?

At least the East Berliners could attempt escape by scaling walls, swimming rivers, and dodging bullets. With the licensing hammer, the WSBA has nailed the exit shut. If I disagree with the activities of a voluntary association, I can choose to remain or I can choose to leave, a decision I recently made with respect to the ABA. I cannot make that choice regarding the WSBA.

President Stritmatter's comments notwithstanding, the WSBA does not speak for me on any subject, whether I am forced to belong to the Association or not. I am sure that almost *all* of WSBA members disagree with one or more of the positions taken by the Association. President Stritmatter's vision of what is meant by "preserving and developing a society for the benefit of everyone" may be very different than that of any given WSBA member. The state has no natural right to coerce all those who wish to practice law in the State of Washington to contribute to anyone else's "vision"—even the "vision," if one can be discerned, of a majority of the membership.

Mr. Erickson's logic could be extended to any licensed profession. Should not the state require all licensed barbers to belong to a "unified" organization which will carry out the civic barbering ideas of a majority of its members while taxing every member, whether they agree with its positions taken and programs initiated? Why don't we just bring back the guilds of the Middle Ages, with all the market limitations and political power they amassed?

I have listened to the "unified bar" advocates for the two decades I have been in the law profession. Not one has been able to answer the primary argument stated by Mr. Ockerman: why should the state use its power to coerce membership in an organization which performs functions other than the regulation of the designated profession? The answers invariably dwell a good deal on highly subjective issues of "public welfare," "parochial interests," "civic service," and "community." It is possible—nay, more likely—to have all of this high-mindedness through voluntary associations. In fact, more civic good has been done through voluntary trade and charitable associations than will ever be done through mandatory bar associations.

The coercive power of the state should be limited to the establishment and enforcement of licensing matters (the desirability and effectiveness of which can and should be separately debated). A state agency regulating any profession should not conduct other functions. The WSBA is nothing more than a state agency performing the additional functions of a trade association and a political action committee.

It's time to tear the wall down, and let legal professionals find "community" in one or more voluntary associations.

MARC D. BOND
Anchorage, Alaska

A Modest Proposal

Editor:

I am writing to take a position and to make a proposal.

It is my position that the underlying

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cause for the deterioration of the public's perception of attorneys is that we don't charge enough. To understand this, it is first necessary to consider some history.

In the past, there was a minimum fee schedule. The purpose of this was to protect the public. The theory was that by setting appropriate minimum fees, the bar could insure that attorneys didn't have to overload themselves with cases to make an adequate living. It was also to insure that attorneys could afford to take time away from their case load to do pro bono or other public service and simply read and keep up on developments in the law.

In the late 1960s, the "advisory" minimum hourly rate appears to have been $35 per hour. Since then inflation has increased the cost of living about four to five-fold. This means that if we had a minimum fee today, the minimum hourly rate would be between $140 and $175 per hour.

In Snohomish County, no one charges that much per hour. As a practical matter, this means that real income for attorneys has dropped substantially since the '60s. The result of this is pressure on lawyers to take more cases than they should, to practice law in a "sharper" manner, to cut more corners, take less pro bono, and spend less time simply keeping up with the law. I believe this has also made the practice of law less of a profession and more of a business.

My proposal is that the bar lobby for an exemption from the antitrust laws. After all, if professional baseball can have one, why can't we? Once such an exemption is obtained, the bar should again set minimum-fee schedules.

To make the idea of a minimum-fee schedule more palatable, it might be coupled to a pro bono requirement. The pro bono requirement would vary from attorney to attorney and should be based on the net income of each attorney for the previous year. The theory here is that attorneys who make more can afford to give more. Further, this requirement can be satisfied by either actual hours of service or a financial contribution to an organization designed to serve the community.

I believe that such a program would, in the long run, improve both the practice of law, and how the public views attorneys.

JAY W. NEFF
Everett

Articles, Contributions Sought:

The *Bar News* depends upon readers for the bulk of its content each month. Contributions by WSBA members are welcomed in all departments of the magazine. Proposals and submissions may be directed to the Editor at the WSBA office; telephone queries may be made to the Editor at (206) 625-9211. For a list of style and format guidelines, please write the Editor at the WSBA office.

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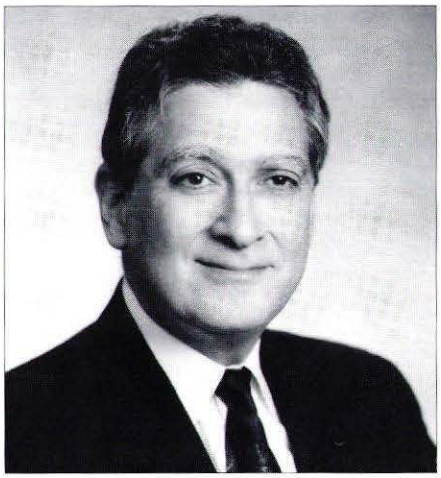
IT STARTS WITH US

by **Ron Gould**
WSBA President



Ronald M. Gould

If our legal system is to fulfill its promise of equal justice under law, we all must do more to increase access to justice for the poor and the powerless. Many Washington lawyers from all types of practices have made it a tradition to use a part of their time each year in this way. They learned, early on, the values derived from giving free services on selected cases to those who cannot afford to pay. Many will continue to donate time year after year to help those in need.

All lawyers benefit from taking on pro bono cases. Why?

We have a duty to help meet the legal needs of *all* people, for we are guardians of a system of justice, the legitimacy of which rests on the premise that the law serves everyone. Doubtless, our legal system gives ample protections to a person who can afford to hire a squadron of good lawyers, or even one who is well-trained. But what of the needy? Do we have law for one group of people but not for others? We recognize in criminal cases the need for appointed counsel to represent those without funds whose freedom is challenged. Our government does not invariably pay, however, for legal help for those poor who have civil legal issues that affect their economic livelihood, pursuit of happiness, raising of a family and other vital personal rights. We, as individuals, should play a part to make our system more fair, more accessible to all.

Any who take on a pro bono case for a poor person will find it rewarding. There is no unimportant case for the person involved in it. Often people simply need advice on their rights, and to help them shows them that the system cares for them as well as for the wealthy. This creates little burden on a lawyer's time, but great gratitude as a common reward.

There also are practical reasons why lawyers benefit from taking pro bono cases. They are good training. As Justice Brandeis once noted, "Responsibility is the great developer." It helps train the lawyer in diligence, care and skill. Newer lawyers will benefit from having front-line responsibilities with clients, and they generally can find an experienced lawyer willing to act as a mentor if needed.

To those newest to our profession, we ask your help. Make a personal commitment to access to justice. Resolve to take one or more pro bono cases this year. You will develop new expertise to meet the needs of the new clients that you serve. You will learn how to deal more efficiently and responsively with clients in general. You will learn to set for yourself a yearly goal: "I will handle not fewer than ___ pro bono clients without charge this year," and you will meet that goal once you set it. Call your county bar association or one of the legal-service organizations and volunteer to take on cases. You will not regret it.

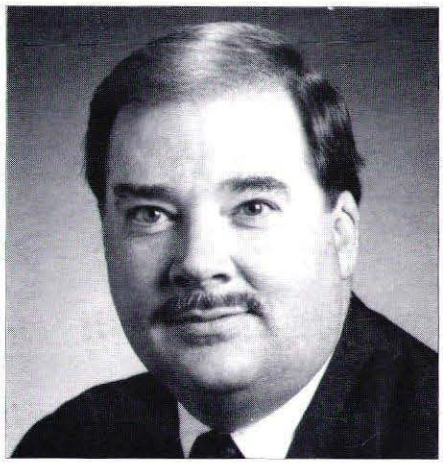
To more experienced lawyers, I have a challenge for you as well. Many of you manage your firms. The American Bar Association has developed a program challenging law firms to make an institutional commitment to pro bono activities. It asks each firm to contribute, annually, a specified percentage of its total billable hours. Our WSBA Legal Aid Committee, chaired by Barbara Evans-Cordts, is developing a parallel program for Washington. I urge you and your firm to "take the pledge" and support the firm challenge.

Finally, our state Supreme Court has established, by provisional rule, a new Access to Justice Board. Appointments to this Board are pending, but once up and running, it should aid pro bono activities in our state. I am urging not only the members of this new board but also our Legal Aid Committee and members of the Board of Governors to do everything they can to aid volunteer legal services in their own communities. When you are called upon by the Access to Justice Board, your representative on the Board of Governors or any representative of the Legal Aid Committee, please make a positive commitment for your firm to provide institutional support for pro bono services.

And so there is something for each of us to do. The number of the poor and their legal problems have increased, while federal and other funding sources have diminished. When you represent a poor person without charge, you can expect that, in many cases, he or she will return your kindness by doing a kindness for some other person. It starts with us.

Ron

How Many Lawyers Did the Board of Governors Disbar Last Year?



Dennis P. Harwick

by **Dennis P. Harwick**
WSBA Executive Director

The quick answer—none.[1] The Board of Governors doesn't get to vote on disbarments—or any other disciplinary sanction. The belief that the Board of Governors serves in an *adjudicative* role for lawyer discipline cases is one of the most persistent misunderstandings about the WSBA—or any other state bar association. The Board of Governors, though involved in general oversight and funding of the lawyer discipline system, has a very limited role in individual disciplinary cases.

The presiding body for lawyer discipline is the 14-member Disciplinary Board consisting of ten lawyers appointed by the Board of Governors and four citizen members appointed by the Washington Supreme Court. Appeals by respondent lawyers from the decision of the Disciplinary Board go directly to the Supreme Court, not to the Board of Governors.

If you seem to remember a time when the Board of Governors actually voted on disciplinary sanctions, you're not losing your mind—though it has been a long time since that happened. Approximately 20 years ago, the ABA's Clark Commission issued its report recommending that popularly elected governing boards be removed from the adjudicative loop in lawyer discipline in order to avoid the political pressure to either impose discipline or acquit prominent members of the bar accused of professional misconduct. Washington, like most states, set up an autonomous Disciplinary Board to oversee disciplinary cases.

In a nutshell, the disciplinary system works like this:

- People with a grievance file the grievance with the WSBA Legal Department, who reviews the grievance and does one of the following:
  - issues a conditional dismissal for failing to state a violation of the Rules of Professional Conduct or Rules for Lawyer Discipline,
  - refers the matter to another appropriate entity (fee arbitration panel, interprofessionalism committee, or other agency), or
  - assigns the grievance for additional investigation.
- After appropriate investigation, the grievance is either referred to a review committee of the Disciplinary Board or dismissed (either party can appeal the dismissal to a review committee).

The Disciplinary Board is divided into four review committees consisting of two lawyers and one citizen member per review committee. These review committees screen the results of investigations conducted by disciplinary counsel and determine whether further action is warranted. If so, a hearing is ordered and the matter is assigned to a volunteer hearing officer appointed by the chair of the Disciplinary Board. Hearing officers act as trial judges. After hearing evidence and argument, hearing officers enter findings and conclusions and forward a recommendation to the Disciplinary Board for a sanction. The Disciplinary Board serves as the appellate court for hearing appeals from the trials conducted by hearing officers and reviews proposals for stipulated dispositions of serious grievances.

Appeals by respondent lawyers from the decision of the Disciplinary Board go straight to the Washington Supreme Court. If the Disciplinary Board recommends a sanction of suspension or disbarment, the matter automatically goes to the Supreme Court since only the Court has the authority to remove a lawyer's license to practice law.

So, is the Board of Governors completely removed from the lawyer discipline system?

Absolutely not. The Board appoints the lawyer members of the Disciplinary Board, provides the resources for the Disciplinary Board and WSBA Legal Department, and adopts general policies for the lawyer discipline system. The Board also makes recommendations to the Supreme Court on the Rules of Professional Conduct and the Rules for Lawyer Discipline and receives regular reports on the discipline case load, including activity and aging reports and a status report on the formal disciplinary proceedings docket.

The Board of Governors does have the privilege of administering the sanction of formal reprimands by requiring a lawyer to appear before the Board to receive the reprimand and be reminded that such misconduct brings discredit to both the lawyer and the legal profession. Just don't ask a member of the Board of Governors to vote a certain way on a specific disciplinary case. He or she will probably give you a quizzical look, and then patiently explain that the Board is "out of the loop" on virtually all disciplinary cases.

[1] *Five lawyers were disbarred by the Washington Supreme Court in 1993 and five lawyers have been disbarred so far this year.*

BOOK REVIEWS

Practice Guides

Elderlaw: Advocacy for the Aging, 2d

by Joan Krauskopf, Allan Bogutz, Bob Brown and Caren Tokarz, 1,137pp./2 vols., hardcover, $190, West Publishing [(800) 328-9352], 1993.

reviewed by **L. Brooks Baldwin**

Have you ever considered a new career in law? One that, although not new, is in an up-and-coming area of interest? One that would allow you the opportunity to meet and personally serve a population of individuals who were brought up in an era where courtesy, respect and integrity were taught along with the ABCs? Believe it or not, such a field does exist, and with the aging of the baby boomers, that field is going to need to expand rapidly in order to accommodate them. What field am I speaking of? Elderlaw of course!

Most of you who have read this far are probably wondering how anyone with little or no knowledge about the elderly population or the legal issues surrounding that population would be able to break into such an esoteric practice. Rest assured, there is a two-volume reference source unceremoniously entitled, *Elderlaw: Advocacy for the Aging* (2nd Ed), that addresses that very issue. This source not only addresses and guides the reader through the general practice of law affecting the elderly as well as specific legal issues exclusively experienced by them, but also gives specific advice on how to break into the field.

While this book is great for those with a budding interest in the field, it would be equally resourceful to those already familiar with elderlaw. The set has the basic hornbook appearance and layout, but don't let that fool you (it actually frightened me off at first —until I finally opened it and thoroughly examined its table of contents). When I saw chapters with such titles as "Age-Disability Discrimination," "Consumer Frauds Targeted at Older Consumers," "Planning for Incapacity," and "Anatomical Donations," I decided to give the volumes a chance.

I'm glad I did. While I practice in an area of law which generally focuses on the young-adult population, I discovered that reading about providing legal assistance to the elderly was both interesting and somewhat refreshing. Reading about another distinct area of law caused me to adjust my focus from my limited realm to another realm which contained its own compelling and population-specific issues.

Some of the most rewarding aspects of reviewing the two volumes were examining the style and content of the written material. The format is easy to follow and understand. The content is direct, basic and informative. Rarely did I find the materials dry or irrelevant to the topic. I did not get the feeling I was meandering aimlessly through subject matter that pertained to hopelessly impossible or implausible situations. This was hands-on reading that could easily be accessed and referred to in a practice of elderlaw. An additional bonus was the inclusion, at the end of several chapters, of useful forms that are either copies of actual legal documents necessary for addressing specific issues or are at least useful in outlining information vital to creating your own forms in compliance with your jurisdiction.

Not having practiced in this field, I honestly cannot say that every aspect of Elderlaw is addressed (or for that matter, that it covers all of the most important issues associated with the practice), but I can confidently say that all topics are covered thoroughly and, most times, with interesting history and detail. I found myself reading into chapters beyond where I had intended to stop because the topics were so interesting.

Take for instance, the chapter on anatomical donations. Did you know that an individual can donate specific organs to specific intended recipients? In other words, your client can decide that at the time of her demise, her corneas will be donated to Cousin Sue and her liver to her ailing granddaughter, Sara. Sounds great, but the chapter advises the attorney that realistically specific donations of this sort (i.e., by will or documentary device) may be hampered by the delay often resulting from problems locating those documents in an extremely timely fashion. Another interesting fact gleaned from this chapter: "If a gift of *all* (emphasis mine) of a body is made, there is no duty on the part of the donee to return the body to the relatives after use" (regardless of the relatives' desires!) "However, if a gift of *only parts* (emphasis mine) of the body is made, the donee shall remove the parts with as little mutilation as possible." Then the custody of the body minus the donated parts vests in the next of kin or otherwise responsible party. That section prepares the attorney to explain to the elderly gent who has no close next of kin that, should he want to donate only various body parts, that his "part-less" body may unexpectedly end up in some distant relative's custody if he does not otherwise specify how the remainder of his

body is to be disposed of. Interesting stuff, huh?

An extensive variety of topics are addressed in the 27 chapters, including grandparents' rights, developing and marketing an elderlaw practice, Medicaid and Social Security issues, community resources, housing issues, planning for a longer life and long-term care, in addition to basic estate planning topics. There is a very interesting chapter, entitled "Health Care Decision-Making," that deals with such controversial issues as assisted suicide, who is responsible for the decision-making of an incompetent individual, withdrawal of nutrition and hydration, and the making and carrying out of living wills.

All in all, the volumes present a comprehensive, convenient and pleasant access to information necessary for the practice of elderlaw. It should be in every elderlaw practitioner's library and should be mandatory reading for anyone considering that area of practice.

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A member of the Editorial Advisory Board, ***Brooks Baldwin*** *lives in Seattle.*

Breaking Traditions: Work Alternatives for Lawyers

Donna M. Killoughey, Editor. Published by the American Bar Association Section of Law Practice Management, (312) 988-5522.

reviewed by **Carolyn M. Van Noy**

This three-hundred-plus-page paperback is a compilation of essays. The topics include discussions of alternative working conditions and alternative careers for lawyers, with the essays arranged in sections devoted to broad areas of interest. The editor begins with those concerning the changing environment for law firms and follows that section with essays defining personal values. The remaining sections that discuss alternatives presume that the conflict in values for the reader consists of the time demands of the profession v. the family and leisure time requirements of a well-adjusted human being.

Consequently, the remaining sections consider alternative work schedule arrangements for the traditional law firm, methods of improving efficiency to maximize personal time, alternative legal positions in which personal time is more easily acquired and successful transitions to nonlegal alternative positions. The last section discusses coping with addictions and other harmful effects of ignoring the conflict in values issues.

Most of the essays are well-written and provide directions for action by the reader. While each author provides authority for his or her thesis, the essays generally offer practical advice about how to proceed.

The book contains an appendix listing resources, a brief biography of each contributor and an index. It is an excellent resource and provides thoughtful discussion of the time management dilemma.

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Editorial Advisory Board member ***Carol Van Noy*** *works with the Seattle Ethics and Elections Commission.*

Positioning Your Firm:

A Guide to Law Firm Marketing Communications

by Burkey Belser, George Kell & Norm Rubenstein, 32 pp., softcover, $30, National Law Firm Marketing Association [401 N. Michigan Ave., Chicago, IL 60611, (312) 245-1592], 1993.

reviewed "in dialogue" by ***Mary Jane Pioli*** *and* ***Robert C. Cumbow***

Pioli: This is a well-written little book, especially valuable because it gives advice from a strategic point of view. It also provides solid input on what can be done within the law firm environment, keeping in mind the politics of marketing within that environment.

Cumbow: The authors seem to have three purposes: First, to sell their own services and the services of people like them. Second, to help law firms understand what marketers and designers do. And third—probably the most valuable from the attorney's viewpoint—getting law firms to accept change, to recognize the need to compete, to identify and target specific markets.

The concept of targeted marketing of law firm services is very new because the whole notion of marketing law firm services is still fairly new. The authors' approach is, "You've got to start thinking this way, lawyers." In terms of those three goals, the authors have done a pretty good job.

Pioli: I agree. One criticism I have goes with your point that one objective of the authors was to help sell their services: probably because the authors are mainly consultants who deal in the design industry, the book tends to be more design-oriented than a holistic approach to marketing. It really has a slant toward the look and feel and design of pieces.

Cumbow: That was also the source of my one frustration with the book. The authors emphasize the importance of the visual in creating firm's identity (they always used the word "identity" rather than "image," as if "image" has a negative connotation, like a false front); yet they don't tell you what appropriate design *is*. Of course, it's fact-specific, it depends on the firm. But I would like to have known how design relates specifically to attaining a goal and projecting an identity. Maybe I wanted more than the average reader of this book is going to want, but I wanted to know things like—curved lines suggest such and such an identity, straight lines suggest something else; whether to use color or not; what kinds of shapes to use in your design. Obviously this book doesn't set out to be a grammar of design; but it bothers me that while they keep talking about choosing the appropriate design, they don't give me any idea what considerations go into that choice.

Pioli: Yes, it's more of a theoretical approach to design instead of hard-core facts on how different design approaches work for different cultures. But one good point they made that really hit home for me, because we recently went through a redesign phase, was that objections to a new design often are based on emotional reactions to *change*, rather than to the design itself. So what they are advising us to do, without giving us all those facts that you were just asking for, is to attack this problem with logic and seek to answer *real* objections and not—as they call them here—the "straw dogs," those emotions and problems in dealing with change.

Cumbow: Still, more information on what goes into actual design decisions would be helpful in overcoming some of those "traditionalist" arguments, like: "We've always used this logo and this typeface, why should we change? Just for change's sake?" And if the response to that is, "No it's not just for change's sake, it's a new design that will better convey the firm's identity," then you are back to that question of how the design does that. How does the actual choice of typeface and lines reflect something different, and what's wrong with what we've always had?

Pioli: I think you're right, because the audience here is lawyers. Lawyers want facts. They want to pull the evidence together and then make a decision. You can't just give them emotional appeal; you have to give them evidence, even though lawyers also make decisions based on emotion—especially when it comes to change.

Lawyers are taught to look at the facts and look at the precedent and then make a decision for the future. Everything is based on precedent. With marketing, you're often dealing with new, creative ideas that might not be proven. You might be coming up with new methods, and you don't have the facts to say how it's worked before. Sometimes we just have to try new things, and that's difficult in a law firm environment.

Cumbow: The National Law Firm Marketing Association identifies this book as "the second edition in our Legal Directions series," but there's no clue what the first one was, or what others are yet to come. I'd like to know more, to put this into the context of an overall series.

I think the authors' advice will be even more helpful to smaller law firms that don't have the benefit of having a marketing professional or two on staff. They give good advice, such as: collect sample brochures that you've liked from other firms and organizations. Choose a designer that you trust, look at that designer's other work. And they talk about how typography and space are important to the look of communications materials.

Pioli: We recently did a corporate-iden-

tity revamping. One of the first things we did was a competitive analysis, to take a look at brochures that we liked, others that we didn't like. We did it not for the purpose of trying to emulate the ones that we liked, but to come up with a design that is different enough to set us apart. I think—as the authors suggest—that is an excellent exercise to go through.

Cumbow: Although the emphasis is on design, there is a fair amount of material in the book on written communication, too—although a lot of it is pretty much common sense. How to write a personal, warm, lively letter instead of a dull letter that has three times as many words in it as it needs—that's very valuable. Certainly the legal profession is trying to come out from under a tradition of overwritten and stilted language. Those old ways die slowly, but I think these authors do much to try to hasten the change.

Pioli: It reminds me of one of my favorite quotes from Thomas Jefferson: "The most valuable of all talents is that of never using two words when one will do."

Cumbow: The authors also did a great job of selecting visuals to illustrate what they mean by design options, old ways and new ways of doing things.

Pioli: I agree. It is laid out well, with high overall readability, and it uses graphics in a very effective way. It has an especially good use of subheads, making it easy to go back and review, which I've done a couple of times. And it offers some good examples, too, such as the creative work plan they've provided.

Cumbow: About firm announcements: The authors make the comment that, "Rarely do announcements hail a single lawyer any more. Usually, to save money the announcements gang two, three or more names together on the same card or set of cards. The impression a single name might have made on a more collegial community in years past has been made slighter by today's crowded and competitive marketplace." I thought they were going to say that isn't always a good policy, but they didn't. I think one thing they overlook here is the business development value that a single name might have. There is still a value in the single-name announcement.

Pioli: Well, I for one was happy to read that section, because it validated the way we have approached announcements, since we *have* "ganged" them. But we've done something a bit different that relates to what you said about the value of the individual name. We have created announcement cards and a mini-folder with individual cards inside, so a new partner can send out special ones with just her card in it, or they could be ganged with other ones.

Another thing that is increasingly important to law firms and their clients is that the materials law firms send out don't cost a lot of money and don't *look* as if they cost a lot of money. Firms are trying to take advantage of printing quantities and saving money. We are really finding ways to save money. Law firms need to show their clients that they care about spending their own money, because then they are going to care about spending their clients' money just as well.

Cumbow: Yes, and the kinds of writing and design suggestions that appear in this book are valuable in showing them how to have a good looking product without buying the most expensive one.

Pioli: Right. But I'd tell the reader, if you are going to look at anything in this book, look at the proposal section, because proposals are going to be a part of your life no matter what size law firm you work in, whether you are a partner, an associate or a marketing person. The authors do a good job of laying out a productive way to approach a proposal. Proposals are fairly new to the law firm environment, but I think we only need to look to the accounting profession and what has happened to them in the last five years to see what's going to happen to us in the coming five years.

There's a section in the book that talks about what the buying cycle is and how decisions are made. The authors make the point very well that a proposal really goes beyond a written document. There is the pre-proposal stage, the information gathering, talking to the client, asking the questions. Then there's preparing the document, then actually delivering it. Then there's the follow-up and the actual presentation that often accompanies a written proposal. Statistically we know that written proposals alone do not win work. It's all the other things you do around them—within the buying cycle—that win you the work. And this book lays that out well. Every law firm has its own culture to incorporate this proposal activity into, but it is something we all have to pay a lot of attention to in the coming years. That's another reason this is a book I highly recommend—especially for smaller law firms that do not have marketing professionals in-house or marketing consultants they regularly work with. This book can be an excellent guide.

Mary Jane Pioli *is director of Client relations for Perkins Coie.*

Robert C. Cumbow *is a Perkins Coie associate, former communications professional and a WSBA Editorial Advisory Board member.*

BOOK REVIEWS

Reference Works

Washington Tort Law and Practice

by David K. DeWolf and Keller W. Allen, 531 pp. including text, sample forms, tables and index, hardcover, $85, West Publishing [(800) 241-0214], 1993.

reviewed by **J. Scott Miller**

Gonzaga University Law School professor David DeWolf and Spokane attorney Keller Allen took on a massive project to write a single text that provides a complete overview of tort law in the state of Washington. Because of the scope of the assignment there are necessarily some gaps, but overall the book is well worth owning.

This practice manual is the latest in the 16-volume *Washington Practice* series West began publishing before the mind of man runneth not to the contrary (actually, 1956). It fills a void in the series that has existed for a surprisingly long time, perhaps because no attorney was willing to accept the daunting challenge of distilling the thousands of state tort cases into a single manageable product.

The authors have divided tort law into 17 categories ranging from common law negligence and intentional torts to the more recent statutory enactments of protected civil rights and product liability. Because this area of the law is so broad and wide ranging, there are nuances that are missed (some important, some trivial). But DeWolf and Allen explain they have already begun working on the pocket part and plan to expand some areas that received rather cursory attention in the main volume.

There are 227 different forms that provide proposed language for complaints, answers, jury instructions, and verdicts. Each form cross-references to the Washington Pattern Instructions (WPI) pertinent portions of the text, and, in some instances, to outside source materials. This should be of particular benefit to attorneys who have not yet developed an extensive form bank. Because the language is carefully crafted it will not be surprising to see trial courts adopting the phraseology in many of these forms.

The real key to a good practice manual, though, is an index that works. I have had the opportunity to use this book in my practice for a few months, and while the index is excellent, it could be more comprehensive. As an example, it contains no reference for "slip and fall" or "trip and fall," or "land owner liability"—the pertinent references on these topics are found only under "premises liability," although there is a cross reference in the "owners and occupiers" topic. While this certainly is not a major flaw, practitioners tend to reduce certain types of cases to a sort of litigation shorthand so it would be nice if the Index included more of these commonly used terms. Perhaps the 1995 pocket part will address this minor shortcoming.

Professor DeWolf reports that the project took the two authors more than three years to complete. The draft manuscript was critiqued by trial practitioners as well as academicians, and the result is a book that is useful both as a reference tool and practice manual. It focuses on the law as it currently exists, rather than analyzing historical development, so concise answers are easily found. It belongs on the bookshelf of every firm and single practitioner in the state.

Spokane attorney ***J. Scott Miller*** *is a partner in the law firm of Johnson, McLean, Riccelli, Devlin and Miller. He is a member, and former chair, of the WSBA Editorial Advisory Board.*

Washington probate guide, newly updated, merits a look . . .

Washington Law of Wills and Intestate Succession

by Mark Reutlinger and William C. Oltman, Butterworth's 1985, 1994 Supplement; $30/supplement $15. Available from Seattle University School of Law Bookstore, 950 Broadway, Tacoma, WA 98402 [(206) 591-2290].

reviewed by **Douglas C. Lawrence**

Are you tired of getting lost in the index and table of contents of the Revised Code of Washington? Do you need an answer NOW to that burning question about inheritance by half-bloods? Do you want to know what it takes to cut that child out of your client's estate plan once and for all?

Look no further! Answers to these questions, and many more, can be found by turning to *Washington Law of Wills and Intestate Succession* by Mark Reutlinger and William C. Oltman, professors at the Seattle University School of Law. They have applied their talents to consolidating Washington's laws relating to wills, intestacy and estate administration in one easy-to-use volume. This text includes discussions of issues both common and rare. You can find help on creditors' claims, pretermitted heirs, testamentary capacity and the formal requirements for a codicil. You can also find out what Washington law is on inheritance by half-bloods, escheat, ademption and the effect of conditions imposed in a will.

The book contains a comprehensive review of Washington statutory and case law relating to wills, intestate succession, probate and estate administration. Reutlinger and Oltman take us into a specific area of the law and help us understand why the law exists. With this understanding in hand the authors then walk us through the current statutory provisions and the case law interpreting those provisions.

Washington Law of Wills and Intestate Succession is one of the few books that I would classify as a "must" for Washington estate planning and probate practitioners. It functions as a treatise to educate about the law and its genesis, as well as an excellent initial resource for research projects. By using this book as a first resource, a practitioner can often eliminate hours of tedious research time.

The text is concise and easy to use. It contains a comprehensive index , table of contents and table of cases and statutes. This combination gives the reader several avenues to follow in the quest to find "the law" on any given topic.

The only significant problem is finding the book itself! It was originally published by Butterworth's, but the authors have reacquired the copyright and the existing printed copies. We understand that if you call Butterworth's you may be told the book is out of print. NOT SO! (See information above.)

If this isn't enough good news, you should be aware that Professor Reutlinger has written a new book, *Wills, Trusts, and Estates: Essential Terms and Concepts*, published by Little, Brown and Company. If you have forgotten the Rule in Shelley's Case or need a refresher on the Second-Look doctrine, you can find them there. This book discusses most of the terminology used in wills, trusts and the doctrines behind estate and succession planning. There are helpful diagrams and the alphabetical Master Word List. Although intended primarily for law students, this book should prove to be a useful (and inexpensive) reference for both lawyers and paralegals. With its blue-pinstripe-and-hot-pink cover it will be hard to miss! It can also be obtained at the Seattle University Bookstore or the University of Washington Bookstore for $16.95.

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Douglas C. Lawrence *practices with the Seattle firm of Stokes, Eitelbach & Lawrence. P.S. This review is reprinted with permission of the WSBA Section on Real Property, Probate & Trust.*

Cherokee Nation

Two vols., hardcover, $162, West

reviewed by **Hans Thielman**

Despite its 1,309 pages, the two-volume Cherokee Nation Code Annotated (CNCA), which was revised and recodified in 1992, is lean compared to other multi-volume statutory codes, both federal and state. The relatively small size of the CNCA may be one of its biggest virtues, given the propensity of lawmakers at all levels of government to overlegislate. As recodified, the publication lists 85 numbered titles, although some titles are reserved for future use. Rather than carry laws on every conceivable legal subject, the code seems to focus on a relatively small number of topics. For example, certain titles such as Crimes, Criminal Procedure, Children, Landlord and Tenant, and Motor Vehicles, contain an abundance of statutory material and are quite long, while other titles (e.g., Attorneys, Debtor and Creditor, and Property) have fewer statutes and are thus much shorter. The people responsible for recodification contemplated the likelihood of future expansion of the code, as several titles (e.g., Banks and Trust Companies, Probate Procedures and Worker's Compensation) have no enacted laws but are reserved for future use. Some topics one might expect to find in a statutory code are inexplicably absent. For example, there are no statutes pertaining to Land Use/Zoning, and there is no title reserved for that topic. Likewise, the Uniform Commercial Code (UCC), or the Cherokee Nation's version of it, is not included.

Volume One has a detailed table of contents, which is preceded by the Cherokee Nation Constitution of 1975. The Act of Union Between the Eastern and Western Cherokees and the Cherokee Constitution of 1839 are included as archival documents.

Volume Two contains a well-prepared comprehensive index and the Rules of the District Court of the Cherokee Nation. Because the publication is updated through the pocket part system, each volume has its own pocket in back.

Titles are arranged alphabetically. An alphabetical organization of the code makes good sense, although problems may develop as the code grows beyond what has been reserved for future use.

CODE ANNOTATED
Publishing, 1993 [(800) 241-0214].

Thus, renumbering of titles may become necessary in the event a new title is sandwiched between existing titles.

Legislative history, including amendment notes, can generally be found at the end of a chapter or following an individual statute. Interspersed throughout the set are various library references, including citations to Am Jur 2d. In addition to statutes or chapters sometimes being cross-referenced to other CNCA provisions, there are cross references to Oklahoma Statutes. The publisher's decision to include cross references to Oklahoma Statutes was a good one. After all, the seat of government for the Cherokee Nation is located in Oklahoma, and many CNCA provisions explicitly refer to Oklahoma statutes and or Oklahoma government agencies.

Although the publication purports to be an "annotated" code, judicial case summaries are noticeably absent. Since the Cherokee Nation has an appellate court known as the Judicial Appeals Tribunal, it seems reasonable to expect that the CNCA would include case annotations. Perhaps this deficiency will be corrected in future supplements.

A few statutes contain grammatical errors. For example, 10 CNCA 1406(A) on page 209 reads:

> The malicious or wanton neglect, or sexual, physical or emotional abuse perpetrated by any person upon a child in the care or custody, or under the supervision of the Cherokee Nation including employees of any agency, on duty or not, shall be guilty of a crime.

Even if this particular blunder originated during the statute's drafting stage, the publisher's editorial staff should have caught and, if possible, corrected the mistake. Alternatively, if correction of the statute's mangled syntax was not feasible, the staff could have inserted "sic" within the text.

Overall, the CNCA is a well-prepared publication. The organization of the code is convenient for the user and allows for future expansion. As time passes, or as laws get enacted, it will be interesting to see if the CNCA will remain at its modest size or grow to become as large as any other multi-volume code.

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***Hans Thielman**, a member of the WSBA Editorial Advisory Board, lives in Seattle.*

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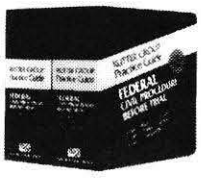

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AIDS and Governmental Liability: State and Local Government Guide to Legislation, Legal Issues and Liability

Editor: Brenda T. Strama; authors: Mary Anne Bobinski, William S. LeMaistre, Frank S. Merritt, Nancy Morrison O'Connor, Brenda T. Strama. American Bar Association Section of Urban, State and Local Government, 1993. Softcover, 188 pages; $49.95 + $4.95 handling. (Discounts available for bulk orders. Special consideration given to state bars, CLE programs, and other bar-related organizations.) Publications Planning and Marketing, ABA, 750 North Lake Shore Drive, Chicago, IL 60611; [(312) 988-5522].

reviewed by **Nancy J. Krier**

AIDS and Governmental Liability: State and Local Government Guide to Legislation, Legal Issues and Liability is a compendium of articles by five health law attorneys and professors.

The 188-page book focuses on liability issues for governmental entities. It describes selected legal problems related to HIV and AIDS, and resulting court decisions and legislation. The four chapters address "HIV Testing and Confidentiality," "AIDS Discrimination in the Public Workplace," "AIDS and the Health Care Provider," and "The Theoretical Basis of Liability for the Transmission of HIV in Prisons and Jails." The book does not cover in significant detail issues related to criminal liability, partner notification, zoning, and needle exchange.

The book includes practice tips on complying with the laws, regulations and health care standards. Several useful appendices provide a checklist for employer compliance with the American with Disabilities Act; a list of state blood shield statutes; and the text of Center for Disease Control publications, including the "CDC Universal Precautions."

This book was written in 1993, and the authors are careful to note the rapid developments in this area of the law. For that reason, I strongly encourage the reader to conduct an on-line search and update of any case, article, statute or regulation cited. Even with that (expected) limitation on timeliness of the material, the book is an efficient guide which summarizes the legal issues and resources for the day-to-day, public-agency lawyer who may be faced with questions regarding liability of government agencies. It is basic enough for the attorney just entering into this complex area of health law, yet extensive endnotes listing cases, articles, statutes and regulations provide a good legal database for the more experienced practitioner.

The chapter on "AIDS and the Health Care Provider" is particularly useful. It not only discusses theories of liability for health care providers (strict liability, implied warranty, negligence and others) but also gives good case-based examples of where the theories have been litigated, including specific findings of various courts. One section treads into the topics of the fear of AIDS and how that fear has sparked lawsuits by concerned patients of health care workers.

All in all, I recommend the book as a good "should have in my library" for the government lawyer who is advising clients on legal concerns with HIV, AIDS, and related health care topics. I offer a caveat, however, that as each year passes and (we hope) science moves forward in removing the deadly virus from our vocabulary, the book may become a little less useful. Contrarily, if no cures or vaccines are found, and HIV and AIDS liability issues remain with us, the book will also become less useful as the case law becomes more developed.

Olympia attorney ***Nancy J. Krier*** *is an Assistant Attorney General for Washington and member of the WSBA Editorial Advisory Board.*

Good for Starters

The Career Legal Secretary, 3d Edition

(National Association of Legal Secretaries, 864 pp., hardcover, $33.50. West Publishing, 1994. (800) 241-0214.

reviewed by **Diana Osborne,** *PLS, LPO*

The Career Legal Secretary, Third Edition, prepared by the National Association of Legal Secretaries, is primarily directed to a legal support professional with limited experience in the legal field. It is published by West Publishing Company. The book is the only recommended recourse for the Accredited Legal Secretary certification exam. This is a national exam administered twice a year and is aimed at secretaries with less than three years' experience.

The manual contains 20 chapters covering everything from a description of the duties of a "career legal secretary" to numerous areas of the practice of law. The information provided is clear and concise and could benefit even an experienced support professional in areas he or she has not previously worked in. The chapter on ethics includes the ABA Code of Professional Responsibility and Model Rules of Professional Conduct and, again, could be useful to anyone in the legal support profession.

The book includes general help in all areas of a law office operation. It has chapters on computers in a law office, accounting, written communications, preparation of legal documents, the courts, administrative agencies, litigation, contracts and torts. It also contains chapters on the more common areas of law, such as criminal law and procedure, family law, business organizations, real estate, estate planning, estates and guardianships and bankruptcy. The glossary in the back of the book is an extremely helpful tool

for a secretary.

I would highly recommend this book as a desk reference for a new legal secretary; however, I could also see it assisting a more experienced legal secretary/assistant when working in a new area of law. The book is well-written, easily understood, and very thorough. I believe it could be especially beneficial to a legal secretary in a small office where many areas of law are practiced.

Diana Osborne *is second vice president of the Washington Association of Legal Secretaries and works in Everett.*

Probate Handbook for the Lawyer's Assistant

Editors: National Association of Legal Secretaries, Specialty Text Development Group, 432 pp., softcover, $49. West Publishing Co., 1994, (800) 241-0214.

reviewed by **Martha Dale,** *PLS*

This is a valuable resource tool for any legal secretary or assistant currently working in the probate field or new to it. The book is well-written and easy to read. Its 20 chapters provide such basic information as what a will is, the different kinds of wills, file organization and how to collect necessary information. It also provides in-depth education on such topics as valuation of assets, tax returns and asset distribution.

The authors are Certified Professional Legal Secretaries who work in the probate field. It provides both references to appropriate federal statutes and rules and many indispensable forms. The instructions on how to use them are thorough and easily understood.

I would encourage each legal secretary and assistant practicing in the probate field to obtain a copy of this book; attorneys should have a copy of it in their law library as well.

Martha Dale *works for sole practitioner Frank Franciscovich in Aberdeen.*

BOOK REVIEWS

Fiction

Trio of Victorian Novels Offers a Look-See into 19th Century Legal Proceedings

by **Philip H. DeTurk**

Tired of reading Grisham, Turow and other modern authors of U.S. novels? Then try three men who wrote about events in 19th-century England.

> If justice had really been done in this case, gentlemen, it is Lady Eustace who should now be on her trial before you, and not my unfortunate client. But, gentlemen she is not here. She is at her own castle in Scotland, and sends to us a medical certificate. Had she the feelings of woman in her bosom she ought indeed to be sick unto death. I say again that she ought to be here in that dock—in that dock in spite of her fortune, in that dock in spite of her and her great relatives. It is she whom public opinion will convict as the guilty one in this marvelous mass of conspiracy and intrigue. In her absence, and after what she has done herself, can you convict any man either of stealing or of disposing of these diamonds?

But they did convict the two rascals so charged, and the judge sentenced them to 15 years in penal servitude.

Thus concludes one of 47 novels written by Anthony Trollope (1815-1882) during the Victorian years. This one, *The Eustace Diamonds*, deals with the theft of jewelry which really wasn't stolen at all. Lady Eustace, in an effort to protect her inheritance, secreted them.

> All the police in London, from the chief downwards, are agog about this necklace. Every well-known thief in the town is envied by every other thief because he is thought to have had a finger in the pie. I am suspected and half the jewelers in London and Paris are supposed to have the stones in their keeping . . . and all the while you have got them locked up in your desk.

In so stating, Lord George sums up the plot of this book about criminal law in England in the 1860s. The novel, published in 1872, is one of six novels centered on the noble Palliser family, books featured during a PBS series about five years ago. It is also just one of many novels in which Trollope discusses law, lawyers and trial work. Another notable work of fiction in this vein is his equally readable *Orley Farm*.

But the prolific Trollope, long dismissed as a word-machine for his practice of writing every morning before going to work at the Post Office, 250 words to the page, 66 manuscript pages per week, was only one of several Victorian writers who devoted most of a novel to a particular aspect of the law and its followers.

Wilkie Collins (1824-1889) author of the famous thriller, *The Moonstone* (1868)—(considered by Benet's 3rd edition to be the first mystery featuring a detective, Sgt. Cuff)—also penned *The Law and the Lady* in 1873. This 413-page piece of fiction (in the Oxford World's Classics edition) deals with the Scotch verdict:

> There is a verdict allowed by the Scotch law, which (so far as I know) is not permitted by the laws of any other civilized country on the face of the earth. When the jury are in doubt whether to condemn or acquit the prisoner brought before them, they

are permitted in Scotland, to express that doubt by a form or compromise. If there is not evidence enough, on the other hand, to thoroughly convince them that a prisoner is innocent, they extricate themselves from the difficulty by finding a verdict of Not Proven.

According to the novel's appendix, this is still the law in Scotland with a 15-person jury having to reach a majority for a decision. While the Not Proven verdict is in reality the same as an acquittal, this was insufficient according to the man who married the Lady of the title. In Collins' novel, Mr. Macallan felt that the Scotch verdict was such a stigma at the end of the trial concerning his supposed murder of his first wife, that he had to change his name and start life anew.

The well-constructed novel centers around the efforts of Macallan's wife, Valeria, to prove her husband's innocence. Besides the considerable time spent throughout the book in the Court of Scotland, there is also the development of one of the more unusual characters in all of Victorian literature.

I refer to the personage of Miserrimus Dexter. This extremely intelligent but overly sensitive character has no lower limbs. When he is not using his wheelchair, he is hopping around on his hands at "prodigious speeds".

On the occasion when Valeria, the "Lady" of the title, first interviews Mr. Dexter—for he is an important witness to the poisoning of Mr. Macallan's first wife—his attire is described thusly:

> His jacket, on this occasion, was of pink quilted silk. The coverlid which hid his deformity matched the jacket in pale sea-green satin; and, to complete these strange vagaries of costume, his wrists were actually adorned with massive bracelets of gold, formed on the severely-simple models which have descended to us from ancient times."

Dexter has this to say about his outfit:

> I have dressed, expressly to receive you, in the prettiest clothes I have . . . Except in this ignoble and material nineteenth century, men have always worn precious stuffs and beautiful colours as well as women. A hundred years ago, a gentleman in pink silk was a gentleman properly dressed. Fifteen hundred years ago, the patricians of the classic times wore bracelets exactly like mine. I despise the brutish contempt for beauty and the mean dread of expense which degrade a gentleman's costume to black cloth, and limit a gentleman's ornaments to a finger ring . . .

Needless to recount, the very dedicated Lady Valeria Macallan is able to bring about a change of the husband's Not Proven verdict to one in true keeping with the facts of the untimely demise of the first Mrs. Macallan.

Perhaps the best of the Victorian novels about lawyers and law is the one penned by Charles Dickens (1812-1870) in 1852. Recently the subject of a well-conceived television series in which Diana Rigg played the part of Lady Dedlock, *Bleak House* is truly an impressive read for any lawyer.

This novel is important to practicing attorneys for three reasons. First, the language, both in usage and style, presents many opportunities to observe how similar concepts may be used in trial memorandums and appellate briefs. Who can not read the opening soliloquy about the London fog and not be impressed with this method of presenting information?

> Fog everywhere. Fog up the river . . . fog down the river . . . fog in the Essex marshes . . . And hard by Temple Bar, in Lincoln's Inn Hall, at the very heart of the dog, sits the Lord High chancellor in his High Court of Chancery.
>
> Never can there come fog too thick, never can there come mud and mire too deep, to assort with the groping and floundering condition which this High Court of Chancery, most pestilent of hoary sinners, holds, this day, in the sight of heaven and earth.

Second, the work should be addressed for the subject matter itself. While Dickens' introduces too many characters, some of whom have little involvement in the development of the plot—mere caricatures of elements of life about which the author had grave concern—the actual narrative is an interesting one.

It involves the attempt of a family to resolve the murky doings that have enveloped it ever since one of the ancestors died and left several wills. Because of this, the famous Mr. Jarndyce brings three youngsters to his home. Two of them are cousins and prospective beneficiaries of the estate being handled in Chancery. The third, and most important, is Esther. Many of the adventures surround her birth, and the efforts to keep information about her mother from just about everyone in the book.

Third, the reader will be the richer for the many legal quotations that have flown from various Dickens' characters throughout the opus. In the 16th Edition of Bartlett's *Familiar Quotations*, Justin Kaplan chooses four quotes from *Bleak House*. None of them are repeated here. Instead, learn about England, the early years of Queen Victoria, and law from Mr. Guppy, a lawyer's apprentice, who says:

> Us London lawyers don't often get an out; and when we do, we like to make the most of it, you know. (An "out" is an excursion, and Guppy was visiting Lincolnshire.)

Consider Mr. Jarndyce's statement about the pending probate proceedings:

> The Lawyers have twisted it into such a state of bedevilment that the original merits of the case have long disappeared from the face of the earth. It's about a Will and the trusts under a Will—or it was, once. It's about nothing but Costs now. We are always appearing, and disappearing, and swearing, and interrogating, and riling, and cross filing, and arguing, and sealing, and motioning, and referring and reporting . . . through such an infernal country-dance of costs and fees and nonsense and corruption, as was never dreamed of in the wildest visions of a Witch's Sabbath.

Then, there is Richard, one of the cousins, who has an optimistic philosophy about the probate hearings:

> . . . the longer it goes on, dear cousins, the nearer it must be to a settlement one way or other.

There is a Mr. Gridley who has been eagerly waiting for the solution to his case:

> ***". . . what do you think the lawyer making the inquiries wants?"***
> ***"A job," says Mr. George.***
> ***"Nothing of the kind!"***
> ***"Can't be a lawyer, then," says Mr. George, folding his arms with an air of confirmed resolution.***

> My mother died. My brother, some time afterwards, claimed his legacy. I, and some of my relations, said that he had had a part of it already, in board and lodging, and some other things. Now mind. That was the question, and nothing else. No one disputed the will . . . (yet) the costs at the time . . . were three times the legacy. My brother would have given up the legacy, and joyful, to escape most costs. My whole estate . . . had gone in costs.

Mr. Tulkington is one of the many legal people who have a role in the book. His wisdom is narrow but perhaps reflects some of Dickens' own beliefs?

> "There are women enough in the world . . . too many; they are at the bottom of all that goes wrong in it, though, for the matter of it, they create business for lawyers.

Later, this man, who is just one of many characters who leave this monumental work during its course, adds to his misogynist beliefs:

> My experience teaches me, Lady Dedlock, that most of the people I know would do far better to leave marriage alone. It is at the bottom of three-fourths of their troubles.

Richard, who has already spent time apprenticed to a doctor, later believes that being involved in a lawyer's office will enable him to know about the suit in which his kissing cousin, Ada, and he are immured:

> "The law," repeated Ada, as if she were afraid of the name. "If I went into (a solicitor's) office," said Richard, "and if I were placed under articles, I should peg away at Blackstone and all those fellows with the most tremendous ardor."

Dickens himself is bemused by the fact that the Courts close for four months every year:

> The bar of England is scattered over the face of the earth. How England can get on through four long summer months without its bar—which is its acknowledged refuge in adversity and its only legitimate triumph in prosperity—is besides the question.

Another character who was at one time a law writer but has fallen upon hard times tells us, ". . . what's the use of living cheap when you have got no money! You might as well live dear." (Shame, Mr. Kaplan, you should have used that one in your new edition of *Bartlett's*).

Then there is Mr. Smallweed. This very aged gentleman, who must be carried from place to place in a chair, is the epitome of a very sharp business man. Occasionally he imparts to his children that his day of death is at hand, causing the very famous author to reflect:

> A close observer might perhaps detect both in her eye and her brother's, when their venerable grandsire anticipates his being gone, some little impatience to know when he may be going, and some resentful opinion that it is time he went.

Dickens also reflects on Chancery upon the occasion of its beginning another term:

> To see everything going on so smoothly, and to think of the roughness of the suitor's lives and deaths; to see all that full dress and ceremony, and to think of the waste, and want, and beggared misery it represented. . .

Mr. Smallweed and a Mr. George, who is referred to throughout the book as the old trooper, (a person who has served in England's army over many years), have this delightful colloquy:

> ". . . what do you think the lawyer making the inquiries wants?"
> "A job," says Mr. George.
> "Nothing of the kind!"
> "Can't be a lawyer, then," says Mr. George, folding his arms with an air of confirmed resolution.

Perhaps Mr. George anticipated his

confrontation with Mr. Tulkington. If nothing else, it emphasized the best way to settle a case, when you know that you will not lose:

> "Serjeant," the lawyer proceeds in his dry passionless manner, far more hopeless in the dealing with, than any amount of vehemence, "make up your mind while I speak to you, for this is final. After I have finished speaking I have closed the subject, and won't reopen it . . ."

(Though he appears to be addressing a military man, Tulkington is speaking to a Serjeant-at-Law, "an old-fashioned dignity, long abolished . . . at one time the highest rank at the English Bar." The *Oxford Book of Legal Anecdotes* (1986) notes.)

Still, Chancery drags onward, year after year. Esther, who has nothing to gain from the interminable proceedings, discusses the interest that a Mrs. Flite has in them:

> "I expect a Judgment. Shortly."
> There was an anxiety even in her hopefulness that made me doubtful if I had done right in approaching the subject.
> "My father expected a Judgment," said Mrs. Flite. "My brother. My sister. They all expected a judgment. The same that I expect."
> "They are all—"
> "Ye-es. Dead, of course, my dear," said she.

In Chapter 39, "Attorney and Client," Dickens explains what law is all about.

> The one great principle of English law is, to make business for itself. There is no other principle distinctly, certainly and consistently maintained through all of its narrow turnings. Viewed in this light it becomes a coherent scheme, and not the monstrous maze the laity are apt to think it. Let them but once clearly perceive that its grand principle is to make business for itself at their expense, and surely they will cease to grumble.

Another solicitor by the name of Vholes represents Richard and his cousin up to the termination of the *Jarndyce* proceedings, His philosophy is succinct:

> It is part of my professional duty to know best. It is part of my professional duty to study and to understand a gentleman who confides his interests to me. In my professional duty I shall not be wanting sir, if I know it. I may, with the best of intentions, be wanting in it without knowing it; but not if I know it, sir.

The beloved Mr. George gets in a scrape—a rather serious one, since he is to be charged with murder, and Esther (bless her) tells him he must have a lawyer. His rejoinder is reasonable, based on his earlier problems with the now-deceased Mr. Tulkington: "I don't take kindly to the breed," said Mr. George.

During the final 150 pages of Bleak House, Mr. Bucket, a detective, becomes a very important character. (It is hard to believe that Benet could have considered Wilkie Collins' Sgt. Cuff the first English fiction detective.) Bucket opines,

> So's this rule. Fast and loose is one thing, fast and loose in everything. I never knew it to fail. No more will you.

Mr. Jarndyce is the really very nice guy of this book, a sort of Esther of the male gender. When a third will is found (by Mr. Bucket, who assists Mr. Smallweed in releasing the document), Jarndyce asks his solicitor, upon presenting it to him, "Did you ever know English law, or equity either, plain and to the purpose?"

The infamous Jarndyce case (bear in mind that the name has nothing to do with our hero, but one of his many ancestors) is finally concluded. The new will is of no consequence. To find out why, you must read the book, or at least the chapter beginning at page 920.

Before the denouement, Mr. Guppy returns to the scene. He is after Esther's hand in marriage, for which he is, again, unsuccessful. However, he has now become a lawyer:

> I am now admitted (after undergoing an examination that's enough to badger a man blue, touching a pack of nonsense that he don't want to know) on the roll of attorneys, and have taken out my certificate.

Bleak House reads fast, even with the number of pages to get through. It is worth the effort. If you read only one novel by Dickens, let it be this one.

❖ ❖ ❖

Puyallup lawyer ***Philip DeTurk*** *reviews neglected classics of legal fiction each year for the* Bar News' *book issue.*

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Lindsay T. Thompson, *Editor*, Bar News

Yakima, October 14, 1994

Present: The President and members of the Board of Governors except Governor Vickie Norris. *Also present:* Thomas A. Campbell (Washington Prosecuting Attorneys' Association); Myrna Contreras-Trejo (Legal Foundation of Washington); Mary Jo Diaz (Government Lawyers Bar Association); Susan Edison (King County Bar Association Young Lawyers); Zanetta Fontes (King County Bar Association); Judge James Gavin (Superior Court Judges' Association); Dennis P. Harwick (WSBA Executive Director); Nancy Krier (Washington Women Lawyers); Douglas C. Lawrence (WSBA Real Property, Probate & Trust Section); Alva Long (South King County Bar Association); Judge Ray E. Munson (Court of Appeals, Division III); Bradford Steiner (WSBA Young Lawyers Division); and Lindsay Thompson (*Bar News* editor).

For Openers: After the Board approved the minutes of the last meeting (see also "The Board's Work," *Bar News*, October 1994, page 26) the president gave them a report on his first month in office. He has attended, or spoken to, the Canadian Bar Association, the Washington Judicial Conference, and the WSBA Governance Task Force, the last now laboring under complete media silence. He reported that the WSBA Task Force on Professional Qualifications is not seriously considering an articling requirement for newly admitted lawyers. This means the WSBA Young Lawyers Division, which (in addition to predicting that even speaking the word "articling" would trigger a series of plagues ranging from accelerated aging of its members into Fellows status to house pets turning, slavering, on their owners) had grabbed the state's law students to its bosom as human shields, can now begin releasing hostages. The board heard, but did not act upon, YLD complaints that the Task Force has gone from determining there is a problem with what practical skills newly-admitted lawyers pick up in law school to considering solutions without coming back to the board to ask permission.

Governor Jan Peterson reported the joint Supreme Court/WSBA Discipline Task Force is "lumbering toward its goal" of a December report. Though much remains to be decided, Peterson said "it appears proposals to dramatically change the system may be adopted."

The president noted that the board's nominations to the new Access to Justice Board are still pending before the Supreme Court and went out of his way to stress his view that the creation of the ATJ does not eliminate the need for WSBA involvement in the area of provision of legal services to the poor.

See Bar News, June 1993, page 29: A Yakima law firm wrote in, complaining that the Washington State Bar Association Credit Union wouldn't release it from the credit union's field of coverage so they could join a local credit union, even though the WSBACU only has offices in the Seattle area.

Governor Pat Williams remembered the creation of the Credit Union, but the rest of the board tut-tutted and harrumphed that they had no idea such a thing existed, and where do they get off using our name anyway. As a fictional Seattle lawyer in the novel *Judgment by Fire* proved ("I walked around my office . . . straightening the piled-up copies of the *State Bar Journal* and the other junk people are always sending to lawyers"), you can send information to people 'till the cows come home, but you can't make them read it. Credit Union leadership will be summoned to a future meeting to give an account of themselves.

Another Sighting: WSBA legislative liaison John Fattorini, rarely found outside his native habitat, the state capitol complex in Olympia, appeared before the board to report on coming legislative efforts in the 1995 session. The realtors want a bill to clarify their relationship to parties to property transactions ("The way I read it, they want to represent everybody and be responsible to nobody," Governor Jim Handmacher quipped) that will need some work. There will be a technical corrections act covering the limited liability companies law passed this year; a consumer protection act amendment to provide some teeth to fight unauthorized practice of law; amendments to UCC Article 8; a proposed Uniform Prudent Investors Act; bills to reform criminal sentencing and judicial selection and cure some anomalies in county law library funding; and a raft of family law bills. Most of these are still under review by the WSBA Legislative Committee. A fuller report will come in December.

Catching Up With the Times: One of the president's aims this year is to develop model policies to help firms that want to set policies for attorney leaves of absence and part-time employment in times of pregnancy and the like. An ad hoc committee has been working on these issues and Laurie Connolly presented the board with their recommended part-time employment and family and medical leave policies, designed to comply with all the latest legislation. The board is referring them out to various sections and specialty bar associations for comment before taking further action on them.

A Better Sense of What We're About: The board approved some amendments to GR 12, which defines the purposes of the WSBA. Mainly the order of listed purposes is shifted around and general purposes made more specific. The text will appear later in the year in *The Advance Sheets*.

Dealing With Youth Violence: Governor Dan Hannula chaired a two-hour session on another of the president's priorities, curbing youth violence. The seminar featured extended remarks by a number of Yakima County residents, from police officers to the juvenile court commissioner to local lawyers to social service workers in a variety of fields. Their discussion of the complex and intertwined issues affecting this topic was sobering but informative, and will be followed up on by other such mini-conferences as the board meets around the state this year.

Planning Ahead: Saturday and Sunday morning the board took part in a long-range planning retreat designed to identify a clearer mission and goals for the WSBA. Greeted in prospect with considerable skepticism by some board members, the sessions accomplished a surprising amount of focus and definition. A WSBA task force chaired by Governor Mary Fairhurst will pick up the ball and run with it in 1995.

Wrap-Up in Yakima: Dennis Harwick reported to the board on efforts to fill some newly created posts in the Bar office, mainly in the disciplinary department. A question raised by a district court judge—why all judges don't get a break on the price of WSBA CLE programs—was referred to the CLE Committee.

The board made a number of appointments. To the ABA state delegate seat vacated by Lew Pritchard, Arlington lawyer Paula Boggs was the only nominee, and was duly elected. Annette Plese of Spokane was appointed to the District & Municipal Court Advisory Committee; Rebecca Baker (Republic) and Dan Gandara (Seattle) were appointed to the board of the Legal Foundation of Washington. Don Curran of Spokane was named to the state Board for Judicial Administration; Spokane County Bar Association employee Judy Foster was appointed to a nonlawyer seat on the Client Security Program Committee.

Nominations by the president to the WSBA Task Force on Legal Services by Nonlawyers were also approved. They are Michael Carrico (Seattle); Samuel Chung (Seattle); Steve Crossland (Cashmere); Sally Favors (Tacoma); Deborah Garrett (Bellingham); Sally Gustafson (Seattle); Donald Hackney (Spokane); Kristin Hickman (Vancouver); Holly Holman (Bellevue); E.W. Kuhrau (Seattle); John Ladenburg (Tacoma); Paul Larson (Yakima, to serve as chair); Robin Lester (Seattle); James Lopez (Tacoma); Howard Marshack (Vancouver); Mary McQueen (Olympia); Deborah Norwood (Olympia); Sheri Olsen (Spokane); David Smith (Seattle); Perry Stacks (Bellevue); Steven Tubbs (Vancouver); a draft pick to be named by the League of Women Voters, and an advocate of letting nonlawyers do what lawyers do, also to be identified.

The board also approved a change in the method by which lawyers who dislike certain bar association activities can seek a rebate of bar dues. Since the U.S. Supreme Court mandated that state bars provide a means for lawyers to get a refund on political or ideological activities of bar associations not reasonably related to regulation of the profession of improvement of the law in *Keller v. State Bar of California*, WSBA members have had to make a request for a rebate. Under the new policy the per-member cost of such activities will be calculated earlier and members can deduct if from their bar licensing fees when they pay them. Dennis Harwick told the board the new plan will make it easier for members to seek a rebate.

The board elected Governor Jim Handmacher WSBA treasurer for 1994-1995. They also heard a report on WSBA finances from Dennis Harwick; one of increasing board contact with minority bar associations from Governor Steve Toole; and one on improving the availability of information on WSBA and state government committee appointments open to lawyers by Governor Mary Fairhurst.

NOTICE OF APPOINTMENT AVAILABILITY

At its December 2-3 meeting the Board of Governors will consider applications for appointment to the state Limited Practice Board. The Board oversees the licensure of title officers in the limited areas in which they may perform functions commonly defined as the practice of law. Members serve four-year terms. Two seats are available. The Supreme Court has requested several nominees for each, taking into account racial, gender and geographical diversity. Members interested in being considered should contact their governors or WSBA Executive Director Dennis Harwick.

NOTICE OF PRESIDENTIAL SEARCH

The WSBA Presidential Search Committee is seeking applications, resumés and nominations for president of the Association. This year's selection will come from a list of candidates from eastern Washington.

See page 33 of this issue for details.

Notices of Interest to WSBA Members

WSBA Attorney Disciplinary Notices

Reprimand: Federal Way lawyer **Marilyn Jacobson** (WSBA #6616, admitted 1976) has been ordered reprimanded following a disciplinary hearing. The discipline is based upon Jacobson's failure to communicate with a client, and proceed with the client's Chapter 13 bankruptcy, over a six month period; and her failure to promptly account for and return the funds of another client. Additionally, Jacobson is subject to a term of probation for a period of two years, requiring her to improve her office and calendar procedures and communication with clients. [August 29, 1994]

Censured: Des Moines lawyer **Stephen D. Cramer** (WSBA #9085, admitted 1979) has been ordered to receive two letters of censure following a disciplinary hearing which became final in August 1994. The discipline is based upon Cramer's conduct with respect to two separate matters. In the first matter he failed to have adequate office procedures to ensure that real estate documents handled by his office were properly recorded prior to the transaction's client file being closed. In that matter, over a three-week period, a party to the real estate transaction contacted Cramer before Cramer determined that the real property documents were not recorded and took corrective action.

In the second matter, Cramer was ordered to receive a letter of censure because he removed from his client trust account funds in excess of that authorized by a contingent fee contract. The contract provided that he would receive one-third a contingent fee on sums recovered in excess of $17,000. The case proceeded to trial, which resulted in a judgment less than the $17,000 listed in the fee agreement. In that particular case, after erroneous disbursal on a one-third of all sums recovered on a contingent fee basis, the client, over a period of several months, complained to Cramer regarding the discrepancy in the trust fund disbursal and the terms of the initial contract. The hearing officer determined that Cramer's disbursal of client funds, contrary to his express written fee agreement with the client, violated the trust account rule. [September 8, 1994]

WSBA Nondisciplinary Notices

Interim Suspension: Seattle lawyer **John S. Sandmeyer** (WSBA #12469, admitted 1982) was ordered suspended from the practice of law pursuant to RLD 3.1 pending the outcome of disciplinary proceedings by Supreme Court order entered August 15, 1994.

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

New Formal Ethics Opinion Issued

Formal Opinion 191 (1994)

A Contingent Fee May Not be Based Upon the Larger of the Recovery Obtained at Trial/Arbitration or the Amount Offered in Settlement

Issue: May a lawyer properly include a provision in a contingent fee contract which states that if the client rejects a settlement offer that the lawyer deems "reasonable in light of all the circumstances," then the contingent fee will be based upon the larger of the recovery obtained at trial/arbitration or the amount offered in settlement?

Answer: No. The provision infringes on Rule 1.2(a) of the Rules of Professional Conduct that requires a lawyer to abide by a client's decision whether to accept or reject a settlement offer.

Discussion: Contingent fee contracts are specifically approved by the Rules of Professional Conduct. *See* RPC 1.5(c) and 1.8(j)(2). However, the RPCs also impose certain restrictions upon such agreements. For example, a lawyer may not charge a contingent fee for representation relating to either marital dissolution or criminal defense. *See* RPC 1.5(d). A contingent fee agreement must always be in writing. *See* RPC 1.5(c), and, as with all fee arrangements, the contingent fee must be reasonable. *See* RPC 1.5(a) and 1.8 (j)(2).

In addition to those Rules which apply to contingent fee agreements by their express terms, any such agreement also must not contravene any other requirement of the RPCs. One such requirement is contained in RPC 1.2(a). That rule provides in relevant part (emphasis added):

> A lawyer *shall abide* by a client's decision whether to accept an offer of settlement of a matter.

The proscription is phrased in mandatory terms. Although not defined by the RPCs, "abide" is generally understood to mean "to await submissively; accept without question or objection . . . to submit to."

See Webster's Third International Dictionary, (1986). Thus, RPC 1.2(a) requires a lawyer to "accept without question" a client's decision to accept or reject a settlement offer. Moreover, as a legal matter, courts also affirm a client's unfettered right to accept or reject a settlement offer. *See Bernard v. Moretti*, 518 N.E.2d 599, 601 (Ohio App. 1987) (a client does not breach a contingent fee agreement by refusing to accept a settlement offer even if the refusal was foolish; it is solely within the client's discretion to accept or reject a settlement offer); *Goldman v. Home Mutual Ins. Co.*, 126 N.W.2d 1, 5 (Wis. 1964) ("Claim belongs to the client and not the attorney; the client has the right to compromise or even abandon his claim if he sees fit to do so"); *Giles v. Russell*, 567 P.2d 845, 850 (Kan. 1977) (". . .neither a valid contingent fee contract nor an attorney's lien can interfere with a client's right to settle"); *but see Hagans, Brown & Gibbs v. First National Bank of Anchorage*, 783 P.2d 1164, 1167 (Alaska 1989) ("Should the client fail to exercise control over the litigation in a manner consistent with the reasonable expectations of the parties, the client may become liable to his attorney.")

The proposed provision is antithetical to a lawyer's duty to "abide by" a client's decision regarding settlement. Rather than accept a client's settlement decision without question, the provision—and thus the lawyer by extension—restricts the client's freedom to reject a settlement offer. In very real terms, the provision functions to economically coerce the client into accepting an offer that the client might otherwise perceive to be inadequate. The theoretical possibility of a non-coercive use does not justify permitting this provision. Regardless of any coercive effect the provision may have, the client who does exercise his or her rightful prerogative to reject a settlement offer is directly penalized. The provision shifts all downside risk of the litigation—otherwise shared by the lawyer and client alike—to the client alone. Nonetheless, the lawyer remains entitled to share in all upside risk. "It is not necessary that the contract actually caused the feared evil in a given case; its tendency to have that result in [sic] sufficient." *Wunschel Law Firm, P.C. v. Clabaugh*, 291 N.W.2d 331, 335 (Iowa 1980). For the foregoing reasons, it is the opinion of the Rules of Professional Conduct Committee that a contingent fee contract may not include a provision that bases the contingent fee upon the larger of the recovery obtained at trial/arbitration or the amount offered in settlement in the event that the client rejects a settlement offer that the lawyer deemed reasonable. Such a provision is unduly coercive to a client's choice with respect to settlement or trial of the client's matter.

Public Notices

Pierce County Code Supplement Available

The July 1994 Pierce County Code Supplement is now available. Total cost, including postage ($4.10) is $20.60. To order, make checks payable to Pierce County and mail to Pierce County Council, Attn: C. Miller, County/City Building, Room 1046, 930 Tacoma Avenue South, Tacoma, WA 98402. For further information, contact Cynthia Miller at (206) 596-6695.

Alaska Legal History Materials Sought

The Historian's Committee of the Alaska Bar Association is collecting memorabilia related to Alaska's legal history: articles, documents, journals, and photos are welcomed. Contact Deborah O'Regan, Executive Director, Alaska Bar Association, 510 L Street, Suite 602, Anchorage, AK 99501, tel. (907) 272-7469.

Attorney General Opinions Issued:

I. Fire Protection Districts - Cities-Firefighters - Pension Liabilities - Municipal Corporations - Annexation - Public Funds - Transfer of assets and liabilities of pension system upon annexation of a portion of one municipality's territory by another municipality.

The Attorney General's Office has issued an opinion in response to a request by Sen. Bob McCaslin. The opinion answers the question: If, through incorporation or annexation, a city acquires more than 60 percent, but less than 100 percent, of the assessed valuation of the real property of a fire protection district, do any or all of the liabilities of the fire protection district become the legal liabilities of the newly incorporated city or annexing city?

Synopsis of Answer: 1. If, through incorporation or annexation, a city acquires more than 60 percent, but less than 100 percent, of the assessed valuation of the real property of a fire protection district, all of the district's assets and a proportionate share of the district's liabilities, pension fund assets and liabilities excepted, are transferred to the city.

2. If, through incorporation or annexation, a city acquires more than 60 percent, but less than 100 percent, of the assessed valuation of the real property of a fire protection district which has existing liabilities for pension fund obligations established pursuant to Chapter 41.16 or 41.18 RCW, and has funds dedicated for the payment of such obligations, both the assets and liabilities are retained by the fire protection district.

Cite as AGO 1994 No. 12, September 2, 1994. Alice M. Blado, Assistant Attorney General, is author of the opinion.

II. Legislators- State Legislature- Public Funds- Mailings by Legislators at Public Expense.

The Attorney General's Office has issued an opinion in response to a request by Melissa A. Warheit, Executive Director, Public Disclosure Commission. The opinion answers the question: Would either house of the Washington State Legislature have authority to adopt a rule governing mailings by members to constituents at public expense which would supersede the provisions of RCW 47.17.132, a statute which limits mailings by members of the legislature?

Synopsis of Answer: 1. Neither house of the Washington State Legislature has authority to adopt a rule or a policy on mailings by legislators at public expense which would supersede the provisions of RCW 42.17.132, a statute on the same subject.

2. The language in RCW 42.17.132 generally limiting legislators at certain times to mailings to constituents "in direct response to . . . [a] request" does not require that the request be explicit, but requires some evidence that the addressees of a legislative communication had shown an interest in the legislator's views on the subject, or in obtaining other relevant information.

Cite as AGO 1994 No. 13, September 12, 1994. James K. Pharris, Senior Assistant Attorney General, is author of the opinion.

SEATTLE UNIVERSITY LAW SCHOOL and the SEATTLE UNIVERSITY LAW REVIEW
cordially invite you to attend a symposium on

PHYSICIAN ASSISTED SUICIDE

Moderator: Annette Clark, M.D., J.D., Professor of Law at Seattle University Schoool of Law

Panel Discussions: The Current Status of Washington Law; Perspectives of Changing Current Washington Law; Practical Implications of Physician Assisted Suicide; The Ethical and Moral Implications of Suicide.

Panelists include:
Susan Dunshee, President of the Board of Compassion in Dying
Suzanne Johnson, Assoc. General Counsel, Group Health of Puget Sound
Albert Jonsen, Chair of Department of Medical History and Ethics, University of Washington School of Medicine
Peter McGough, President-elect, Washington State Medical Association
Karla Rowe, Director of Cancer Service and Hospice Southwest, Vancouver, WA
Peter Shalit, M.D., Plaintiff in *Compassion in Dying v. Washington*
Thomas Preston, M.D., Plaintiff in *Compassion in Dying v. Washington*
John Sheehan, Legislative Director, Seattle Chapter of the ACLU
Kathryn Tucker, J.D., Lead Counsel for plaintiffs in *Compassion in Dying v. Washington*
Bill Williams, J.D., Lead Counsel for the state in *Compassion in Dying v. Washington*
Kenneth Wing, J.D., Professor, Seattle University School of Law
Shanon Park, O.P., Washington State Catholic Conference
Robert Spitzer, S.J., Professor of philosophy, Seattle University

Friday, November 18, 1994 — 7.5 CLE credits available
8:00 am - 5:00 pm (Breakfast and Lunch Provided) — Reg. fee: $115 before 10/20
The Edgewater, Seattle — $125 after 10/20

For information: call (206) 591-2995
Speakers subject to change without notice

In re RCW 19.52.120(1): Legal Interest Rate ("Usury Rate"):

The average coupon equivalent yield from the first auction of 26 week treasury bills in October 1994 is 5.61%. ***The maximum allowable interest rate permissible for November 1994 is therefore 12%.***

Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills, and past maximum interest rates of the past 10 years appear on page 48 of the June 1994 *Bar News*.

CASA volunteers:

This holiday season, give a gift to a child, as well as yourself. Volunteer with the King County Superior Court as an advocate for children involved in contested custody and visitation disputes.

As a Court-Appointed Special Advocate, you will investigate the issues, make recommendations regarding the child's best interests and testify at court hearings and trials.

Training and supervision is provided by professional staff.

Call CASA, (206) 296-9320, for more information and an application packet.

Business Advisory Services, Inc. (206) 223-5400
CLE International (206) 621-1938
Idaho Law Foundation (208) 342-8958
King County Bar Association CLE (206) 340-2579
Northwestern School of Law of Lewis & Clark College (503) 768-6642
National Business Institute, Inc. (715) 835-7909
National Education Network (800) 637-0020
National Employment Law Institute: (415) 924-3844
National Institute of Trial Advocacy (NITA) (800) 225-6482. BBS registration, messages, etc.: Set communication program to 8 bits, no parity, 1 stop bit, then call (219) 234-7348.
Spokane County Bar Association (509) 623-2665
Tacoma-Pierce County Bar Association (206) 383-3432
University of Washington School of Law (UW CLE) (206) 543-0059; (800) CLE-UNIV
Washington Association of Criminal Defense Lawyers (WACDL) (206) 623-1302
Washington Association of Prosecuting Attorneys (WAPA) (206) 727-8202
Washington Defense Trial Lawyers (WDTL) (206) 689-8500
Washington State Bar Association CLE (WSBA CLE) (206) 727-8202; fax (206) 727-8320
Washington State Trial Lawyers Association (WSTLA) 206) 464-1011, (800) 732-9251
World Trade Club (206) 448-8803

Notice to Members of the Washington State Bar Association

Washington State Bar Association Seeks Applications and Nominations for President of WSBA

The WSBA Presidential Search Committee is seeking applications, resumés and nominations for president of the Association.

The Board of Governors elects a president on a rotating geographical basis. This year's selection will come from a list of candidates from eastern Washington.

The Association encourages WSBA members to send applications, resumés or nominations for qualified candidates from eastern Washington. The deadline for such submissions is December 1, 1994. Write to: West Campbell, Chair, Presidential Search Committee, Washington State Bar Association, 500 Westin Building, 2001 Sixth Avenue, Seattle, WA 98121-2599.

November 1994

3 Seattle: Annual WSBA Real Estate Conference. *Sponsored by* WSBA.

3 Spokane: Sixth Annual Family Law Seminars. *Sponsored by* WSTLA.

4 Bellevue: Sixth Annual Family Law Seminars. *Sponsored by* WSTLA.

4 Seattle: Living Trusts—The Controversy Continues. *Sponsored by* WSBA.

4 Seattle: Using the New Washington Civil Trial and Evidence Manual—Evidence That Can Make or Break Your Case. *Sponsored by* WSBA.

4 Seattle: The Constitution in U.S. History. *Sponsored by* UW CLE.

4 Seattle: Guardian ad Litem Seminar for Family Law Attorneys. *Sponsored by* KCBA.

4 Seattle: Federal Estate & Gift Tax: Basic Implications for Estate Planners (2nd in a basic-skill series). *Sponsored by* UW CLE.

4 Spokane: Criminal Law. *Sponsored by* Spokane County Bar Ass'n.

10 Seattle: Private v. Public Employers. *Sponsored by* KCBA.

10 Seattle: Employer's Rights and Responsibilities. *Sponsored by* KCBA.

15 Deadline for January 1995 *Bar News*.

17 Spokane: Insurance Seminar. *Sponsored by* WDTL.

17 Seattle: luncheon—Exporting Environmental Products and Services. *Sponsored by* World Trade Club.

18 Seattle: Insurance Seminar. *Sponsored by* WDTL.

18 Seattle: 11th Annual Antitrust, Consumer Protection & Unfair Business

Northwestern School of Law
of Lewis and Clark College CLE Programs

11TH ANNUAL HAZARDOUS WASTE LAW AND MANAGEMENT CONFERENCE

December 6-7, 1994 Seattle **December 8-9, 1994 Portland**

The Most Authoritative Hazardous Waste Conference

Superfund Reauthorization
Environmental Crimes
Case Law Update
Brownfields
Audit Privilege
Environmental Justice
Insurance Coverage
Pollution Prevention

Special breakout sessions/Planned by ELMAC with special assistance from EPA Region 10

$325 ($345 after November 6) 14 CLE credits applied for

24TH ANNUAL ESTATE PLANNING SEMINAR

February 3, 1995 Oregon Convention Center

Nationally prominent speakers and hot topics

Distributions from Qualified Plans –
Louis Mezzullo, Attorney – Mezzullo & McCandlish – Richmond, VA

Current Developments In Estate Planning –
Professor Stanley Johanson – University of Texas Law School

Creative Funding for Estate Tax Liabilities –
Rodney Owens, Attorney – Meadows, Owens, Collier, Reed, Cousins & Blau – Dallas, TX

Family Partnerships and LLC's –
D. John Thornton, Attorney – Stoel Rives Boley Jones & Grey – Boise, ID

Trust Administration and Estate Planning –
Susan Porter, Senior Vice President – U.S. Trust Co. of New York

$145 ($160 after January 9, 1995) 6 CLE credits applied for

Cosponsored by the Estate Planning Council of Portland

CLE DOCKET

End of the year update for last minute CLE requirements

November 18
Seattle – WA Athletic Club

December 1
Portland – Governor Hotel

Live presentations in one hour segments. Faculty and practitioners will update you on tax law, employment law, secured transactions, how to keep your corporate clients satisfied, contracts and other important areas of practice.

$20 per CLE credit hour

For more information or a brochure, contact Maureen Breckenridge, Director of CLE at (503) 768-6629

Practices Conference. *Sponsored by* WSBA.

18 Seattle: Effective use of Arbitration, Mediation and Settlement—Making ADR an Advocacy Tool for Your Client. *Sponsored by* WSBA.

18 Seattle: Decedent's Property: The Basic Distinctions: Community or Separate? Probate or Nonprobate? (3rd in a basic-skill series) *Sponsored by* UW CLE.

18 Seattle: CLE Docket, one-hour segments on tax law, employment, secured transactions contracts, and other areas of practice. *Sponsored by* Northwestern School of Law of Lewis & Clark College.

18 Spokane: Tax and Legal Fundamentals. *Sponsored by* Spokane County Bar Ass'n.

18 Portland: Workers' Compensation. *Sponsored by* OSB CLE/OSB Workers' Compensation Section. *For information:* Carolyn Wence, (503) 684-7407/ Oregon only (800) 452-8260.

28-30 Olympia: Newly elected prosecutor course. *Sponsored by* WAPA.

30 Seattle: Family Law Institute. *Sponsored by* KCBA.

December 1994

1 Nominations due for WSBA president. See details on page 33.

1 Seattle: CLE Docket, one-hour segments on tax law, employment, secured transactions contracts, and other areas of practice. *Sponsored by* Northwestern School of Law of Lewis & Clark College.

1-2 Seattle: WAPA winter meeting & Banquet.

2 Seattle: How to Draft Wills and Other Estate Planning Documents. *Sponsored by* WSBA.

2 Seattle: Domestic Violence: National Disgrace or Crime *du Jour*? *Sponsored by* WACDL.

2 Seattle: Constitutional Limits on Forfeiture: The Pendulum Swings Back. *Sponsored by* WACDL.

2 Seattle: Law, Literature & Film. *Sponsored by* UW CLE.

2 Seattle: Using Trusts in Estate Planning (4th in a basic-skill series) *Sponsored by:* UW CLE.

2-3 Seattle: WSBA Board of Governors' meeting.

3 Seattle: A Pictorial History of the United States Environmental Law. *Sponsored by* UW CLE.

6 WA, D.C.: Salmon in Decline: Fishing for a Solution. *Sponsored by* Environmental Law Institute. *Contact:* (202) 939-3816.

6-7 Seattle: 11th Annual Hazardous Waste Law and Management Conference. *Sponsored by* Northwestern School of Law of Lewis & Clark College.

8 Seattle: Construction Bankruptcy—Protecting the Rights of Your Clients. *Sponsored by* WSBA.

8-9 Portland: 11th Annual Hazardous Waste Law and Management Conference. *Sponsored by* Northwestern School of Law of Lewis & Clark College.

9 Spokane: CLE Buffet—All You Can Learn. *Sponsored by* Spokane Co. Bar Ass'n.

10 Seattle: Ninth Circuit Appellate Practice Institute. *Sponsored by* UW CLE.

12 Seattle: Innovative Billing is Good for Your Financial Health. *Sponsored by* KCBA Health Law Section. *For information:* Donna Moniz, (206) 223-4770.

15 Seattle and Spokane: Liens—Protecting, Defending and Foreclosing Against Liens. *Sponsored by* WSBA.

15 Deadline for February 1995 *Bar News*.

15 Seattle: luncheon—Marketing Services Abroad. *Sponsored by* World Trade Club.

16 Seattle and Spokane: Best of CLE. *Sponsored by* WSBA.

16 Seattle: Tegland's Annual Litigation Update 1994. *Sponsored by* UW CLE.

16-17 Portland: Federal Practice Seminar. *Sponsored by* Northwestern School of Law of Lewis & Clark College.

17 Seattle: American College of Trial Lawyer's Greatest Hits. *Sponsored by* UW CLE.

29 Seattle: How to Probate an Estate. *Sponsored by* WSBA.

January 1995

20 Seattle: A Primer on Probate (5th in a basic-skill series). *Sponsored by* UW CLE.

26 Vancouver, WA: A Second Look at Durable Powers of Attorney and Directives to Physicians - Ethical and Drafting Issues. *Sponsored by* WSBA.

27 Seattle: A Second Look at Durable Powers of Attorney and Directives to Physicians - Ethical and Drafting Issues. *Sponsored by* WSBA.

February 1995

3 Portland: 24th Annual Estate Planning Seminar. *Sponsored by* Northwestern School of Law of Lewis & Clark College.

17 Seattle: Planning for the Disabled and/or Elderly. (6th in a basic-skill series). *Sponsored by:* UW CLE.

March 1995

17 Seattle: Putting It All Together (7th in a basic-skill series). *Sponsored by:* UW CLE.

COMMITTEE APPOINTMENT OPPORTUNITIES FOR WSBA MEMBERS

The Board of Governors of the Washington State Bar is called upon to make appointments to various boards, commissions and committees listed below. These vacancies are in addition to those on standing committees of the WSBA, for which a separate mailing goes out to each member annually. Some timeframes for application are shorter than others, as a result of the need to start this service at some point in time and the desire to include as many openings as possible. Over time all openings will be listed at least three months prior to Board action.

Members are encouraged to apply for any and all positions that are of interest. Applications may be directed to Dennis P. Harwick, Executive Director, WSBA, 500 Westin Building, 2001 Sixth Avenue, Seattle, Washington 98121-2599, or to members' representatives on the Board of Governors. Members of the Board of Governors, the congressional or other districts they represent, and their city or residence are listed on the masthead of the *Bar News*.

Board for Judicial Administration (BJA): One Seat
(Call for applicants-September; Board action-November)

The term of Ronald M. Gould (Seattle) expires December 31, 1994. The term of William H. Gates, Jr. (Seattle) expires December 31, 1995. There is no set term (terms coincide with the term of office of each member, most of whom are judges), but the Board prefers that individuals serve two to three years for continuity. Meeting expenses are paid by the BJA. For a description of the BJA, see Board of Judicial Administration Rules (BJAR) in the Supreme Court's Rules of General Application.

JUVIS Advisory Committee: One Seat
(Call for applicants-November; Board action-January)

The term of James A. Doerty (Seattle) expires February 23, 1995. The Board assists the Office of the Administrator for the Courts in dealing with juvenile criminal records. A familiarity with juvenile records and their uses in the criminal justice system, as well as with computers, is recommended. Meeting expenses are paid by the OAC.

Legal Foundation of Washington Board of Trustees: Two Seats
(Call for applicants-September; Board action-November)

The two-year terms of Rebecca Baker (Republic) and William P. Bergsten (Tacoma) expire December 31, 1994. The two-year term of Kevin F. Kelly (non-lawyer member appointed by WSBA) expires December 31, 1995. The Foundation manages and disburses the interest earned on lawyers' pooled trust accounts (IOLTA). The funds go to support legal assistance and education programs in Washington. Requirements are a knowledge of, and interest in, access to justice for low-income persons and a willingness to devote the time required to carry out the Foundation's duties. The Board meets five to six times per year for full-day meetings. Committee meetings may require additional time. Meeting expenses are paid by the Foundation. The open terms commence January 1, 1994, and end December 31, 1995. Trustees are eligible for appointment to one additional term, for a total of four years' service.

Limited Practice Board: Two Seats
(Call for applicants-September; Board action-November)

The three-year terms of William L. Green (Seattle) and Teresa A. Sherman (Spokane) expire December 31, 1996. The Board is authorized under Admission to Practice (APR) Rule 12. No less than four of the nine members must be lawyers. WSBA nominates members for appointment by the Supreme Court. Meeting expenses are paid by the Supreme Court.

Ethics Advisory Committee: One Seat
(Call for applicants-September; Board action-November)

The two-year term of Mary H. Wechsler (Seattle) expires December 31, 1995.

BAR LEADERS

Harwick Elected to Lead National Association of Bar Executives

Washington State Bar Association Executive Director and CEO Dennis P. Harwick has been elected vice president of the National Association of Bar Executives (NABE) after a vigorously contested election. As vice president, Harwick will automatically become the organization's president in 1995.

NABE is the national professional organization for leaders of American bar associations, ranging from the ABA to small, local bar associations. Its members administer all the state bar associations in the United States, along with smaller, special interest, county and metropolitan bar associations which represent approximately 90% of all the lawyers in the United States.

Harwick has served as chief administrator of the WSBA since December 1990. Before coming to Washington he served as executive director of the Idaho State Bar. For the past two years he has served as the Washington state bar delegate on the NABE executive committee.

"I am honored to be elected by my colleagues to represent the associations that constitute the legal profession in the United States," Harwick said. "The next few years will be challenging as bar associations address the changing face of the justice system, the legal profession, and the way we deliver legal services."

THE COURTS

McQueen Elected to National Position

Mary Campbell McQueen, chief court administrator for the Washington courts, was elected president-elect of the Conference of State Court Administrators in August. The Conference, which consists of the highest judicial administrator in each of the fifty U.S. states, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa and Guam, held the election at its annual meeting in Jackson Hole, Wyoming.

By becoming president-elect, McQueen becomes a member of the board of directors of the National Center for State Courts, a nonprofit organization dedicated to improving state courts. The Center serves as secretariat for COSCA and a number of other organizations.

McQueen took office as Administrator for the Courts in Washington in 1987. She has also served as director of judicial services in the Office of the Administrator for the Courts; a court planning officer in the District of Columbia courts; planning coordinator for the Kentucky Department of Justice; and manager of the evaluation unit of the Kentucky Department of Corrections. She is a member of the American and Washington State Bar Associations, American Judicature Society, American Bar Association's Judicial Administration Division Lawyers' Conference, the Conference of State Court Administrators' board of directors, the Washington State Judicial Council Trial Court Education Board, Court Management Council, and Information Services Board. She received the Jury Standards Award of the American Bar Associations and the National Center for State Courts in 1989 an the Center's Distinguished Service Award in 1991. McQueen is a graduate of the state and local government senior executives program at the John F. Kennedy School of Government at Harvard. She holds a B.A. from the University of Georgia and her J.D. from the University of Puget Sound School of Law.

WSBA DISCIPLINARY COUNSEL

Board of Governors Wishes Departing Counsel Well

WSBA Chief Disciplinary Counsel Lee Ripley has resigned his post, effective September 30, 1994. For 17 years Lee worked in the disciplinary department of the Washington State Bar Association. For the last eight years, he headed the department as Chief Disciplinary Counsel. Over that time, the membership of the Bar Association has increased dramatically. The burden of lawyer regulation and discipline has skyrocketed, while financial support for the Bar Association has not.

Despite these challenges, under Lee's stewardship the discipline department has maintained a quality that was recently acknowledged by the American Bar Association Disciplinary Task Force that evaluated Washington's system. Under Lee's leadership, the Washington State Bar Association has done an almost impossible job of maintaining a quality, aggressive and fair discipline system ion the face of overwhelming growth.

Lee is, unquestionably, the most knowledgeable lawyer in the state on the subject of lawyer discipline. He continues to advance the cause of self-regulation of the bar and modernization of the discipline system. His wisdom, patience, steadfastness of purpose and wealth of experience have served us all well.

The Board of Governors, the Disciplinary Board and the membership of the Washington State Bar Association wish to acknowledge this long record of excellent service and wish Lee well in his new endeavors. On behalf of all of us, Lee, a great big thank you!

—Jan Eric Peterson
Member, Board of Governors, 7th Congressional District

Job Hunter Support Group

by **Joyce Elven**

One small, yet innovative, LAP program is meetings of its Job Hunter Support Group: learning about networking, reviewing current job openings, finding new sources of employment-related information and identifying volunteer opportunities. Participants include experienced lawyers looking for a change, recent graduates looking for a first job and new residents looking for information about the legal job market.

There frequently is a guest speaker with expertise in legal job hunting and career planning. Recent guests have included a well-connected local lawyer and networking guru, a former firm partner who's gone in-house with a successful local company, a number of lawyers telling their stories of "going solo," a lawyer/arts school business professor, an entrepreneur/part-time contract lawyer and a motivational career-planning consultant.

The meetings without speakers give the participants opportunities to share information among themselves and hear how others are managing their career searches. Participants describe job search strategies, exchange leads and contacts and offer encouraging career advice based on experience.

Recent discussions included the King County family law mentor program, temporary work opportunities, networking methods and experiences, volunteering for CLE planning, specialty bar associations, difficulties encountered in solo practice and WSBA practice sections.

The Group meets every Tuesday for brown-bag lunch from noon until 1:30 p.m. at the WSBA, fourth floor of the Westin Building, 2001 Sixth Avenue, adjacent to the twin towers of the Westin Hotel. It is on major Metro lines, and convenient bicycle parking is available by the building entrance.

The meetings are conducted in an atmosphere of respect and confidence; there is no sign-in log or sign-up sheet. We ask participants not to discuss outside of the group, information heard during the meetings, and a number of participants introduce themselves by first name only. Volunteer lawyers and LAP counselors attend the meetings to help in any appropriate ways.

The Group maintains a loose-leaf binder of up-to-date information on job vacancies. Several copies of these binders are always available to the public during WSBA business hours, and one set is always available to the Group during its weekly meetings. Other informational publications are also available for distribution at Group meetings.

The Group publishes a quarterly newsletter, *The Sidebar*, which contains information, advice and a schedule of Group meetings and speakers. To receive *The Sidebar*, send your SASEs to the Job Hunter Support Group, c/o Joyce Elven at the WSBA. Your subscription runs out when we run out of your envelopes.

Meeting attendees also gain a new perspective on the difficult challenges facing those looking for work. Career transition or unemployment sometimes causes loss of self-confidence and unpleasant relations with the family. A chance to meet with others facing similar challenges can be an inspiration and a lesson for all.

Economics and Employment in the Legal Profession: Current Trends and New Traditions

by **Janet M. Jacobson**

The National Picture

Even for the pessimists among us who masquerade as cautious optimists, the major sources of information tracking on legal economics agree that due to an improving economy, things are looking rosier all the time. As 1994 draws to an end, and the frenzy of 1995 budget preparation cranks up everywhere, the evidence is increasingly clear.

There has been an economic upturn all over the country for the legal profession. According to Carl Peters, consultant for Hildebrandt, Inc., national law firm consultants, after hitting rock bottom in December 1993, indicators of law firm economics have gone up each month this year. Hildebrandt does internal tracking of several factors affecting law firms, including the number of new cases monthly, and the size of projects coming in the door.

Peters also explains that, in recent years, Seattle never really had a major downturn, nor, for that matter, a boom before it, either. He predicts that all good firms will be expanding their existing departments to keep up with the work coming in now. Several of the larger national firms are on massive hiring binges now, to try to keep up with the current level of demand for services. Mid-sized firms are stable, maintaining their planned growth patterns. Interestingly enough, as I will discuss below, small firms may see a trickle-down benefit, as they are able to attract top-notch law school graduates.

Although legal recruiters around the nation are jumping for joy as the economy continues to improve, they still warn young lawyers that it is ever-important for them to monitor the ebb and flow of demand for different areas of expertise. Generally speaking, the market is much more niche-driven now than in past years.

There is some conflicting information on the employment picture for starting associates. The National Association of Law Placement (NALP) says that there is continuing evidence that starting legal associates are playing a less significant role than they have in the past. Consider the fact that for the fifth straight year, the national median starting associate salary has stayed flat at $50,000. Starting salaries have fallen well below that number in some regions, including the West. Paralegals, research professionals, and lateral, contract and temporary hires are now performing tasks that used to fall to the most junior law clerks. Additionally, paralegals now belong to the fastest growing occupation in New York City, according to current labor department statistics. Clients are no longer willing to pay for associate training. In response, firms are hiring fewer new graduates, hiring more senior laterals, and absorbing training costs. Future economic leverage will flow from lower-cost paralegals and high-value partners.

Interestingly, it's the smallest firms that form the most solid and still-expanding employment base for new lawyers. Of the nearly 40,000 new lawyers entering private practice in 1993, nearly half (47.1 percent) joined firms with fewer than 25 lawyers, compared to 44 percent in 1992. At the other end of the spectrum, a total of only 9 percent were hired by the largest firms, down from 13 percent in 1992.

Considering all of the evidence, it looks as if the supply of freshly minted law school graduates still exceeds the demand, especially among the largest firms. This may be a hidden bonus for the mid-size and smaller firms, as they are able to attract more of the top echelon of new graduates, a benefit previously exclusive to the larger firms, without increasing salary levels.

As far as the Puget Sound marketplace goes, it's a mixed bag for new lawyers. Some of the larger firms are once again hiring large numbers of new associates. However, many others have cut back in favor of more experienced lateral attorneys.

National surveys of law firms and legal recruiters have also indicated that certain practice areas are experiencing terrific growth, and others are not. Nationally, corporate and real estate work have made a strong recovery during the past year. The increase in corporate work may provide a strong base of opportunity for a variety of corporate associates, including transactional, regulatory, and securities work (especially initial public offerings). Surprising this year is how strongly the demand for real estate associates has rebounded. When the economy suffered, firms redirected their attorneys into other practice areas. Now that the demand for real estate work has increased, including development, acquisitions, sales, leasing and real estate investment trusts, there is a shortage of associates with real estate knowledge.

Intellectual property continues to be a hot practice area, particularly in the high-tech patent arena. Recruiters consider this area the best opportunity, with most agreeing that there is a shortage of patent

attorneys. Firms are getting very specific, though, in the type of people they want to hire. Usually, at least a technical undergraduate degree is required, and these are fairly scarce.

Employment and labor law are strong, keeping attorneys working steadily, especially as lawsuits stemming from the workplace threaten employers. Traditional labor union-management work has taken a back seat for the time being. Discrimination suits based upon race, religion, and other areas abound. Sexual harassment suits are rife as well, with employment attorneys spending time educating their management clients on proper workplace behavior and etiquette, and doing damage control, as well as litigation.

Health care law is yet another area of expected growth, although most recruiters have not yet seen the predicted groundswell. How significant it will become is hard to assess—potentially due to the lack of clarity around the Clinton administration's reform plans. Some firms have adopted a "wait and see" approach. However, many other firms are certain that health care lawyers are highly marketable, given the current activity, particularly in the area of entity consolidation.

The news is not as favorable for other practice areas. The demand for civil litigators has fallen off significantly. Environmental placements also continue to decline, mainly because firms have already hired enough people to fulfill their needs. Since this area of practice rose from nothing ten years ago, a leveling off of demand is to be expected, and it should not be worrisome. In the tax field, the opinions are mixed. Some recruiters say that they have seen an upturn in demand due to the improved economy; others claim that the field has bottomed out. There seems to be little dispute that bankruptcy, a big area just a few years ago, has taken a deep plunge.

Lateral Hiring

Here, there is total consensus. Many firms are searching for experienced attorneys, particularly those with an existing and portable book of business. A great advantage of hiring laterals, according to many firms, is that they arrive already trained, ready to hit the ground running. This is in direct contrast to the new graduate who may require several years of training prior to becoming fully independent and productive. The pervasive attitude among law firms is to let the largest firms bear the expense of training the new graduates, then hire them away after three or more years of experience gained at someone else's expense.

Although the concept of lateral hiring has been accepted throughout larger cities in the United States for quite some time, it's a newer phenomenon in the Puget Sound marketplace. Many partners at area firms are reexamining their level of satisfaction within the framework of their current firms. Differences in firm culture, personal lifestyle choices, economic factors, and other issues have created an atmosphere of tension, and, in some cases, extreme dissatisfaction with career paths in a given firm. Loyalty to the firm may erode in the face of such questions, and that opens the door to making a mid-career switch, either laterally to another firm or to pursue an alternative path, as discussed below.

By far the greatest demand is for those partner-level laterals with a portable book of business, although in some of the hottest practice areas, this may not be a requirement for hiring. Specific areas of practice ripest for lateral hiring include business transactions and intellectual property, especially high-tech patents and software technology transfer. Several of the large and midsize firms in the Puget Sound area have planned the greatest portion of firm growth to come through the hiring of lateral-level partners and associates.

Changing demographics . . . have led to the need for alternative career paths within the practice of law. Caring for children, and even elderly parents, has mandated that women create more flexible arrangements for work; men have also taken on more responsibility for these tasks, either voluntarily or where no other viable solution exists.

Creating New Traditions

Changing demographics in American society over the past 20 years have led to the need for alternative career paths within the practice of law. Caring for children, and even elderly parents, has mandated that women create more flexible arrangements for work; men have also taken on more responsibility for these tasks, either voluntarily or where no other viable solution exists. WSBA president Ron Gould has been encouraging law firms to address this issue and made it a priority for 1994-1995.

Most law firms and other legal employers are now receiving demands from staff, attorneys and potential recruits for flexibility in the approach to how their law practices or divisions are operated and managed. There are obvious trends in other professions and in government toward more flexibility. Lawyers have become aware of these accommodations, and are asking for them to be adopted into law firm policies. Our concerns about personal health, family life, and interests outside of a law practice, which have traditionally taken a back seat to the more urgent need for billing hours have now risen to the forefront. Many lawyers have opted to drop out of active practice, perhaps because they see no opportunity for accommodation to their particular needs within the legal profession, or because they are unable or unwilling to ask for alternatives.

However, alternatives to the traditional law practice, with equity partnership as the ultimate brass ring, do exist. They are becoming more commonplace within the profession. Some of these alternatives include a part-time or reduced-hours work schedule; creating a job-sharing scenario; pursuing a permanent staff attorney position (non-partnership track), contract or temporary work; and running a solo practice on a self-defined schedule.

Part-time positions have not been strictly defined; they may be negotiated between an individual and the firm. One approach is to create an arrangement whereby a reduced number of overall billable hours are budgeted, (e.g., 1,200 hours per year instead of 1,800), or where a set schedule of three days per week is expected. Several factors which must be taken into account under this type of

arrangement include liability insurance for the part-timer, benefits and compensation, and measuring professional achievement. Procedural issues must be articulated and written in order to create a clear-cut and equitable understanding between the firm and the part-time attorney, as well as the other members of the firm. Few area firms have established part-time policies as of this time, although there is much talk about getting it done.

Another approach to part-time attorney work is to create a job-sharing situation. In this circumstance, two individuals may share a case load and office space as well as benefits and compensation. This type of scenario requires all parties to remain flexible with regard to personal idiosyncrasies and working styles. Job-sharing in other professions, such as teaching, have been highly successful. The individuals involved are allowed to pursue the career of their choosing while still maintaining the quality of life they desire. This alternative presents a win-win situation for all parties involved, and it bodes well for the future of part-time legal work.

As lifestyle choices become increasingly important, attorneys may choose not to pursue the ultimate goal of equity partnership, but rather opt for a position of reduced responsibility. Under the description of usual hours, but nontraditional status, many lawyers are now choosing to be permanent associates or staff attorneys, non-equity partners or "of counsel" to a firm. There may be a greater perceived level of job security in these positions, as those associates judged unsuitable for partnership are ushered out the door after five to seven years of work. In these types of arrangements, compensation is normally set and reviewed annually, and the same range of benefits available to employees of the firm is offered.

Another flexible arrangement becoming quite popular in the legal community is generically described as "project attorneys." If they are employed on a short-term basis, these attorneys are called "temporary attorneys"; if hired to handle a specific assignment for a longer period of time, they are called "contract attorneys." They are not limited to doing work for only one firm but are able to pick and choose the projects and firms which interest them most. Perhaps most importantly, they are able to define how much time they spend working and control the level of time committed. The ABA has established guidelines for contract and temporary work so as to avoid conflicts and fulfill obligations to the client. For the law firm, this arrangement may make particularly good economic sense. The overhead for a temporary or contract attorney is negligible compared to the cost of a full-time associate or partner. Benefits are not expected, and compensation may be established on either an hourly or project basis. An additional bonus is that the contract or temporary attorney is usually highly experienced in a specific area of law, so the work is ideally performed at utmost efficiency with specific expectations.

Finally, the option exists for an attorney to embark upon a solo practice, perhaps working out of a home office. Many are choosing this path in order to better

control the amount of work they take in, and the level of time they commit to their law practice. With comparatively low overhead, it becomes possible to work fewer hours and maintain a steady income. This arrangement might also allow an attorney to work a split shift, so to speak, taking afternoon time out for other activities and working hours early in the morning and later in the evening. Creativity is key to making a flexible solo practice thrive.

Conclusion

All things considered, there is much good news as we wrap up 1994 in the legal marketplace. The national economy shows encouraging signs of recovery. Studies indicate strong growth for our legal marketplace. Traditional career paths are available today, as is the ability to create nontraditional roles in the legal profession.

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Since 1989, WSBA member ***Janet Jacobson*** *has acted as a consultant to the legal profession in several areas, including litigation support, profitability analysis, and long-term planning for law firm automation needs. She is president of Legal Pursuit, Inc., a legal employment search and consulting firm in Bellevue.*

Revisiting the Professional Commitment to Civil Justice for Washington's Growing and Increasingly Diverse Poverty Communities

by **James Bamberger**, *Director, Spokane Legal Services Center*
& **Ada Shen-Jaffe**, *Director Evergreen Legal Services*

I. Access to Justice: The Challenge

"Access to justice" has arrived as a critical issue for the bench and bar. At the national, state and local levels, great energy is being expended to insure that the civil-justice needs of low-income people are met. At the urging of the Washington State Bar Association, the Washington Supreme Court has established an Access to Justice Board. Its charge is the coordination and development of activities and the implementation of policies and initiatives "that will enhance, improve and strengthen civil access to justice."

While the Court's order establishing this board does not incorporate a specific definition of "access to justice," a working definition will ultimately be needed to guide the newly appointed Board and assist the many others who are working on these issues in maintaining a contextual framework for planning and measuring their progress. This article suggests how we can define and further the goal of access to justice.

The promise of justice lies at the heart of the due-process clauses of the Fifth and Fourteenth Amendments. Our concept of justice includes the right to participate equally and fully, not only in the enforcement of the laws, but also in the fair development and administration of laws. It recognizes that the legitimacy of our democratic institutions rests upon the accessibility to them, not just by those with means and wealth, but as importantly, by those who, because of their social or economic status, are least able to be heard. Justice, as the concept has evolved over the years, contemplates fundamental fairness and equity of access to and treatment by the justice system and the law.

For low-income residents of Washington State, justice is an exceedingly rare commodity. Inadequate resources to meet need means that justice is unavailable to many, including: thousands of women who are beaten by spouses and partners; frail, elderly people who are unable to obtain the care they need; families who are illegally evicted and forced into homelessness; poor people, minorities, and people with disabilities for whom the only available housing is substandard; those who depend on a welfare system which is complex, confusing and highly bureaucratic, and which provides assistance at a level that is less than half of what federal and state governments recognize is the bare minimum needed for survival; and those for whom critical medical, psychological, and psychiatric treatment is unavailable.

Others with unmet needs include residents of state institutions who are vulnerable to neglect and abuse, and who are all but forgotten; children removed by the state from their parents only because their families are homeless; agricultural workers who do not know about the existence of laws which protect their safety and health from hazardous working conditions and exposure to toxic pesticides; children who must live on welfare because the state does not collect essential child support payments from absent parents; poor and minority children whose ability to become educated, self-sufficient and contributing members of our society is limited by school programs which do not meet their most basic educational and instructional needs; children who cannot be protected from abusive or neglectful parents; and residents of low-income and minority neighborhoods who are denied access to credit and capital as a result of systemic discriminatory lending practices.

Plainly, justice is wanting in such situations—and in far too many others. Viewed from this perspective, "access to justice" incorporates the assertion of substantive and positive rights and prerogatives on behalf of those for whom justice is lacking. It is proactive as well as reactive. It contemplates more than access to a civil counterpart of the criminal public defender system (i.e., having an attorney available to defend low-income individuals who have been sued or against whom a regulatory authority has taken action). It incorporates the ability to positively and directly assert substantive legal rights and protections.

II. Access to Justice as a Function of Unmet Civil Legal Needs in the State of Washington

There are many reasons to believe that, in some ways, Washington lawyers are

doing better as a profession helping the poor than we ever have before. Nevertheless, when considered in the context of meeting the aggregate unmet civil legal needs of poor people in the state of Washington, we are falling further and further behind in the struggle to achieve access to justice. Over the past decade, three key factors have converged to create an unprecedented degree and scope of need for civil legal representation. These are:

1. Growth and Major Shifts In Poverty Demographics and the Emergence of New Classes of Low-income People

According to the 1990 Census and other demographic data, the number of low-income people eligible for free legal services in Washington State exceeded 900,000, including poor people confined to state long-term care, those in mental-health, juvenile detention and corrections facilities and poor migrant workers.

In addition to the continuing rise in the number of low-income people, the decade from 1980 to 1990 witnessed the arrival of large numbers of poor people from minority groups. For example, of the 50,000 low-income residents of Yakima County, more than 20,000 are members of minority groups. The influx of significant numbers of Asian refugees and individuals emigrating from eastern Europe, coupled with larger-than-average birth rates for persons of African-American, Hispanic and Native American descent, resulted in disproportionate and substantial growth in ethnic and minority populations here; a disproportionate number of these are poor. (According to the 1990 Census figures, there are more than 125,000 low-income minority residents, not counting migrant agricultural workers.)

...a new term and a new "condition" was added to the national lexicon: homelessness. Washington state was not spared. Thousands of individuals and families found themselves increasingly unable to find or maintain affordable safe and appropriate housing.

Another dynamic arose from efforts to deinstitutionalize members of the state's mentally and developmentally disabled populations. While these well-intended efforts were, for the most part, undertaken to remedy past practices that had resulted in the institutionalization of many who were able to live in less confining community-based settings, they nevertheless produced new challenges and substantially increased responsibilities for those charged with asserting and enforcing the rights of low-income disabled clients, many of whom have unique and very specific social and legal needs.

It was during the same decade that a new term and a new "condition" was added to the national lexicon: homelessness. Washington state was not spared. Thousands of individuals and families found themselves increasingly unable to find or maintain affordable, safe and appropriate housing. The "new poor" (e.g., those working at least one, and most likely more than one, minimum-wage jobs) found themselves unable to handle the "triple whammy" of increasing housing and utility costs, stagnant or declining income and purchasing power and skyrocketing child care costs.

Homelessness, particularly in the case of people with disabilities and families with children, presented a new set of interdisciplinary challenges to legal-service providers. No longer could client legal problems be considered in isolation. Now, advocates had to consider a broad spectrum of legal and social- service needs each and every time a client walked through the door with an eviction problem, a domestic-violence problem, or a welfare problem. For a family with children, homelessness often resulted in the permanent breakup of families.

These and many other social phenomena experienced (e.g., retrenchment in the unavailability of federal and state judicial remedies; significant shifts in the distribution of wealth as a result of national, state and local taxing policies and spending priorities; the wholesale reduction of federal, state and local housing, feeding and other antipoverty programs) have led to a climate of escalating hostility and blame toward poor people. Those

attempting to represent the legal rights of poor people sometimes face this same hostility.

2. Restructuring of the Relationship Between Low-income People and Society

Already the most bureaucratized sector of society, poor people have been the focus of an ever-increasing number of regulatory, statutory, and administrative initiatives, with many more in progress (e.g., healthcare reform, welfare reform, etc.). There now exists a virtual Rubik's Cube of regulations that low-income people must constantly attempt to manipulate and 'solve' just to meet core subsistence needs. Consider, for example, just a few of the programs, acronyms, statutory and regulatory terms, and governmental bodies that low-income clients encounter: AFDC, SSI, SSA, GA-U, JOBS, FIP, JTPA, VA, Food Stamps, DSHS, DDD, DVR, COPES, Chore Services, ADA, OSE, OBRA, Relocation Assistance, Medically Needy, MI, BIA-GA, Refugee Assistance, Title II, Title XVI, Title IV-D, Title XX, Section 236, Section 8, Section 221(d)(3), MMR, Resource Limits, Income Exclusions, HOME, good cause, HOPE, CDBG, Manual F, WAC, RCW, OSHA, WSHA, L&I, . . .

And the list goes on and on. In response to perceived gaps and failures in social-service programs, new statutes are passed, new regulations enacted, and new regulatory instructions issued to low- income clients. Low-income people must understand and comply with a mass of rules and regulations that would strain the abilities of the most experienced lawyer.

Inadvertent or unknowing noncompliance with a single regulatory requirement may not only result in the loss of income or other assistance, but may very likely put in motion a chain of events leading to foreclosure, eviction, homelessness, utility shut-off, loss or denial of child support payments, denial or termination from essential medical assistance, or other such crisis.

Compounding such immediate consequences is the specter of state intervention and removal of children or other equally catastrophic consequences. To say that low-income clients have become hostages of the civil regulatory system is no overstatement. The stakes are extraordinary. In the absence of timely and effective legal intervention, they can—and thousands do—lose everything.

To say that low-income clients have become hostages of the civil regulatory system is no overstatement. The stakes are extraordinary. In the absence of timely and effective legal intervention, they can—and thousands do—lose everything.

3. New Societal Problems and Significantly More Complex Challenges for Low-income Clients

In the 1960s and 1970s, the legal problems of the poor were often relatively simple and straightforward and could be addressed through fairly direct means. Clients would present landlord/tenant, collection, divorce, public-benefits denials, or other legal problems that could be addressed with a more or less standard advocacy approach. This is no longer the case.

One of the enduring legacies of the 1980s was the emergence of new and far more complex legal problems faced not only by low-income people, but by the citizenry as a whole. Day-to-day life and survival present complex, multidimensional challenges and problems which are daunting even to those with the means to address them.

Low-income people face a triple disadvantage. First, many are less equipped to handle difficulty than those better-off. Second, the inability to handle a problem without effective and timely intervention or assistance implicates their very survival. Third, as mentioned above, for those without resources, almost any "presenting problem" is symptomatic of a plethora of interrelated crises and problems. Thus, homelessness is not just a housing issue; it may be an income issue, a jobs issue, a discrimination issue, a domestic violence issue and/or a social services issue, or any combination of these. Divorce is not just a family law issue; it may be a substance abuse issue, a domestic violence issue, and/or an income issue.

These complexities require that we change the way we look at the unmet justice needs of the poor. For example, new legal rights must be identified and asserted to insure that non-English-speaking children receive an education which does not condemn them to second-class citizenship as adults; to insure that families living in crime-infested public housing complexes are protected from violence and harm; to insure that victims of domestic violence have shelter and income opportunities so that they have a chance of escaping the cycle of violence; to insure that disabled children are effectively integrated into the educational and social main stream; to insure that public assistance recipients have a meaningful opportunity to become self-sufficient; to insure that HIV-positive individuals are protected from discriminatory housing and employment practices; to insure that new growth management rules and regulations do not effectively exclude opportunities to develop safe and affordable housing for our most vulnerable citizens and our most impoverished communities; and to insure that agricultural workers do not face debilitating illness and injury from working conditions which violate health and safety standards imposed by law.

Increasingly, the life and legal problems of poor people reflect in a magnified way the stresses and strains of our society. That magnification means that their problems are often more urgent, more complex, more diverse, and more unforgiving than those faced by the general population. And they reflect the consequences of exposure to an increasingly violent and punitive social environment, where those least able to be heard are the most likely to become society's forgotten people or its scapegoats.

III. The Role of the Members of the Legal Profession in Furthering Access to Justice

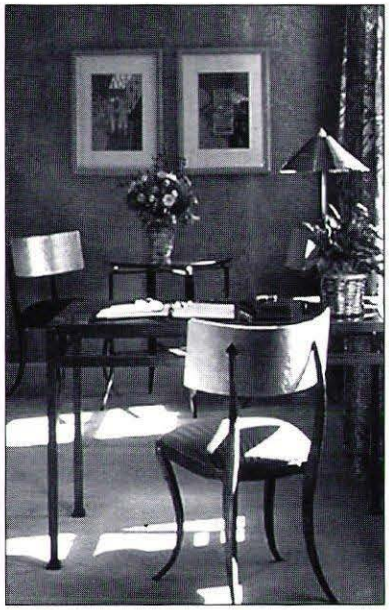
When Alexis de Toqueville observed the role of lawyers in American democracy in the 1800s, he characterized the lawyer as the link and "natural liaison officer" between the "aristocracy" and the people. He further observed that out of this unique role and the privileges which accompanied it grew a duty to protect the public good. As America be-

came industrialized, lawyers came also to represent industrial and corporate interests. Relatively new in the evolution of the legal profession is the role of lawyer as representative and protector of the legal rights of private individuals against other individuals, corporate interests and government.

Today, the legal profession is highly fragmented by "specialty" area, type of practice and role in the representation of corporate v. business v. private individual v. governmental v. public-sector rights, by criminal v. civil interests, by litigation v. business practice, by plaintiff v. defense bar practice, etc. Whole segments of the profession have nothing in common other than law school, bar exams and audits, and the annual payment of licensing fees.

The duty of the legal profession to help ensure access to justice arises from the privilege of membership in a profession which is sworn to uphold justice and serve the public good. This unifying duty transcends all other divisions. Every lawyer in our state shares in this duty; every Washington lawyer has something to offer in furtherance of the goals discussed in Part II of this article.

The creation of the ATJ Board further presents an unprecedented and extraordinary opportunity for all who believe that equal access to justice is an ideal whose time has come. In addition, current and upcoming decisions and activities at the state and local-bar levels regarding bar governance, goals and purposes, volunteer attorney services (e.g., implementation of the volunteer-attorney action plan, development of local VLP priorities, etc.), strategies for the development of resources for civil legal representation for the poor (e.g., expanding IOLTA coverage to LPOs and LAW Fund (Legal Aid for Washington Fund) continue to present new opportunities for the members of our profession to uphold and protect the fundamental ethical and professional duty to ensure access to justice for all.



WASHINGTON NEEDS A MORE OPEN DISCIPLINE SYSTEM

by **Leland G. Ripley**, *Chief Disciplinary Counsel* [1]

After 17 years of lawyer discipline work, and seven years as chief disciplinary counsel, I believe that the weakest link in our self regulatory system is that we "secretly" process and dismiss grievances. It looks like, feels like and is perceived as a "cover-up." The public will not make the "leap of faith" that we are adequately policing the legal profession unless they can see the *entire* process. When our own reports show that more than 90 percent of grievances are dismissed, the public sees protectionism, not a functioning regulatory system. My bias is towards the most open system possible while balancing a lawyer's due process rights and the public's right to know.

The Board of Governors Discipline Committee has crafted a more open disclosure rule which would, while opening our current system, leave "inquiries," those grievances which fail to state a rule violation, confidential. All other aspects of the system, including the investigation of grievances which state a violation of the RPCs, would be a matter of public record once the lawyer has responded or the time for that response had expired. Confidentiality of an inquiry would end if the grievant protested the dismissal of their inquiry and asked that a Review Committee of the Disciplinary Board consider the dismissal of their grievance.[2] The positive side of this compromise is that facially spurious grievances remain confidential. The negative side, that we still have some secret complaints, remains.

The Proposed Disclosure Rule's Changes

The proposed disclosure rule directly impacts *only* the WSBA and its officers, agents and employees. The current confidentiality rule does not and constitutionally cannot regulate the conduct of either grievants or the lawyers accused of misconduct. Both are free to disclose all, or part of the correspondence, they receive from each other or the WSBA. The current rule prohibits the WSBA, without a clear showing that release would benefit the public, clients or the integrity of the bar, from either confirming or denying the existence of a grievance or divulging information, even if disclosure would correct false information or would exonerate the lawyer.

Those who recall the 1980 editorial cartoons blasting the WSBA's "secret" disciplinary system in a high profile case, remember their detrimental impact on the public's perception of the lawyer discipline system. The irony was that we were

doing our job, investigating and ultimately disbarring the lawyer, but we could not say a word.

My Responses to Specific Criticisms

Space does not permit my response to all the possible criticisms of the proposed rule, I do want to respond to the some of the general criticisms.

*1. **There is No Public Demand for This Change.*** The lack of public demand for change should not be the measure of needed change. We need to improve our system when we see it needs improving. While there is little, if any, organized public demand for this change, the public who contact my department are *always* interested in this type of information. My receptionist routinely explains to people that all we can tell them is about public (generally since 1983) discipline because grievances are confidential. When I was discussing this proposed rule with the Disciplinary Board (which voted 9-4 in favor of a more open system), the chair, Len Cockrill, summarized very well the reason to make this change: "Either make this change now when there is no public pressure because this change will help preserve our current self regulatory system, or we wait until there is public pressure, make the change then, and hope we keep self regulation." A regulatory system which waits to respond to public pressure for change gains less from that change.

*2. **This Will Not Improve Our Lawyer Discipline System.*** No, the ABA evaluation team did not recommend this change to improve our system. That's because we already meet their "wait for the probable cause determination" which was the only one that would pass their House of Delegates. The initial ABA recommendation was to follow the Oregon model of complete openness. To allow the public to see and know about grievances and why they were dismissed can only be an improvement for a system that is routinely viewed as protectionist and unresponsive.

*3. **Disclosure Means the WSBA Helps Disseminate Spurious and Even Malicious Grievances.*** Obviously under the committee's compromise, this would not be the case. Under the compromise or even under the originally proposed rule, the public would know about the grievance, the lawyer's response and our analysis of why the grievance lacked merit. The WSBA would provide the whole picture not just the side some grievant wanted to present. In addition, dismissed grievances are purged from our records after three years.

*4. **Oregon's Experience Doesn't Justify the Change Because the Media and its Hunt for a Story Have Changed.*** Assuming that the media has changed since the Oregon system became more open, their experience fails to demonstrate a problem with media misuse of public information about dismissed grievances. Also, while we grant grievant's absolute immunity, the fact that a grievance was filed against a lawyer does not make that lawyer a public figure exempt from the protection of the libel laws if the information about the grievance is misused by a third party.

*5. **Full Disclosure Would Have a Chilling Effect Upon Grievants.*** I doubt that there would be many instances where a person with a grievance against a lawyer would be prevented from filing the grievance by disclosure. Grievants could seek protective orders if necessary.

Conclusion

I started this push towards a more open disclosure rule. This issue needs broad discussion among our members. Copies of the proposed rule can be obtained from the WSBA Legal Department at (206) 727-8207. Talk to your fellow lawyers. Talk to your Governor. My belief that we cannot continue the current secret system is reinforced by a story Becky Stretch of the ABA recently told me. She attended a meeting of all the supreme court justices of Maine, New Hampshire, and Vermont. New Hampshire's lawyer discipline is totally closed. Maine and Vermont follow our current model. The New Hampshire justices were sounding the alarm about all the terrible costs of opening up the lawyer discipline system. The Chief Justice of Maine finally said that he disagreed because: "Confidentiality is never worth the cost." I agree wholeheartedly, and yes, I have had spurious grievances filed against me.

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[1] *Effective October 1, 1994, **Lee Ripley** opened a private practice in Seattle.*

[2] *Historically, only 1 in 4 grievants seeks further review of the dismissal of their grievance.*

The Oregon Experience with an Open Disciplinary System

by **George Riemer**, *General Counsel, Oregon State Bar*

In 1976, the Oregon Supreme Court ruled that lawyer discipline records were subject to that state's public records act. Since that ruling, Oregon has operated the most open lawyer discipline system in the United States. Complaints are public from the day they are filed with the Oregon State Bar. I want to provide an Oregon perspective on an open lawyer discipline system.

Under the Oregon system, the public has access to the complainant's allegations, the lawyer's response and the bar's disposition of the matter. The Oregon Supreme Court's rationale for opening the lawyer discipline system was that maintaining secrecy of these records suggested to the public that lawyers had something to hide.

We found that opening our process permits interested parties to evaluate the effectiveness of the lawyer discipline process. No compelling reason exists to prevent those with knowledge of and interest in evaluating disciplinary complaints to see how well and how timely they are handled.

People make value judgments about others, from car mechanics to bank tellers, every day. Looking at a lawyer's grievance record can provide the public with useful information. The success of Better Business Bureaus proves this point. Prospective clients should be able to decide whether to hire a lawyer following a check with the bar concerning the lawyer's record. Without this information clients must make the hiring decision without access to relevant information about the lawyer's performance. Maintaining the secrecy of complaint information suggests to the public that we don't believe them capable of fairness and we need to protect them from themselves.

I am unaware of any empirical study to support the contention that the public is protected by not having access to complaint records. I am unaware of any empirical study to support the contention that lawyers are truly harmed by an open records process like Oregon's. If the bar does a good job of public education about the process used in determining whether disciplinary charges should be filed and how those charges are handled, any possible damage caused by public misinterpretation of complaint records can be minimized. I believe, and our experience shows, that the public is capable of distinguishing between unsubstantiated allegations and a formal complaint or an adjudication of misconduct.

I am not taking a utopian view of this issue. I know that freedom of speech and the rights of a free press have potential adverse consequences. On the other hand, we have operated our open system for more than *seventeen years* and no serious effort has been made to change the law in this area. In fact, our board has endorsed our open system on a number of occasions to the ABA and other interested groups. I know of no evidence supporting the claim that individual prospective clients decide not to hire lawyers because of the mere existence of an unsubstantiated allegation. They may decline to do so, however, based on a pending complaint of theft of client funds. But shouldn't they have that right? Wouldn't you want to know this information if you were the client?

While our open records process is not perfect, it adds a great deal of credibility to our disciplinary system. Oregon lawyers still have numerous due process rights when a complaint is made against them. Our system has, in my opinion, effectively melded the public's "right to know" and the lawyer's due process rights. Seventeen years of experience substantiates my claim.

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George Riemer *presents a unique perspective on lawyer discipline. He belongs to both the Oregon and Washington bars. He formerly was a staff attorney for the WSBA, assistant City Attorney in Vancouver, WA, and for many years has served as General Counsel to the Oregon State Bar. These remarks are in large part excerpts from a letter he wrote explaining the advantages of the Oregon system .*

THE JUDICIARY

Former King County Southwest Division District Court Commissioner **James Cayce** has been appointed to replace retiring Judge **Donald Eide** on the Aukeen Division, King County District Court.

Jeff Tolman of Poulsbo has been named municipal court judge by that city.

Governor **Mike Lowry** has appointed Cowlitz County Prosecuting Attorney **C.C. Bridgewater** to the Court of Appeals, Division II. The Longview resident takes office November 1, occupying a new seat on the court created by the 1993 Legislature.

Benton-Franklin County Superior Court Judge **Fred Staples** is enjoying retirement after ending his record-setting tenure September 16. Staples served 33 years on the bench, 12 on the District Court and 22 in the Superior Court. Pasco lawyer **John Schultz** called Staples "irreplaceable" and "the best trial judge ever." Staples and his wife have bought a house in Tucson and plan to move there.

NEWS FROM HOME

Three lawyers from the Bellevue-based law firm Hawkins Jeppesen Hoff P.S. have received accolades this year from the East King County Bar Association. **Valerie Hoff Knecht** was elected president of the Association, **Allen R. Sakai** was appointed a trustee, and **Jacqueline L. Jeske** was named Volunteer of the Year. Another member of the firm, **Michael T. Callan**, has been appointed judge pro tem for Seattle Municipal Court.

Spokane attorneys McCormick, Dunn & Black, P.S. announce the association of **Deborah G. Hander** with their law firm. She came to the firm from the Washington Court of Appeals and the Attorney General's Office, and is a former adjunct professor at Gonzaga.

Ron Ward, a partner with Levinson, Friedman, Vhugen, Duggan & Bland in Seattle, was elected vice president/west and reelected to the board of governors of the Washington State Trial Lawyers Association in July.

Craig H. Shrontz has been appointed partner-in-charge of the firm's Bellevue office. He succeeds **John F. Boespflug, Jr.**, station chief since 1991.

In Seattle, Lasher Holzapfel Sperry & Ebberson has moved its offices to 2600 Two Union Square, 601 Union Street. Their telephone and fax numbers are unchanged.

Brian J. Dano, managing partner of the Dano Law Firm, has announced that **Christopher F. Ries** has joined the firm as an associate. Raised in Moses Lake, Ries is a Gonzaga law graduate.

Another Gonzaga graduate, **Robert Schroeter**, opened his office in downtown Chehalis this summer. He came from the Attorney General's Office in Olympia.

Michael Jacobsen, former WSBA general counsel and a barrister and solicitor in Canada, and former U.S. consul and Gonzaga Law professor **Dennis Olsen** have opened a law firm, Jacobsen & Olsen, with offices in Everett and Vancouver, B.C. They limit their practice to immigration, naturalization, and consular matters.

Vancouver attorney **Paul L. Henderson** has been elected to a second term on the board of governors of the Washington State Trial Lawyers Association, representing members in the third congressional district.

In Auburn, **Robert C. Van Siclen** and **John S. Stocks** have moved their firm to 4508 Auburn Way North, Suite A-100, Auburn, WA 98002-1381.

After nearly forty years' practice, **Roy J. Moceri** has retired from the Reed McClure firm in Seattle. He is a past member of the WSBA board of governors and president of the Washington Defense Trial Lawyers Association. Moceri will continue to serve the firm in an of counsel capacity.

Martin T. Collier and **Kristen P. Onsager** have joined Betts, Patterson & Mines in Seattle. Collier returned to the firm after a two-year period spent pursuing academic interests and serving with Floyd & Schlemlein. Onsager is a 1993 graduate of the University of Washington's law and business schools.

A husband and wife legal team, **Peter Goddu** and **Margaret Langlie**, have moved their practice from Plain to Leavenworth.

In Seattle, Mosler, Schermer, Walstrom & Cooper has become Mosler, Schermer, Walstrom & Scruggs. Michael P. Scruggs is a new partner in the firm. **Lincoln D. Sieler** has joined the firm in an of counsel capacity.

The WSBA Health Law Section has elected Spokane lawyer **Mary R. Giannini** chair for the 1994-95 year.

Loni Lindell is the new city attorney in Federal Way, succeeding **Carolyn Lake**, who resigned to go into private practice. Lindell was deputy city attorney for two years before moving to the top job in July.

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

Rumor Control

The Ugly Attorney: As we drift toward the winter months, stories of summer travels linger around our campfires and become part of our oral history. Making the rounds this year is **Steve Tubbs'** version of his European vacation. While resting somewhere near some French plaza, he noticed an older gentleman who was strikingly familiar. Try as he might, he could not place a name with the face. Was he a client? A fellow Rotarian? An in-law? One of his kids? Completely frustrated, Steve inquired of the man, "I know you from somewhere don't I?" The man, somewhat embarrassed, replied in a soft baritone, "Yes, I am in the entertainment business." Steve was nonplus and his expression was one of obvious, "no clue." Finally, the man, in an effort to get the stupid look off Steve's face, stated, "I am **Tony Bennett**." Now Steve *could* have made one of a multitude of snappy retorts, but the one he chose was fitting of such a prestigious CCBA member. Steve responded, "You're right!" Well, thank God he didn't say "I loved you in the 'Odd Couple.'" So much for the concert tickets, Steve!

Travails with Charlie: Sure, it is easy to poke fun at someone who always seems to be a walking accident, i.e., having paint fall on his head; pie in the face; losing a default motion. It may not be the kindest thing to do, but hey, I got a deadline, and while it may not be nice, it sure is easy. Thus I offer up once again **Chuck Cusack** in his adventures in golfing. Chuck was breaking in his new golf bag and as he bent over to check his ball for any identifiable markings, the strap somehow became hooked onto his belt loop. As he tried to stand upright (he is one of the first in his family to do so) he almost toppled over. The good news, his swing did improve with the bag on his back.

Trick shots also seem to be in Chuck's repertoire. Teeing off on the first tee, he hit the ladies' tee marker, and the ball ricocheted back toward Chuck. Thus, generating the three most hated words in golf, "you're still away." Last seen, Chuck was taking lessons with one restriction from the instructor: do not publicly use his name.

LAW FUND
by **LAUREN MOORE**

Let LAW Fund help you with your 1994 Tax Burden!

As the end of the year approaches, the volunteers and board members of LAW Fund are in the process of contacting all law firms and individual attorneys in the state who are not currently participating in the 1994 Third Annual Campaign. If you have not made a contribution to LAW Fund this year, please be sure to send it in prior to December 31. Contributions made to LAW Fund are tax deductible.

Please be aware that LAW Fund accepts gifts of property that has appreciated in value, such as stock or other securities. This type of gift offers double tax savings. First, you receive a charitable income tax deduction at the time of the gift based upon the current fair market value of the property. Also, you avoid paying any income tax on the appreciation in value of the property, since its purchase. For income tax purposes, you may deduct a gift of appreciated property up to 30 percent of your annual adjusted gross income, with an additional five-year carryforward.

If you would like a copy of the LAW Fund Planned Giving Opportunities brochure, please write LAW Fund, 1326 Fifth Avenue, Suite 815, Seattle, WA 98101, or call (206) 623-5261.

KING COUNTY BAR FOUNDATION

Together with the Asian, Hispanic, Loren Miller and Northwest Indian Bar Association, the King County Bar Foundation held their first-ever joint fundraising auction and dinner October 12 in Seattle's Westin Hotel.

Proceeds from the event benefit minority students at Seattle University, the University of Washington and Gonzaga University law schools. Guest speaker for the event was U.S. Bankruptcy Court Judge Bernice Bouie Donald, incoming

chair of the ABA Commission on Opportunities for Minorities in the Profession.

The King County Bar Foundation was established in 1979 to support programs that increase minority participation, provide free and reduced-fee legal services to the poor, and improve public understanding of the law. The Bar Foundation is run by volunteers and is funded by voluntary contributions.

PIERCE COUNTY REPORT

by **GEORGE S. KELLEY**

The first annual Tacoma Pierce County Bar Association convention was held at Alderbrook Inn on Hood Canal, and all who attended thought it was a rousing success. The convention committee, headed by former bar presidents **Mike Smith** and **Mike McKasy**, scheduled nine hours of excellent (and cheap) CLE classes. Other activities included a golf tournament (15 of 20 players won prizes), a tennis tournament, a nature walk and an evening of dining and dancing. They should also be credited with the summer-like weather and for convincing ABC to move the start of the Washington - Miami football game until after the close of the morning's CLE classes.

Mark Dietzler, chairman of the annual TPCBA golf tournament, reports the following winners of this year's outing at the Madrona Golf Course in Gig Harbor. **Grant Anderson** was the winner of the Ed Eisenhower trophy with a low gross score of 71. It should be noted that this Grant Anderson is not the judge of the same name and that Ed Eisenhower was unable to attend the tournament to present the trophy. **Don Anderson** won the S.A. Gagliardi trophy for low net with a score of 64. **Bill Mays** won the senior men's (geezer) division and the Leo McGavick trophy. **Beth Jensen** won the Elizabeth Shackleford trophy (low gross), beating two-time former winner **Corinne Dixon** by one stroke. Finally, overachiever **Dave Tuell** won the closest-to-the-pin honors with a hole-in-one.

In other golf news, **Jeff Gross** qualified for the national finals in the Oldsmobile Scramble tournament, which was held in Florida.

The bar seems to have survived a joint dinner with the county medical society featuring a debate about medical-negligence cases. This is an issue which seems to attract a lot of attention and emotion in the medical community. They chose the topic. Dr. **Ben Blackett**, who also has a law degree, and **Dan Hannula**, together with lobbyists from the medical and the trial lawyers associations, put on a spirited debate at the end of which everyone went home unconvinced of the merits of the other side's arguments. There was agreement that these joint dinners were worthwhile. During the dinner and debate, one could not help but hear the many telephone pagers going off—sort of like being at arraignment docket after a dope dealers' roundup.

In other medical news, we have learned that **Richard Turner** injured his Achilles tendon while fly fishing. We don't know whether he slipped on a rock or was tripped by an angry trout.

WASHINGTON DEFENSE TRIAL LAWYERS REPORT

by **BETH A. JENSEN**

The Defense Bar began its new year with a full house for its October 14 seminar entitled "Recent Developments in Orthopedics." Nine orthopedic specialists discussed nearly every bone in the body and the various traumas done to them. (No, **Tonya Harding** was not on the program.) **Tim D. Blue** chaired the seminar. His ability to bring together nine "orthopods," luring them away from their operating tables, exam rooms, and classrooms, can only be matched by president **Mary Spillane**'s successful efforts to work together with the plaintiff's bar (WSTLA) on civil-justice reform. Whether plaintiff or defense counsel, we all have a strong interest in preserving and improving the civil-justice system. More on the progress of this joint effort in future columns.

Getting all the judges together was really much more fun! Some 200 lawyers and judges attended WDTL's annual Judges Reception held at the Seattle Westin on October 14. This reception acknowledges the judges' significant contributions to our community and gives them a chance to socialize with old friends and members of the defense bar.

Coming up is the **Roy Umlauf/Karen Hornbeck/Mark Cole** - produced Insurance Law Seminar, November 17 in Spokane and November 18 in Seattle. Attorney General **Christine Gregoire** will speak about insurance fraud. Former Justice **Keith Callow** will speak at lunch about the Court's view on insurance coverage. Other current topics include contribution issues, duty to defend issues, and environmental-coverage issues. This is one not to miss.

IN MEMORIAM

Jack M. Whitmore

Retired Seattle attorney Jack M. Whitmore, 82, died August 16, 1994. Born in South Dakota, he moved to Seattle as a child and lived there nearly seven decades. Expelled from school at 14 for "refusing to tattle on a school mate who had passed a note to somebody else in class," Whitmore took a job delivering Western Union telegrams and later worked for Montgomery Ward, Safeway and the streetcar company. Retaining his desire to complete his education, Whitmore enrolled in Arlington High School past his 21st birthday, completed his junior and senior years in one year, graduated, and shipped out on an oil tanker. In 1935, back in Seattle, he landed a job with the Social Security Administration and worked his way through the University of Washington for his B.A.

With the arrival of World War II Whitmore joined the air force as a private and left the service as a major. He remained in the reserves and retired a colonel. After the war he married and entered the UW School of Law on the G.I. Bill. During his career in Seattle Whitmore was active in the Elks, Shriners, Lions and Rotary International as well as the Episcopal Church.

Whitmore retired in his early 70s and moved to Hawaii where, restless after a few months, he took and passed the Hawaii bar examination and practiced law at Kihei. Survivors include his two sisters, his wife, a son and stepdaughter, and five grandchildren.

The October issue carried the following obituary with the incorrect name; it should have read Gordon, not George, N. Cromwell. The Bar News *regrets the error.*

Gordon N. Cromwell

Gordon N. Cromwell, 76, died August 10, 1994. A Bellevue resident, Cromwell was educated at Washington & Lee University in Virginia, receiving both his undergraduate and law degrees there. During World War II he served as a flier in the Naval Air Corps.

Admitted to practice in Virginia and Washington, Cromwell practiced law as a tax attorney from 1953 to 1984. Survivors include his brother, wife, two sons and six grandchildren.

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"Move to Strike!" This Month: More Pleadings

From Seattle, **Lawrence L. Longfelder** of **Longfelder, Tinker, Kidman & DuBois** reports, "For years I have told all of my medical malpractice clients that malpractice cases are difficult to win because the defense always tries to convince a jury that 'We didn't do anything wrong. Well, maybe we did something wrong, but it didn't injure the plaintiff, and even if we did something wrong and it injured the plaintiff, it would have happened anyway.'"

"However, some years ago, **Jerry Palm** took my statement one better and sent me his Answer to a Complaint for Malpractice: 'We didn't do it, and even if we did, you're too late.'"

The Spiritual Founder of this column, federal judge **Jerry Buchmeyer** of Texas, passed along a complaint filed in Louisiana (*Wanda Thompson v. Exxon*, Docket 67,695, 26th District Court, St. Mary Parish, August 1992) in his July 1994 *Texas Bar Journal* column. The lawyer who sent it in confessed carrying it around for years as "a prime example of concise legal writing": "*Petition for Damages:* About June 2, 1982, a big boat of Exxon Company came along at a rapid speed and not reducing speed making wave wash and sucked Wanda into the bayou, sucked her car into the bayou, sucked everything she had into the bayou, injured her, bruised her, hurt her back, hurt her neck, ruined her car, and now they won't even pay for the wave wash damage.

"Wherefore, plaintiff demands judgment against Exxon Company, USA, for ONE MILLION DOLLARS ($1,000,000) plus legal interest and cost . . ."

Reading the June installment of this feature in Yakima, **Tim Weaver** of **Cockrill & Weaver** was reminded of a Most Unusual Pleading, involving a Seattle lawyer who was on the other side of a continuing jurisdiction case in Portland. "One morning in my mail I noticed a pleading from this fellow, designated simply and to the point, "NOTICE OF FIRE." Nothing further was indicated in the caption. Reading the notice, however, I learned that a party to the lawsuit involving this particular attorney (he didn't disclose whether it was his client or his opponent) had fire-bombed the attorney's office, thereby causing substantial damage. There was no request for continuance, copies of pleadings, or even for sympathy. Clearly this document was simply a NOTICE OF FIRE."

John R. Rizzardi of Betts Patterson & Mines, Seattle, proves himself handy with a pleading dealing with "the enclosed Notice (real and filed) and Objection (unreal and unfiled)," just the thing for the waning days of summer:

NOTICE OF VACATION

COMES NOW THOMAS S. WAMPOLD, attorney for the above-named Plaintiff, and gives notice that he will be out of the country from June 24, 1994, through August 1, 1994.

Dated this 7th day of June, 1994.

To which Mr. Rizzardi responds:

OBJECTION TO VACATION AND REQUEST FOR HEARING

COMES NOW John R. Rizzardi of Betts, Patterson & Mines, P.S. and objects to the Notice of Vacation filed by Attorney Thomas S. Wampold for the following reasons:

1. *The Notice is Untimely:* The Notice was not received by the undersigned until the day that Mr. Wampold's vacation started. While Mr. Wampold is presumably winging it to parts unknown, the undersigned is winging it to get case deadlines attended to in a timely fashion.

2. *Lack of Itinerary*: Mr. Wampold did not file his itinerary, therefore the undersigned cannot determine whether or not Mr. Wampold's vacation is justifiable. By way of example, if Mr. Wampold is visiting in-laws in Puyallup, an extended absence of five weeks would be unjustifiable, if not just plain masochistic. On the other hand, if Mr. Wampold is going to languish on the beaches of Bali, or explore the Alpine areas of Europe, such an extended absence may be understandable.

3. *Notice Ambiguities:* Mr. Wampold has not filed any supporting documentation to substantiate his statement that he will be "out of the country." Does this mean that he will be out of the United States? If he is going to France and then he leaves France will he then be "out of the country" with respect to France? Mr. Wampold will always be out of some country—the question is, what country will he be out of? The notice is ambiguous and the notice of vacation should fail.

4. *The Motion Should Fail for Reasons of Spite:* As I stare longingly at this Notice I am reminded of the fact that I am working and Mr. Wampold is not. I am spiteful, jealous, resentful, envious, covetous and suspicious. I have so many other *feelings*, but the foregoing exhaust the Thesaurus list on my WordPerfect program.

For the foregoing reasons, Mr. Wampold's vacation should be rescinded, the Court should issue an order requiring him: (1) to return forthwith; (2) to bring colorful postcards of his destination (if appropriate), and (3) to remain at his desk like us working-class folks until Labor Day.

Dated this 26th day of June 1994.
Betts, Patterson & Mines, P.S.
/s/ John R. Rizzardi, WSBA #09388

Mr. Wampold, on returning from his trip to find this correspondence, jokingly turned in Mr. Rizzardi to the mythical "WSBA Workaholism Committee," asking that Rizzardi be required to attended "Compulsives Anonymous" meetings. "I find they do good work," he commented. "The only problem is that if you are ten minutes late for a meeting, they kick you out of the organization." Wampold also recommended that Rizzardi be "suspended for the practice of law for two weeks each year, during which time he should be prohibited from going to the office or calling in to see if he has received any messages or motions... As he pointed out, Mr. Rizzardi intends to stay chained to his desk until Labor Day, thereby missing one of the best summers we have had. I suggest that the two-week suspension take place immediately, and that Mr. Rizzardi be run out of town for the said two-week period."

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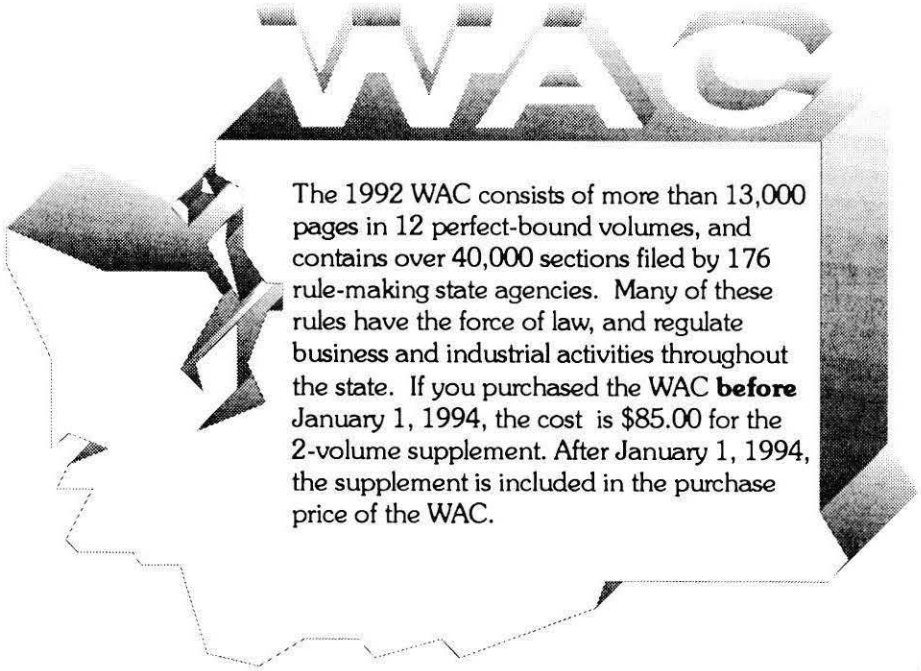

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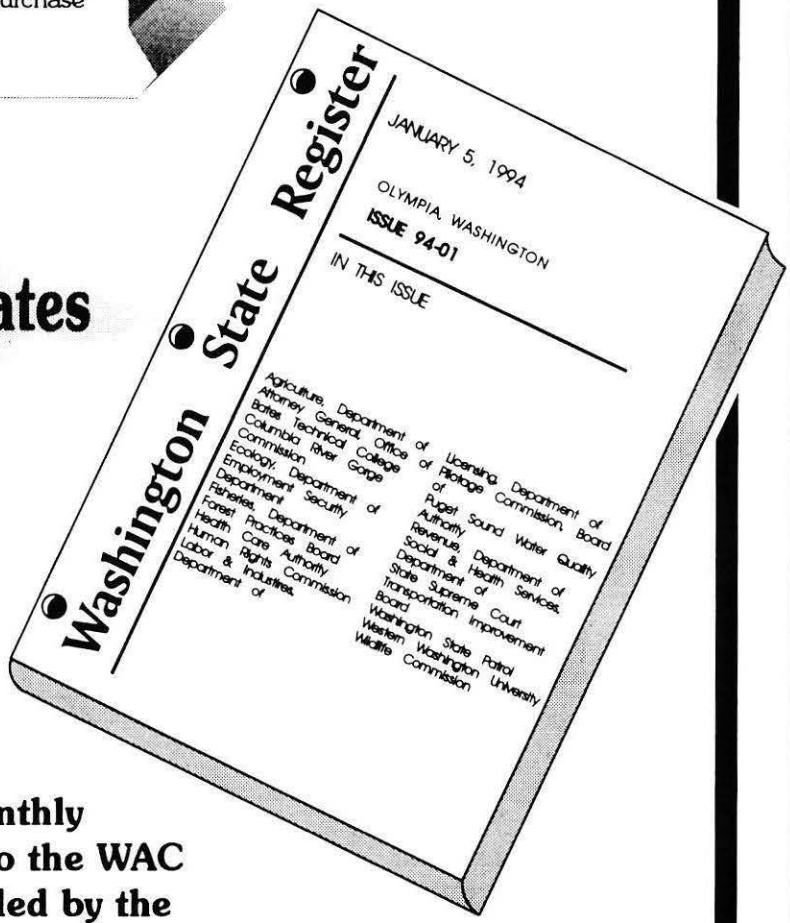

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