Washington State Bar News

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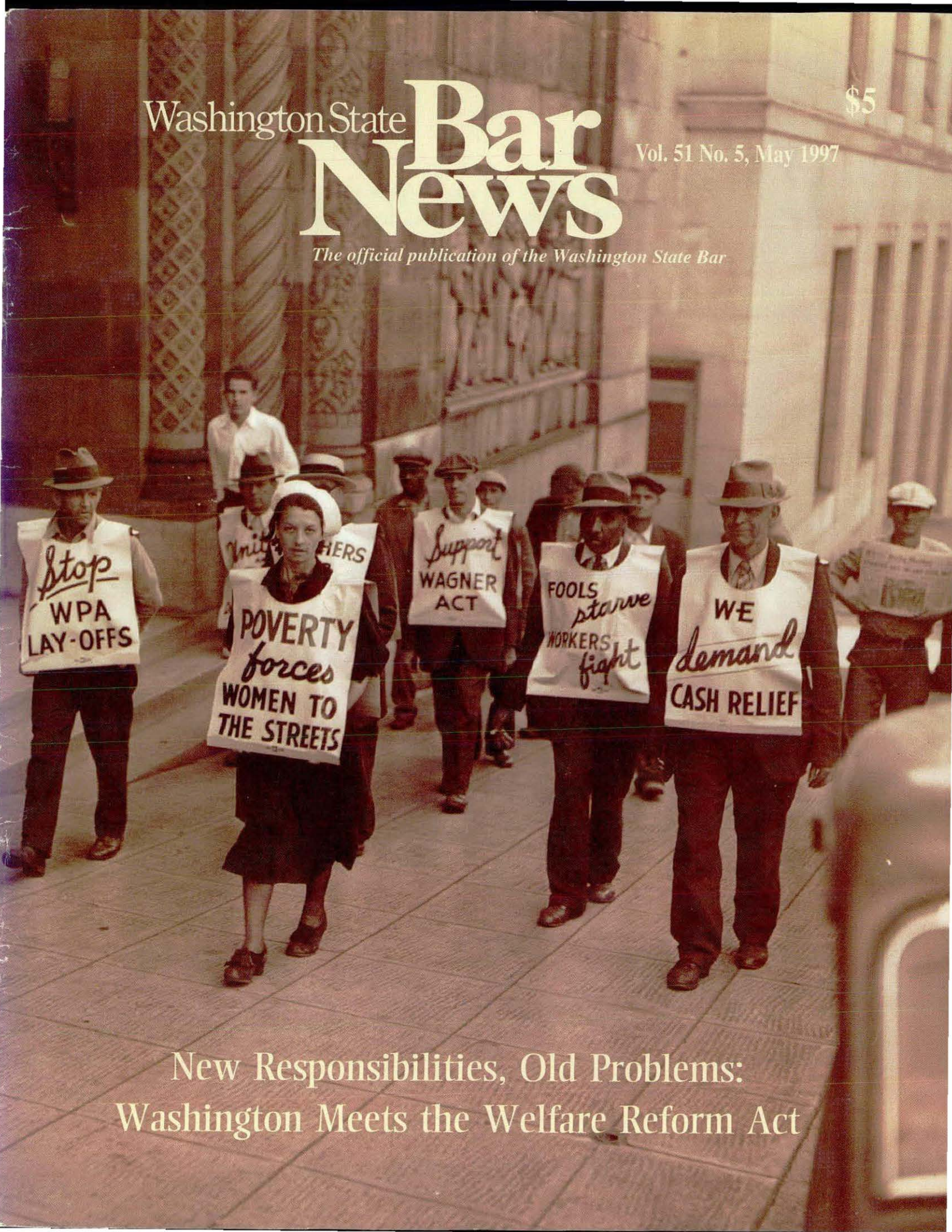
*The official publication of the Washington State Bar*




# New Responsibilities, Old Problems: Washington Meets the Welfare Reform Act

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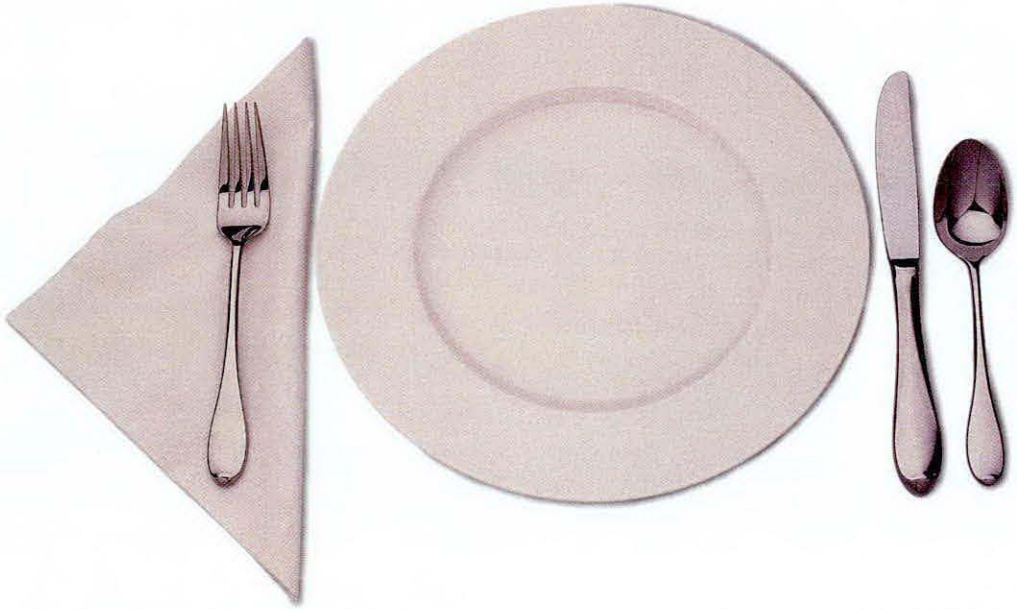

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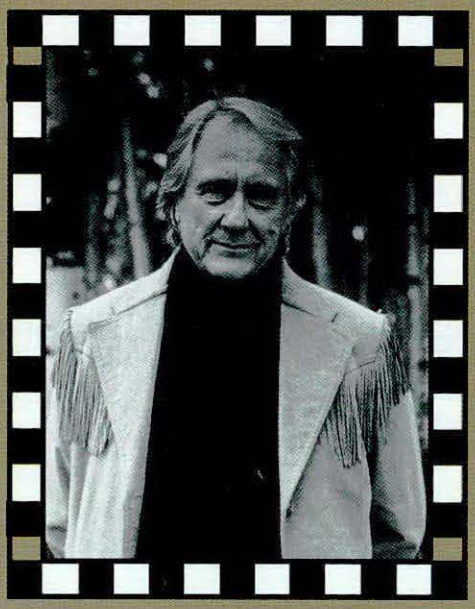

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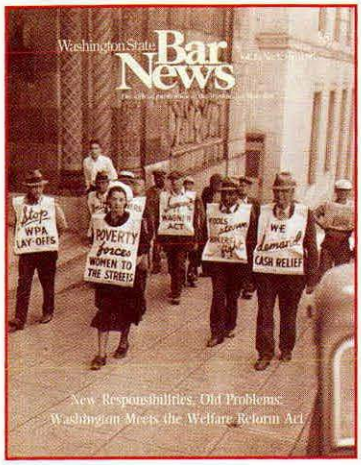


*Washington meets the Welfare Reform Act. Photo from the archives of the P.I. Collection, Museum of History and Industry, Seattle.*


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# Washington State Bar News

Vol. 51 No .5, May 1997

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## Legislature Unfamiliar With Separation of Powers

Editor:

The issue of the proposed rule to suspend young lawyers for defaulting on state or federally guaranteed educational loans is just one more example of the risks we all face from acts of the Legislature. It is the Legislature that inappropriately continues to gain control over the practice of law. (Do they propose to suspend teachers, plumbers or clergy who are behind in their student loan payments?)

It is imperative that we be ever-vigilant in opposing attempts by the Legislature to control the Bar Association and the practice of law. This fundamental principle often overrides the merits of any individual issue. See *Washington State Bar Association v. State*, 125 Wn.2d 901, 890 P.2d 1047 (1995).

As preposterous as it may seem, House Bill 2060 now pending before the Legislature (at the time of this writing), euphemistically entitled "The Balance of Powers Restoration Act," would alter the concept of separation of powers in this state, overrule the principles established in *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 2 L.Ed. 60 (1803), and would allow the Legislature to override decisions of the Supreme Court! If the Supreme Court found a legislative enactment to be in violation of our Constitution, the Legislature could then review and overrule the Supreme Court.

When I testified before a legislative committee on behalf of the WSBA and suggested that a particular provision of a bill was in direct conflict with our Constitution, I was immediately attacked for suggesting that the Legislature could not do anything it wanted to do. The arrogance was shocking; the lack of understanding of our Constitution and the doctrine of separation of powers was sad. A high school student who showed such a lack of understanding would probably flunk any class on government. What is the meaning of the oath taken by legislators to uphold our Constitution? Rather than separation of powers, and checks and balances, the current majority in the Legislature believes it, and only it, has all the answers.

I want to thank our president and our governing board for their tireless efforts, and ask that you continue to strive for our right to be self-governed under the authority of the Supreme Court rather than become just another agency subject to the idea du jour of the Legislature.

PAUL L. STRITMATTER
Hoquiam

*Readers are invited to submit letters of reasonable length to the editor. They should be typed on letterhead and signed. Due date is the 15th of the month for the second issue following. The editor reserves the right to select excerpts for publication or edit them as may be appropriate. Signatures in excess of three names will be printed only in exceptional circumstances, at the sole discretion of the editor.*

## Legislative Law and the Judicial System

Editor:

It has happened — I am finally writing a letter to my fellow lawyers.

I am reacting to the effort in our Legislature to make legislative law superior to the judicial system. I have been amused by efforts regarding gun control, and abortion rights, but I am really appalled at the fact that any State Legislator, whether in the House or the Senate, believes that that political body should be in total control of our destiny as citizens, with no judicial oversight superior to the wisdom of the political Legislature.

I am starting to think that there is a deficiency in the educational system that is absolutely awful. I don't just mean formal schooling. We are subjected to the educational process from many sources, including the media, houses of worship (for those who attend) and other sources of education including, possibly, coffee break conversations.

As a lawyer I think of *Marbury v. Madison*, but as a citizen, having spent my formative years in Massachusetts — the cradle of American liberty, I find it incredible that our legislators and those who support these kinds of ideas, have forgotten what the American Revolution against the British Government system embodied by King George III was all about.

We have all heard the expression: "The King can do no wrong." Is the Legislature trying to tell us that it shall no longer be the executive, but the legislative branch that can do no wrong?

Our population seems to have forgotten that the Founding Fathers had lived through or experienced vicariously the major violations of human rights which the English Government had visited upon the Irish and the Scots during the 17th and 18th centuries preceding our American Revolution.

The forced relocation of population that took place in Scotland and in Ireland was current memory to our Founding Fathers. The inability of the Irish and Scottish populations to effectively defend themselves because they had no weapons, or limited weapons, because the government did not allow weapons to be lawfully possessed, prohibited any form of effective resistance to the government oppression. The populations were basically at the will of the British crown, as supported by the Parliament voting appropriations, in the absence of any effective court system which could interfere with oppressive or "unconstitutional" actions.

The Founding Fathers had these histories in their memories when the first ten Amendments to the Constitution as originally proposed were made, because without those first ten Amendments there would have been no ratification of the Constitution at all. We had a population that was educated to the perfidy of oppressive executive/legislative government, and the systems of checks and balances was established to keep things straight.

Now, we have legislators proposing that that system of checks and balances should be disposed of and replaced by a dictatorship of the legislative branch. The concept of a supreme judicial authority is to give some sense of finality, i.e., *stare decisis*, so that people can live with some semblance of recognition of orderliness in affairs. Even though we laughingly joke by saying: "No man's life, liberty or property is safe when the Legislature is in session," we don't really mean it.

To think that a decision today affirming years of common law application, could be overturned by a legislative whim, is abhorrent to me.

I have been a lobbyist. I understand what goes on in Olympia when bills are being proposed or presented. The Legislature has the power to legislate, but to legislate by overturning a Court decision imposes difficulties too awesome to contemplate.

Any sensible person understands that America has evolved, and maintained its "greatness" in world history because it has an independent judiciary (by and large). America has evolved because of courageous jurists, even though there have been some terrible historical anomalies, i.e., *Dred Scott*, etc.

This demonstration by certain members of the Legislature betrays their ignorance of the process, and their ignorance of Constitutional interpretation practiced by the courts.

The Legislature exercises the power of legislation. The Court exercises the power of interpretation and application of facts to the interpretation of law. The simple fact is that the Court seldom declares legislative enactments unconstitutional. The Legislature retains the power to modify language, or to clarify its intention, in the face of a Court ruling, but to leave judicial affairs and decisions subject to the whim of the simple majority of the Legislature to overturn the decision will create mayhem in our affairs.

I deplore the present tendency to ignore the historical basis on which the Founding Fathers created the first Ten Amendments to the Constitution. I deplore the debate, for example, on the Right to Bear

Arms, to the interpretation that a definition of Arms is limited to only those weapons available at the time of the American Revolution. The concept of retaining the right to keep and bear arms carries with it the idea that the population is entitled to resist oppressive government by arms that are equal to the arms that the government has available to it because otherwise no resistance is possible in a practical sense, which is what happened to the Irish and the Scots during the 17th, 18th and 19th centuries. The concept of militia mentioned in the Second Amendment included the concept that an organized body of "patriots" could form into militarily effective units to resist government oppression e.g., The Whiskey Rebellion.

It is not even sensible to consider that any organized resistance to an oppressive government could be mounted with weapons limited to those available at the time of the American Revolution. It is also foolish to contemplate that any sensible legal decision-making process could assure stability in people's affairs if the Legislature retained the power to overrule on a particular case judicial decision-making. We would find well-connected litigants then going to legislative court to obtain relief when the traditional court system had denied their claims.

WILLIAM J. MURPHY
Federal Way

### Board Should Take Swifter Stand Against Legislation

Editor:

What is the purpose of the Washington State Bar Association?

When I was on the Board of Governors, our bylaws stated that among other things, the purpose was to "promote the availability of legal services to all in need; to advise the public and its officials . . . ."

Therefore, I continue to believe that the Board has to be concerned about the practice of law, lawyers and the people we serve.

On February 10, 1997, two bills, SB5733 and HB1804 were introduced. Among other things those bills:

- Limited contingent fees to 10%
- Required a certificate of merit in medical negligence and product liability actions
- Abolished the last remnant of joint and several liability even where the plaintiff is fault-free
- Permitted *ex parte* contact with plaintiff's physicians
- Allowed construction site immunity and extended the statute of repose
- Established a seat belt defense

I understand that the Board of Governors voted 7 to 3 with one abstention to oppose the legislation.

Some of the arguments I heard of why those who dissented from the Board's action did so are tepid at best. "The process was not adhered to i.e., the Legislative Committee had not made a recommendation." To begin with, the members of the Legislative Committee were not elected to the Board of Governors by their lawyer constituents. The Governors were elected. Second, if there is a fire, you try to put it out, not wait until the house burns down. On its face, the bill is atrocious. Things come to a head quickly in Olympia sometimes.

The interests of the entire bar were at stake, and four members of the Board refused to take a stand.

This letter is not in praise of the majority of the Board, who voted to take a stand; they had no choice. This letter is in rank condemnation of those members who did not vote in the best interests of their constituents.

LEM HOWELL
Seattle

### Federal Right to Trial By Jury

Editor:

The Bar president, Tom Chambers, wrote an article entitled "The Jury System: A Fourth Branch of Government" in the March 1997 edition of the *Bar News*. He made two errors. First, he referred to our government as a democracy, when Article IV of the Constitution affirms that it is a republic.

Second, he claimed that the " right to a trial by jury is not contained in our federal constitution." My copy of the Constitution states otherwise.

Article III, Section 2, Clause 3. The trial of all crimes, except in cases of

impeachment, shall be by jury;

Article VII of the Bill of Rights. In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise reexamined in any court of the United States, than according to the rules of common law.

STEFFAN M. BERTSCH
Lake Stevens

## Bring Back Supreme Court Reports Cumulative Index

Editor:

Our office noticed that we have not received a cumulative subject index for 1996, covering cases in Wn. 2d and Wn. App. reports. Upon calling the commission on supreme court reports, we learned that the cumulative subject index will no longer be published.

It appears that the supreme court's delegation of publishing the Wn. 2d and Wn. App. reports to commercial publishers has caused us to lose a valuable research resource. I urge my fellow attorneys to write to the Commission on Supreme Court reports to urge them to continue publishing cumulative subject indexes.

STEVEN L. OLSEN
Bainbridge Island

## Juries and Judges Should Remain in Judicial Branch

Editor:

I am responding to Tom Chambers' editorial, "The Jury System: the Fourth Branch of Government?" in the March 1997 *Bar News*. I do not agree that lawyers, juries and judges should act as administrative agencies and make laws and social policy.

When juries and judges do act as administrative agencies, they act only after being lobbied by a limited constituency — the parties and their lawyers. Legislation on topics such as car construction should occur after lobbying by all interest groups, including manufacturers, consumers, ideological people, conservationists, and indirectly elected parties. This is what the right to petition for redress of grievances is all about. When juries hear cases, they do not hear from insurance companies, from public-interest groups, from consumers, or from other interested parties. They get heavily filtered information from lawyers and judges. Juries are not competent to be administrative agencies.

Judges should not be solo administrative agencies either. They do not hear from all the interest groups, and judges are not intrinsically qualified to set social policy on their own.

Also, judges are a poor substitute for administrative agencies because individuals make bad decisions. A legislature or administrative agency has many members and must weigh the opinions of all before making a decision. A single judge can make a decision based on bias. This is not a good form of democracy. Also, courts as administrative agencies depend on the quality of the lawyers. What judges hear is limited to the concerns of the parties as perceived or presented by the lawyers. If the lawyers do a poor job, the results are skewed. By contrast, in the

Legislature, there are many players, and the system is not as vulnerable to the vicissitudes of individual personalities. The result is more likely to present public opinion.

Also, there are too many courts. With state, federal, appellate, and foreign state systems, there are inevitably conflicting decisions. This makes it impossible for anyone to know the rules, and neither industry nor the public can engage in rational planning. This costs society money. The construction worker has no job because the employer, not knowing what liability might inhere in some project, refuses to build. This is in the public interest?

This is not to say that administrative agencies in general or in specific cases are wonderful institutions, but rather to say that legislation and administrative agencies are better than the alternatives.

Contrary to the article, the right to trial by jury is provided for in the Sixth and Seventh amendments to the Federal Constitution, and in Article III. I doubt that de Tocqueville thought the jury system allowed citizens to "represent themselves directly." He probably thought juries can and should block the political power of the prosecutor by refusing to convict.

There are only three branches of government. Juries and judges should remain in the judicial branch.

ROGER B. LEY
Seattle

## Editorial Policy

Dear Editor:

I would much prefer to read an article on alleged judicial and prosecutorial misconduct regarding the Wenatchee sex ring prosecutions — which according to the author was censored by your editorial board — than to wade through the promotional fluff piece in the latest *Bar News* entitled "Secrets Good Lawyers Already Know."

GEORGE ANDRE FIELDS
Seattle

Editor:

I want to clarify a letter by Kathryn Lyon which appeared in the April 1997 *Bar News*.

As Ms. Lyon indicated, she had prepared an extensively researched article concerning the Wenatchee sex ring scandal. I had long felt that Washington's premier legal publication should not ignore the biggest legal controversy in Washington's 108-year history. Every major news publication in our state, and most major international publications, had discussed this matter. In my opinion, for the *Bar News* to ignore this issue would have been a travesty. Consequently, as Ms. Lyon indicated, I requested that she write the article because — other than the principals involved — she was the single Washington attorney who knew the most about the cases. It was — and remains — my opinion that her article is important and worthy of publication and discussion.

As is common whenever a *Bar News* editor chooses to publish a controversial article, I requested that the WSBA counsel, Bob Welden, review the article in order to solicit his view regarding potential libel concerns. I should note that — in order to preserve the integrity and independence of the *Bar News* — neither Dennis Harwick nor the WSBA counsel

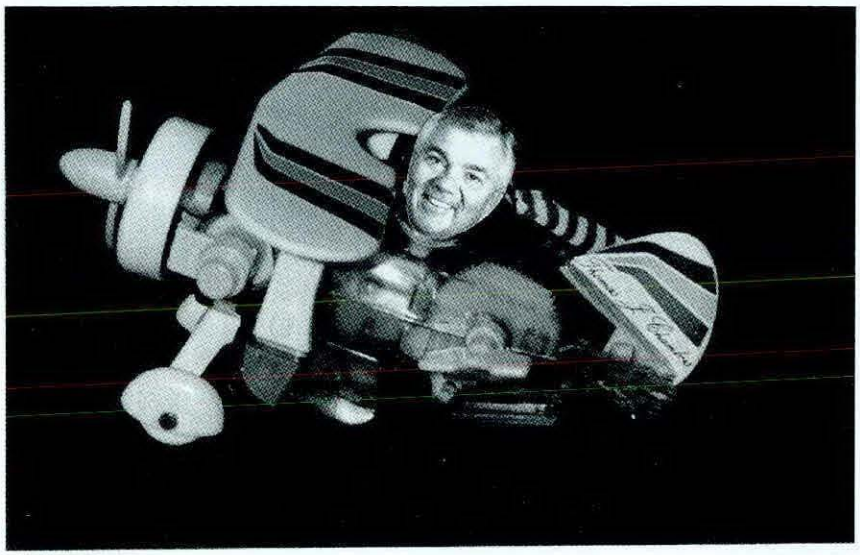
typically review its contents prior to publication; this particular review was at my request.

On the eve of publication, I was contacted by Dennis Harwick, and he and I discussed the publication of this article in a conference call with Editorial Advisory Board Chair Bob Cumbow, WSBA Communications Director Bonnie Kam, Editor-select Sherrie Bennett, Managing Editor Jennifer Klamm and Bob Welden. It became apparent that the main cause of concern was not specific libel issues -- the few concerns which existed could have been quickly modified — but rather a concern regarding the general explosiveness of the article. In short, it would have offended portions of the Wenatchee bar. Predominantly for that reason — and also because my reply to a letter in the December *Bar News* regarding the King County Gay and Lesbian Task Force had created a bit of a stir — I was urged to pull the article.

The pressure to pull the article was strong and unanimous — with the exception of Sherrie Bennett. Sherrie was understandably concerned about the independence of the editor, and although she was no fan of the article — she saw the possible threat of censorship as something to oppose. She should be commended for her stance. However, I should mention that, although the pressure was intense, the conversation ended *without* a commitment from me as to what my decision would be, and with the understanding that it was, in the end, the decision of the *editor*. Dennis Harwick — in spite of his feelings about the article — should be commended for his stance in this regard.

My position was a difficult one. Not only was I a lame-duck editor, but I was an absent lame-duck editor — having relocated to Houston. And — as was pointed out to me in the conversation — I had used up much of my "political capital," as it were, when I had published prior controversial articles/opinions. In the end, however, my decision was based on two factors: The existence of a somewhat-related piece which was available for substitution (the article on child victim witness issues by Jack Hill), and the desire not to "poison the well" for the incoming editor — who is performing an outstanding job. Thus, I — *I* — chose to pull the article. It was the only time that I had ever done so, and — as I have said — I regret the necessity for the decision; because I believe Kathy Lyon composed a remarkable article which everyone should read. In fact, when I told one individual that I was pulling the article — but that hopefully another article would be authored by someone else — he replied, "*Who?* No one else knows the cases nearly as well as she does." Which is true; in fact, her book on the subject, — published by Avon — should be in the book stands shortly. The fact that an extremely knowledgeable Washington attorney had agreed to donate her time to provide an article for the *Bar News* was indeed something I was proud of, as Kathy stated; and its non-inclusion is a loss for the readers of the *Bar News*. But, as I have said, it was *my* decision. Sherrie Bennett should not be condemned for my action.

HAL WHITE
Houston, Texas



# Desert Flying

*by* **Tom Chambers**
*WSBA President*

As I lift off from the Sierra Vista Airport the temperature is 80°. I follow the controller's vectors precisely. It's a breathtakingly beautiful day, but I'm flying an instrument flight plan so that I can follow the air highways and weave among the many Arizona military restricted zones without incident.

The required altitude is higher than I would like, but the desert below is enchanting, a gray moonscape. Here and there are outcroppings of color — yellow from limestone, pale blue from clay, rust red from iron. Erosion fans out the colors like soft feathers on the gray canvas.

It's October 1996, and this is the solo desert flight I've been looking forward to. I planned the trip as a much needed escape from the rigors of my law practice and the demands of serving as president of your state bar association. Flying is the perfect medicine for anything that ails my soul.

I had not hoped to fly over the Grand Canyon, but here I am eastbound on vector 210 at 2,000 feet, and off of my left wing I can see the south rim. It is coming closer. Then suddenly I am gulping breaths — it's right there! Although 6,000 feet below, it is vast with warm red hues and shimmering bright red hues engaging in a slow dance, shifting and gliding as the sun and the plane change positions. Now I can see the emerald green Colorado River snake along the bottom 3,000 feet below the south rim. I'm flying above and slightly south of the rim, and the river slithers in and out of my view.

It doesn't get any better than this. Then it does. After 30 miles or 12 minutes, the canyon is gone. The desert seems different now. Slowly, the plumes of yellow, blue and rust, joined by the shimmering bright red, come together, and the gray desert disappears to become a canvas covered with strokes of color everywhere as if brushed on by a giant hand. At Page, I rent a car and do what land tourists do. I marvel at nature's architecture as bright red pinnacles and bridges erupt from the soft blue waters of Lake Powell. For all the mischiefs that man's dams have caused, this flooded badland with its arches and other sculptures of nature is almost mystical in its beauty.

I arrive at the airport mid-afternoon and seek the counsel of local pilots on flying Monument Valley. After a short delay, I am flying low and close over Nature's glimmering red bridges, towers and arches. Armed with my camera and determined to take just the right photograph, I click the shutter, all the while knowing that no image could possibly capture the true majesty of what's below me.

The afternoon is getting old, and I head westbound and begin to analyze my situation. A dead battery had caused my delay that afternoon. I needed a jump start at the airport. It seemed unlikely that the battery was bad. In any event, I knew what to do. Monitor the ammeter during flight. If it begins discharging, I need to land. Having flown the same airplane for 20 years, I knew from past experience that the first warning of a loss of both alternator power and battery power will be the squeal in my communication radio. I will shut down unnecessary instruments to conserve electricity. If the power were to go out altogether, the engine would run off magnetos and I could rely on my backup hand-held radio for navigation and communication.

Now lured by the desert, I fly on visual reference so I can go lower. Eastbound, I enjoyed a robust tail wind and whisked over the desert at 200 knots (226 mph). Now it is a grueling head wind and I am crawling over the sand at 100 knots. While I have the time I get out the portable navigation/communication radio and plug it into the external antenna. After a while, it begins blinking "low battery" at me.

If you are wondering where the lofty presidential message is to this story, there isn't one. It is subtle and at the end. If you have read this far, you're hooked, so let's both have some fun.

The sun is dead ahead and getting lower. Puffs of clouds appear, and I begin to circumnavigate them. It is one of those delicious evenings that only aviators are blessed to enjoy. Soft pink and blue hues lace pillow- and pillar-shaped clouds. As I fly between two pillars and over a pil-

low, the world is aglow in pink, red and blue. Then below I see the aviator's cross — black on pink — a reflection of my Cessna 210. Then it is gone.

It is getting dusk. I planned to land before dark but the flight time has been unexpectedly slow. I might have made better time at a higher altitude, but I was seduced by a beautiful and wanton desert. I'm now in California, and the clouds are growing. There is a low-level haze announcing industry. It's time to land. After discussing alternatives with a controller, I decide to press on to Bakersfield. Bakersfield is overcast like the rest of Southern California, but it is advertising a 2,000-foot ceiling and a good instrument approach. The ammeter has shown a slight charge for hours, so I accept my new instrument clearance.

I head north and climb to my newly assigned altitude of one zero thousand. Off to my left are traces of reds, pinks and blues flickering over black as the sun is disappearing into the Pacific. Ahead is a dark black cloud that will soon swallow me, airplane and all. I flip a switch, and the interior and panel lights go from white to red. I begin my scan — artificial horizon to altimeter to compass to vertical speed indicator to ammeter and back to artificial horizon. It is important to concentrate. The cloud swallows me. It is totally black outside. I'm tracking my heading precisely and maintaining an acceptable altitude. I got the Bakersfield approach chart out before being swallowed. It's hard to read in the red light. The overhead Cessna lights are adequate, but I have to raise the approach chart up to read it, blocking my scan. I grab the chrome, pencil-shaped flashlight from the glove compartment. Another dead battery. Did I fly over some secret military facility testing electromagnetic fields? Am I sterilized? Concentrate. Nobody cares if you are sterilized, Chambers. Scan. Fly the airplane.

I'm finally communicating with Bakersfield approach. The descent is perfect. I put the gear down early although it slows my speed. If I don't have enough juice to run the electric hydraulic pumps, I want extra time to hand pump the gear down. The gear locks in place and the reassuring green light comes on without so much as a flicker from my ammeter. I begin to see the glow of a city through the clouds. Poof, I'm through. There it is, a brilliant kaleidoscope of colored lights, and in the background I hear a chorus singing hallelujah, hallelujah, hallelujah.

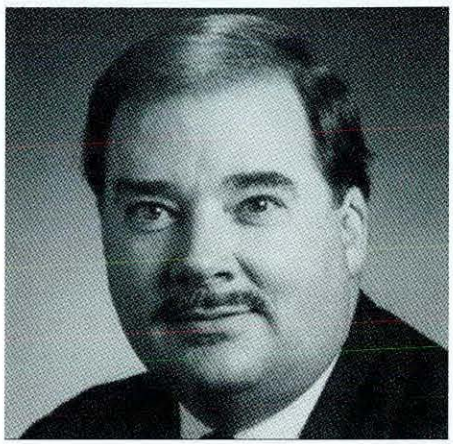
Airport in sight, I hit the landing lights. Damn, the cockpit goes black. The radios are silent, and I suddenly miss the annoying background hiss of the radio. The landing light has drawn too much juice. Not to worry — the airport is in sight, and I've been cleared to land at the outer marker. I throw the landing light switch again. The landing light goes off, and the cockpit comes alive with lights and sounds.

Touchdown and rollout are uneventful. After finding a place that will service my airplane on Sunday morning, I find a human hangar. Tomorrow I'll fly north to Red Bluff. I'll learn about icing crossing Fort Jones near Mt. Shasta. Maybe I'll use the coastal route.

I lie in bed and think about my day. Wonderful, beautiful, stimulating, exciting. Tomorrow promises to be every bit as good.

Not once have I thought about the Bar Association or the practice of law. That's important. That's my message. Gawd, I love to fly.

# The WSBA Membership — What Does It Look Like?

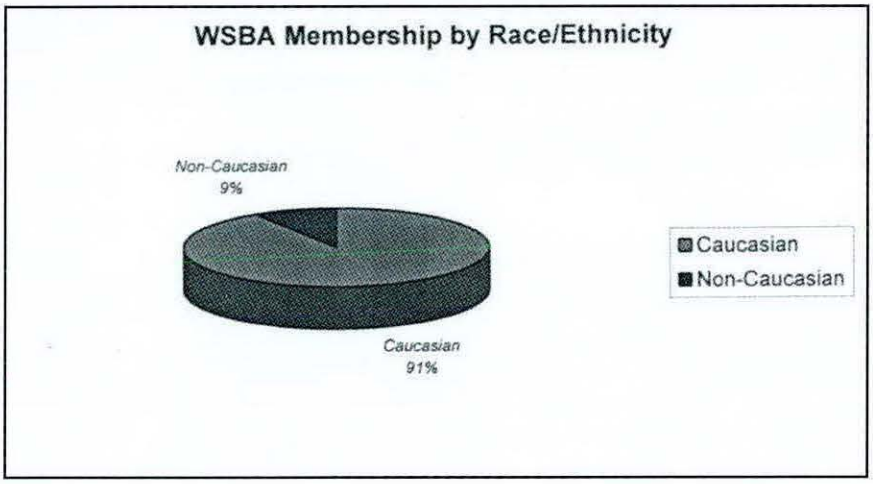


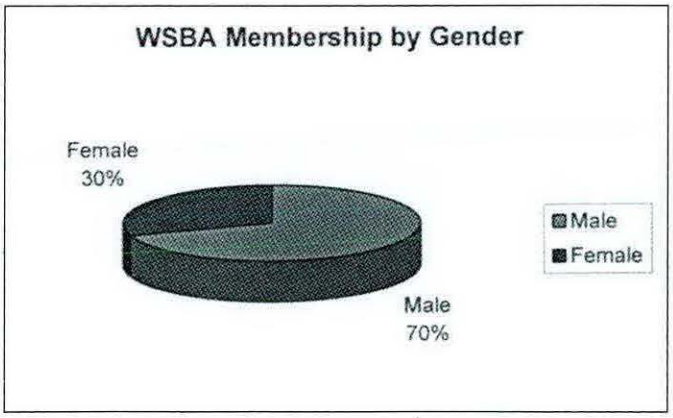
*Dennis P. Harwick*

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

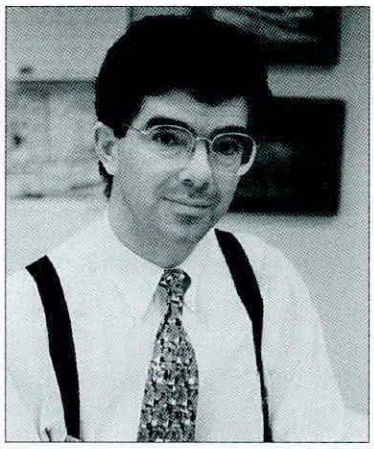
Over the past several years, the WSBA has collected — on a voluntary basis — demographic information about its members. According to our records, about 74% of our members have provided demographic information. I hasten to point out that all the information we've collected comes from voluntary responses and there is no assurance that it is accurate. However, it is consistent with my observations and expectations, to-wit: the WSBA membership is mostly male and mostly white. Now there's a big surprise!

It is, however, becoming more feminine and diverse. As you can see from the attached charts, the WSBA membership is approximately 70% male. However, when similar statistics were collected in 1992, the WSBA membership was 73% male. In 1992, the WSBA membership was approximately 93% Caucasian compared to approximately 91% today. Here's a snapshot of our membership:



Dear Colleague:



When Alva Long died we lost not only a valued and colorful colleague, but an important voice in the governance of our bar association. Although not everyone always agreed with Alva, I think most would agree that he was an important force in encouraging and maintaining accountability of the Association to us all — the members.

Alva, if only by his courage to speak out (even at the risk of controversy), brought a vital energy to the deliberations of the Board of Governors which I think is sorely missing today. I believe this is validated in recent developments in bar association governance which should give us all pause to question, including the following:

—the Board's approval of a compensation package for the executive director which includes a leased 1997 Saab 9000CSE valued at $40,000 (on top of an annual salary of $106,000)
—management of an attorney discipline process which has lead the ABA to recommend that the discipline function be removed from the bar
—proposed rules of professional responsibility that have more to do with dictating what some regard as "politically correct" and less to do with carrying out our work in an ethical and professional manner
—a fifty percent dues increase notwithstanding substantial objections and apparent failures to control expenses.

I am a candidate for the King County at Large position to the Board of Governors because I believe it is critical for the void left by Alva's departure to be filled and for us to bring back common sense and courage in facing the problems that arise in regulating ourselves and our association. I do not profess to be nor aspire to be a clone of Alva — that is neither my style or the approach I intend to bring to being your governor.

But I do believe Alva's legacy of candor and directness must be carried on and that the shortfalls such as those listed above must be addressed straight out and not glossed over. I have practiced as a sole proprietor for over 16 years. I have served as the Chair of the Bankruptcy Section of the King County Bar Association and I have also served on the local rules committee for the U.S. Bankruptcy Court. As a bankruptcy trustee and sole proprietor I am aware of the importance of a balance sheet and of running an organization efficiently and economically. I would appreciate the opportunity to serve you and, hopefully, bring about the positive concrete change in course which we so need in our association.

Please vote for me when you receive your ballot in mid-May. If you share my concerns or have any comments, please fax them to me at my office (206-441-0533). Thank you.

Sincerely yours,

James Rigby
WSBA #9658, Candidate for Board of Governors

# New Responsibilities, Old Problems: Washington Meets the Welfare Reform Act

*by* **Norman R. McNulty, Jr.**

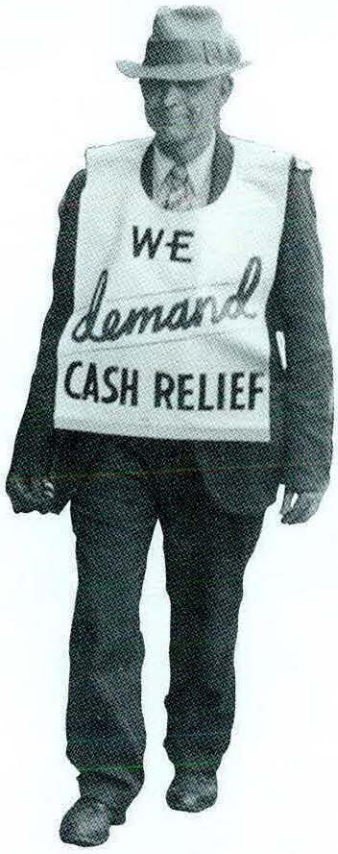
In 1996, Congress passed a new act, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (known as the Welfare Reform Act).[1] Congress converted AFDC from an entitlement program into a block grant program called Temporary Assistance to Needy Families (TANF) with spending caps and time limitations on eligibility. Under the old AFDC program, families with children had an entitlement to benefits; therefore, the State of Washington, which paid part of the costs of AFDC, could receive whatever sums it needed from the federal government to ensure that benefits were paid. Families under TANF have a lifetime eligibility limit of five years, although individual states have authority to set shorter eligibility periods.[2]

With passage of the Welfare Reform Act, the State of Washington has greater responsibility for making decisions about the support of indigent families with children and will receive less federal dollars under a formula based on spending in previous fiscal years. Because of other cuts in assistance programs in the Welfare Reform Act, state officials may be faced with the onerous task of choosing between groups of equally needy people in distributing limited resources.[3]

Such reform, however, makes old laws and customs seem fresh and vital. Once relics, superceded laws must be examined again. What did lawmakers of the Washington Territory and the new Washington State do to help the poor? How did federal laws passed during the calamitous Great Depression change state law? And how might the old laws affect reform today and in the future?

During its first session in 1854, the Territorial Legislature passed the so-called Poor Laws, placing the "entire and exclusive superintendence of the poor" in the hands of boards of county commissioners.[4]

Purporting to assist people unable to earn a livelihood due to "bodily infirmity,




idiocy, lunacy, or other cause," the Poor Laws provided for assistance only if relatives were unable or unwilling to assist. Workhouses for adult paupers and forced apprenticeships for juveniles were available options for county officials. Fines were imposed against anyone bringing a pauper into a county in which he was not lawfully settled.[5]

In 1913, the Mothers' Pension Act authorized welfare benefits for destitute women with children under age 15 who had been abandoned by their husbands for more than a year or whose husbands were dead or inmates of penal institutions or insane asylums or whose husbands were totally disabled.[6] Following controversy over the "abandoned-by-husband" provision, the Legislature repealed the act in 1915 and replaced it with a similar program without the offending provision about missing husbands.[7]

As was true across the nation, the state's welfare system simply could not cope with the financial collapse of the Great Depression. In 1932, the Washington Supreme Court in *Rummens v. Evans*, 168 Wash. 527, 535, 13 P.2d 26 said:

> If husbands and fathers of 17,000 families are unable to find food to satisfy the hunger of their families and other bare necessities, although in the midst of plenty, many will be driven to get what they can where they may find it by any means available, or driven to desperate self-destruction. They will not quietly and tamely submit to starvation. The burdens of the taxpayers of the state are grievous, as we well know, and have reached a point which is well-nigh unendurable, but not so grievous as to be hungry, cold and naked, without fault, and seeing helpless women and children in the same state and unable to relieve them.

The *Rummens* court upheld the decision of the King County Board of Commissioners to exceed the county's constitutional debt limitation without first seeking a vote of the people.

In 1933, the Washington Legislature, in enacting a statute to create relief bonds, declared:

> Hunger marches. Discontent, social unrest and incipient insurrection exist. Acts of insurrection are occurring. The moral resistance of the people is lessening. Government itself is imperiled and must be protected and preserved.[8]

In its discussion upholding the issuance of the relief bonds, the Court in *State ex rel. Hamilton v. Martin*, 173 Wash. 249, 256, 23 P.2d 1 (1933), engaging in masterly understatement, said, "[I]t is far better to cure insurrection or incipient insurrection by promoting prosperity rather than by the use of bullets."

The *Rummens* and *Martin* courts were deciding the legality of government money-raising schemes to help indigent

people suffering from the terrible consequences of the financial collapse of the 1930s.[9] The Court was hardly inclined to second-guess harried state and local legislators, who were operating in the context of a welfare system essentially unchanged since 1854. To deal with the national calamity of destitute families, the Congress in 1935 passed the Social Security Act which, in addition to programs for old-age benefits, unemployment compensation assistance, and aid to the blind, created a financial assistance program called Aid to Families with Dependent Children (AFDC).[10] A dependent child was defined as a child under age 16 who was deprived of parental support or care by reason of the death, continued absence from the home, or physical or mental incapacity of a parent and who was living with certain specified relatives.[11] The Washington State Legislature rushed to take advantage of the Act by passing a statute binding the state to comply with the Act.[12] This new program flooded federal dollars into the state of Washington, and cash-strapped local officials now had an additional tool to help them adequately feed and clothe hungry children and their parents.[13] The old, broken Poor Laws[14] and cases like *Rummens v. Evans* quickly assumed their places as interesting relics from a remote stage of human social development.[15]

While the Poor Laws were repealed, there is an element of the old welfare system which still exists today, and that element is enshrined in the Washington Constitution. *Rummens v. Evans* based its decision that King County could properly issue warrants to fund the needy on Art. VIII, § 7, which prohibits counties or cities or municipalities from giving or lending any money or property or credit to individuals "except for the necessary support of the poor and infirm." The Court stated that this provision, in conjunction with the statutes governing public assistance, created a "legitimate duty" to assist the needy and that, therefore, King County could use extraordinary means to raise money to meet that duty.

In subsequent years, as the state assumed from the counties primary responsibility for running the welfare programs, there was some doubt whether the state could carry out such a function because Art. VIII, § 5 (unlike Art. VIII, § 7) prohibits lending of state credit to individuals but makes no exception for the poor and infirm. That concern was laid to rest in *State v. Guaranty Trust Co.*, 20 Wn.2d 588, 592, 148 P.2d 323 (1944) which upheld the state's role under the doctrine that "recognized public governmental functions" applied to the state in its sovereign capacity as well as to its political subdivisions. Thus, the two constitutional provisions are read as having similar intent.

In light of the enormous responsibilities imposed on the State of Washington with the Welfare Reform Act, the 1889 inclusion of the poor in the Washington Constitution has particular relevance to legislative action in 1997 and the years beyond. While any particular needy person may not have a legal remedy to obtain benefits solely because of the "poor and infirm" language of Art. VIII, § 7, as incorporated into Art. VIII, § 5, nevertheless, the language recognizes the needy as a special group particularly deserving of governmental assistance.

Determining how to deal with the changes brought about by the Welfare Reform Act is a task before the 1997 regular session of the Washington Legislature. Legislators have introduced three separate bills, each of which involves a fundamental rewrite of the welfare laws of the state of Washington.[16] The focus of these bills is on job search and placement. Unfortunately, a fundamental aspect of these bills is that, at some point, a family with children may not be eligible for assistance despite the fact the family is without necessary income or resources to meet subsistence needs. This would be true even if the family has otherwise met all requirements of the public assistance laws, including job search. For example, both SB No. 6040 and E2SSB No. 5677 provide that there is no legal entitlement to temporary assistance for needy families; both bills also amend RCW 74.08.025 to provide that a needy family *may* be eligible for public assistance. RCW 74.08.025 now reads that needy families *shall* be eligible for assistance. This change reverses a sixty year commitment to indigent families.

The Court in *Rummens v. Evans* quoted the biblical injunction: "For ye have the poor always with you."[17] It was lack of adequate state resources for assisting destitute people which plagued state officials in the 1930s. With the reductions in federal funding mandated by the Welfare Reform Act of 1996, state officials with inadequate resources are once again trying to deal with the recalcitrant problems



of the poor and infirm.

*Endnotes*

[1] Pub.L. No. 104-193, 110 Stat. 2105-2185.

[2] *Id.*, § 103. The Act also restricts the eligibility of certain groups of poor people for other federal programs. The Act eliminates food stamp and Supplemental Security Income (SSI) benefits for legal immigrants. *Id.*, § 402. Food stamps are limited to three months in a three year period for unemployed adults under age 50. *Id.*, § 824. The definition of SSI eligibility for disabled children has been narrowed. *Id.*, § 211. For a discussion of the devastating impact of these cuts on poor people, see Peter Edelman, "The Worst Thing Bill Clinton Has Done," *The Atlantic Monthly* (March 1997).

[3] *See* footnote 14, *supra*. It is noteworthy that the Welfare Reform Act allows a state to use its *own*, nonfederal funds to provide for families with children who are terminated due to the five-year limitation. However, a state may simply lack the funds to take advantage of this provision as it tries to assist other groups of destitute people. An object lesson of what happens when there is no money for a worthy public assistance program can be seen in *Pannell v. Thompson*, 91 Wn.2d 591, 589 P.2d 1235 (1979) when the Legislature failed to appropriate money for the noncontinuing general assistance program.

[4] Rem. Rev. Stat. §§9981-9992.

[5] *Id.*

[6] Wash. Laws 1913, p. 644; 3 Rem. & Bal. Code, § 8385-1 *et seq.*

[7] Wash. Laws 1915, p. 364; Rem. 1915 Code, § 8385-1 *et seq.*

[8] Wash. Laws 1933, chapter 65, § 1.

[9] For a general discussion of the Great Depression, see Robert Goldston, *The Great Depression* (Fawcett Premier, 1968).

[10] Aug. 14, 1935, ch. 531, Title IV, 49 Stat. 627, codified at 42 U.S.C. § 601 *et seq.* (1994). See chapter 74.12 RCW.

[11] *Id.* The definition was eventually expanded to include children deprived of parental support or care by reason of the unemployment of the parent who was the principal earner. § 1, Pub. L. No. 87-31, 75 Stat. 75 (1961), codified at 42 U.S.C. § 607 (1994). See RCW 74.12.010, as amended.

[12] Wash. Laws 1935, ch. 110, § 13.

[13] AFDC case load in Washington as of 1994 was 103,138 families. "Public Assistance, Poverty and Jobs in Washington State" (Dept. of Social & Health Services, January 1996).

[14] Repealed by Wash. Laws 1937, ch. 180. Influenced by the centralizing tendencies of the Social Security Act, the Legislature in section 1 of this act created a single administrative agency "which will preserve local autonomy in its administration yet retain the statewide supervision necessary to equity, uniformity and adherence to rules and regulations of Federal government." By the early 1950s the counties had lost administrative authority for welfare benefits.

[15] Secure in the receipt of federal funds for destitute families with children, the state continued to fund welfare assistance for other groups, such as disabled individuals. See RCW 74.04.005 (1996).

[16] Engrossed Second Substitute Senate Bill (E2SSB) No. 5677, Senate Bill (SB) 6040, and Substitute House Bill (SHB) No. 1079.

[17] 168 Wash. at 533.

***Norman R. McNulty**, a legal-service attorney for 19 years, is now an administrative law solo practitioner in Spokane.*

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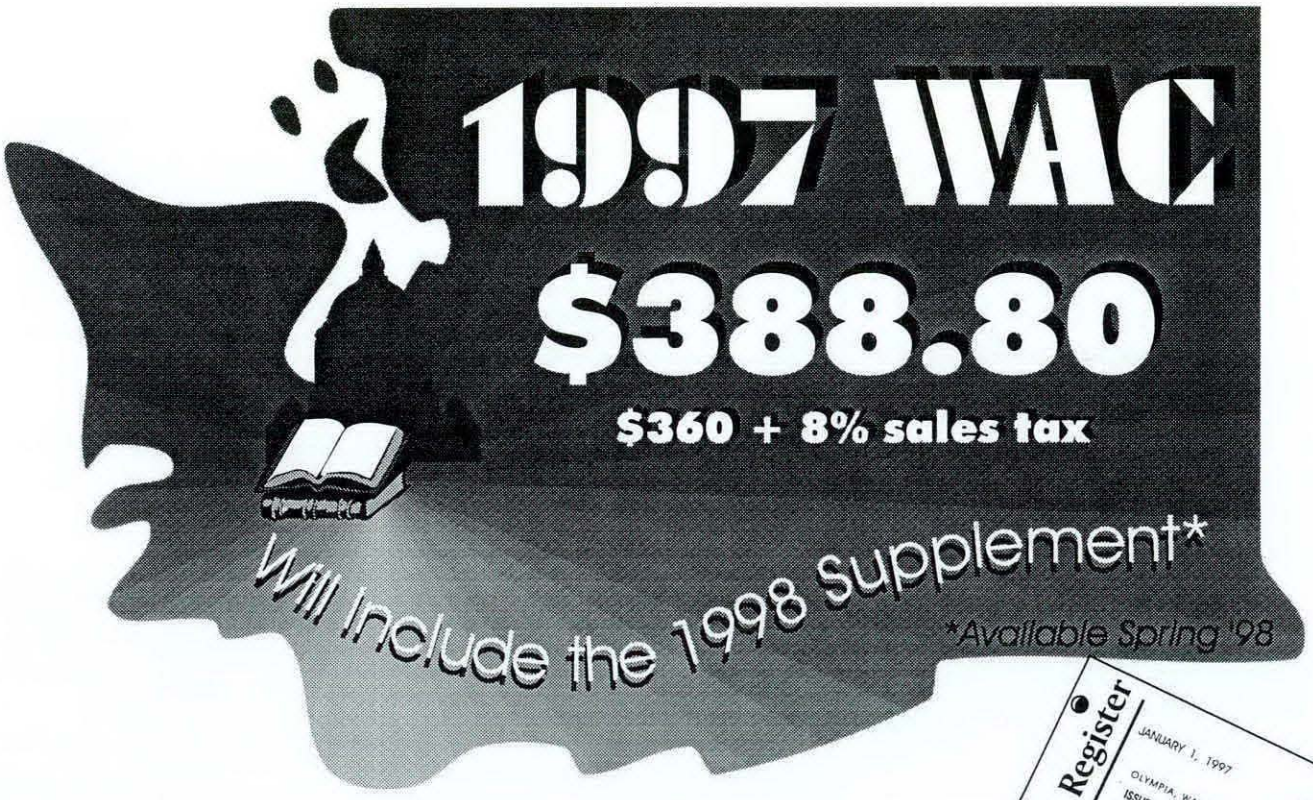


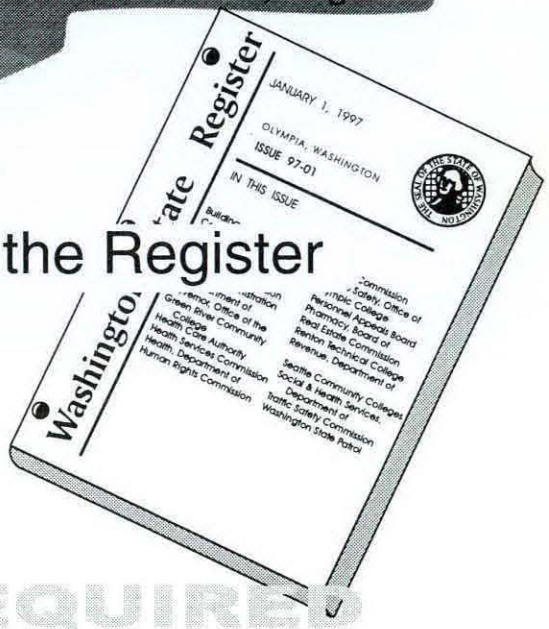


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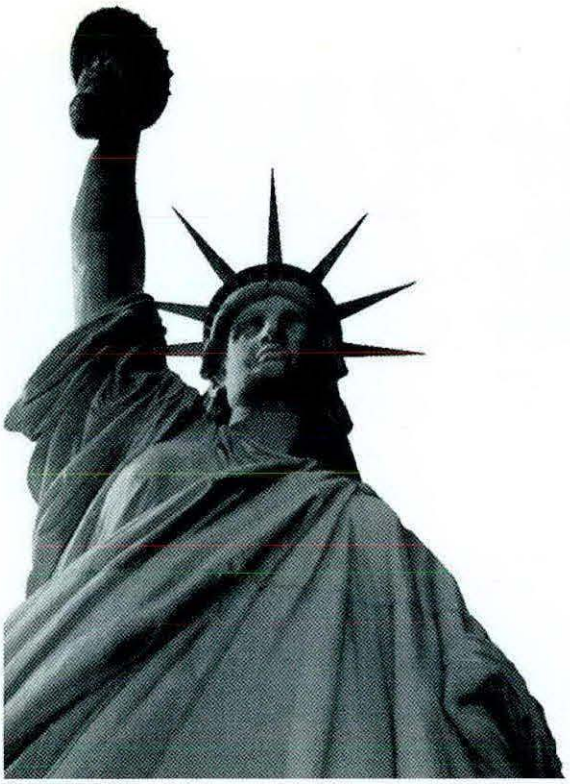

# Two Recent Acts Aim at Limiting Aliens' Access to Public Welfare

*by* **Raymond R. Laghaeian**

Two recent acts signed into law by President Clinton have dramatically affected the lives of many legal immigrants in this country. The Personal Responsibility and Work Opportunity Act of 1996[1] (The Welfare Act) and Illegal Immigration Reform and Immigration Responsibility Act of 1996 [2] (IIRIRA '96) made sweeping changes to the welfare system. Both restricted access of legal immigrants who are non-citizens to federal public benefits, and set stricter guidelines on admitting new immigrants into the United States. The new laws are aimed at getting aliens who have become public charges since their arrival in this country off the welfare system. The new legislation is also designed to ensure that recently admitted aliens do not become public charges.

## Background

Illegal immigrants have historically had little access to public benefits. Prior to the new Welfare Act, however, non-citizen legal immigrants were eligible for the same benefits as U.S. citizens, subject to restrictions such as a five-year residency requirement.[3] These benefits included Supplemental Security Income (SSI), Medicaid and food stamps. Under the Social Security Act,[4] "the aged, blind and disabled" could apply for and receive benefits such as Medicaid and SSI. Aliens lawfully admitted for permanent residence and residing in the United States, as well as those aliens permanently residing in the United States under color or law, were eligible to receive benefits after fulfilling the five-year residency requirement.[5]

## What Legal Aliens Lost

The basic criteria for qualifying for the benefits remain the same. But the new Welfare Act created a new category called "qualified aliens" [6] and limited their access to federal public benefits such as SSI and food stamps. This new category includes most of the legal immigrants currently living in the United States, such as lawful permanent residents and refugees. With certain exceptions, most legal aliens became ineligible to receive federal benefits as a result of the new Welfare Act.

The new laws also gave the states the option of limiting legal aliens' access to Medicaid. [7] In most states, qualifying for SSI automatically qualifies the applicant for Medicaid.[8] Many legal immigrants do not have insurance and have been using SSI as a bridge to qualify for Medicaid. By making them ineligible for SSI, the new Welfare Act took away the ability of these legal immigrants to qualify for Medicaid.

## Exceptions

Under the Welfare Act, "qualified aliens," which include lawfully admitted permanent residents, can receive some federal assistance.[9] This assistance is limited to treatment of certain emergency medical conditions and limited emergency disaster relief.[10] Rather than disqualify all legal aliens from receiving federal public benefits, the Welfare Act allows certain qualified aliens to receive those benefits. Some permanent residents, veterans, refugees and asylees are qualified to receive federal benefits under the new act. These include lawful permanent residents who have worked 40 or more qualifying quarters, veterans and aliens on active duty in the armed forces. [11]

## What Aliens Currently Receiving Public Benefits Can Expect in the Next Few Months

The new laws apply to people who are already receiving federal benefits as well as to those who are applying for them. Legal aliens currently receiving public benefits will continue to receive them until the Social Security Administration (SSA) reviews their status.[12] SSA will "redetermine" the eligibility of legal aliens currently receiving SSI and food stamps within one year of enactment of the Welfare Act. To accomplish this, the Welfare Act authorizes the SSA to apply the new criteria to these public benefits recipients and discontinue payment to those who no longer qualify under the new law. The notice requirement of the Act requires the SSA to give recipients notice of these provisions and the effect on their benefits.[13] By September of this year, the federal benefits of all recipients who no longer qualify will be suspended.

During February and March of this

year, SSA sent letters to qualified aliens who are receiving benefits notifying them of how to prove their eligibility under the new law. Proof of eligibility includes, for example, showing that the alien has changed his or her status to that of a U.S. citizen, is a permanent resident who has worked 40 or more qualifying quarters, or is a veteran.

Aliens receiving federal public benefits who are unable to prove their eligibility under the new laws will receive a second letter from the SSA notifying them of when their benefits will stop. SSA suggests that recipients who lose benefits should reapply for public benefits if and when they meet the criteria for eligibility due to a change in their immigration status: that is, when they become citizens.

Many legal aliens who have been living in this country for years as permanent residents now have to become U.S. citizens to stay eligible for federal benefits. A record number of permanent residents are now applying for naturalization. The Immigration and Naturalization Service (INS) anticipated this rush to citizenship, and has announced that it will expedite citizenship applications to deal effectively with the increase in the number of applicants for naturalization. The INS anticipates that the naturalization process will take on average approximately six months.

## Underlying Rationale of the New Welfare Laws

Congress believes that prior procedures to ensure that the lawfully admitted immigrants do not become public charges and a burden on the welfare system have been ineffective. In its "[s]tatements of national policy concerning welfare and immigration," [14] Congress refers to self-sufficiency as the basic principle of the United States immigration law. Congress articulates U.S. policy that aliens not rely on federal public benefits, but on their own capabilities and resources such as families and sponsors. [15]

Previously, safeguards ensured that legal aliens becoming public charges were deported if the cause of becoming a public charge could not be affirmatively shown to have arisen after entering the United States. Legal aliens receiving such benefits were subject to deportation if they received benefits during five years after entering the U.S. [16]

Another provision which was aimed at assuring that aliens did not become public charges was the financial support agreement. The Immigration and Naturalization Act required prospective immigrants who based their application on family relationship to a citizen or a permanent resident to file an affidavit of support. The person signing the affidavit of support is called the "sponsor." By signing the affidavit, the sponsor agreed to provide financial support to the prospective immigrant. The financial support agreement was, however, unenforceable against the sponsor. Sponsored aliens would be eligible for federal public benefits five years after becoming lawful permanent residents, and would receive benefits such as SSI and Medicaid. Government agencies providing public benefits to an increasing number of immigrants who received federal benefits did not have any legal remedies against a sponsor who refused to support the sponsored alien or reimburse the agency.

Through the Welfare Act and the IIRIRA '96, Congress decided to end what had become an incentive to immigrate to the United States: public benefits to legal immigrants. [17] The new law gave INS the task of designing a new form for affidavits of support. [18] The new form was expected to be available by March of this year, but the effective date was pushed back to April '97. Current affidavits of support will not be accepted after that date.

Under the IIRIRA, unlike previously, the sponsor becomes personally liable to any federal or state agency which provides public benefits to the sponsored immigrant. To assure compliance, the Act requires that affidavits of support be legally enforceable against the sponsor by the sponsored alien and the government agency which provides public benefits to the immigrant. The federal or state agency may also sue the sponsor in any state or federal court for reimbursement of any benefits paid to the sponsored immigrant. The enforceability of the affidavit of support continues until the sponsored immigrant becomes a U.S. citizen through naturalization. [19]

To further ensure compliance with the new support provisions, the Act also requires that sponsors agree to submit to the jurisdiction of any federal or state court for actions brought by state and federal agencies. The sponsor is also required to give the Attorney General and the state where the sponsored immigrant lives notice of change of address within thirty days of moving. [20]

If and when the alien applies for federal benefits, the income of the sponsor and that of his or her spouse are deemed available to the sponsored immigrant in deter-

mining the immigrant's eligibility for public benefits. The deeming of income will also end once the status of legal aliens changes to that of a U.S. citizen, or when the alien has worked 40 qualifying quarters without receiving federal benefits. [21]

Other provisions are aimed at giving INS and states more information on illegal aliens. The Welfare Act requires that states and SSA provide INS with information on persons whom they know are unlawfully in the United States. [22]

## Conclusion

Congress has taken a step in solving the public welfare problem. An early indicator of legal aliens' response to sweeping changes in the Welfare Act has been the rush to the INS to become U.S. citizens. Some have filed lawsuits against states to prevent enforcement of the new welfare law. INS has declared that it is speeding up the naturalization process so that it can handle the sudden increase in applications for naturalization. States' reactions to lawsuits filed by legal immigrants remain to be seen.

*Endnotes*

[1] P.L. 104-193 signed on August 22, 1996

[2] P.L. 104-208 signed on September 30, 1996

[3] 8 USC 1255a, and 20 CFR 416.202

[4] 42 USC 301 et seq, 1201 et seq, 1351 et seq., 1381 et seq., 1382(a).

[5] *See* footnote 3

[6] The term "qualified alien" is defined as an alien who is lawfully admitted for permanent residence, has been granted asylum under section 208 of INA, is a refugee under section 207 of INA, is paroled into the United States under section 212(D)(5) of INA, whose deportation is withheld under section 243(h) of INA, or been granted conditional entry under section 203(a)(7) of INA. 8 USC 1641.

[7] 8 USC 1622

[8] 42 USC 1396a

[9] 8 USC 1612

[10] 8 USC 1611(b)

[11] Permanent residents can receive SSI and food stamps if they have worked 40 qualifying quarters of coverage as defined under Title 11 of the Social Security Act, can be credited with 40 qualifying quarters, or are asylees, refugees, or aliens whose deportation is withheld and have been admitted less than five years. Qualified aliens who are veterans or on active duty in armed forces are also eligible to receive federal benefits. 8 USC 1612.

[12] *Id.*

[13] *Id.*

[14] 8 USC 1601

[15] 8 USC 1601(2)

[16] 8 USC 1227(a)(5)

[17] 8 USC 1601

[18] 8 USC 1183a

[19] 8 USC 1183a

[20] *Id.*

[21] 8 USC 1631

[22] 42 USC 611a



*Seattle attorney* ***Raymond R. Laghaeian*** *practices immigration law; he is licensed in both Washington and Texas.*

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*by* **Sherrie Bennett**
Bar News *Editor*

The March 28-29 Board of Governors Easter Weekend meeting was held in LaConner, bringing the Governors the opportunity to tiptoe through the tulips and be entertained with raucous skits put on by the Whatcom, San Juan, Skagit and Island county bar associations.

**Legislative Report:** The Board's agenda featured a late-breaking legislative report from Ellen Conedera Dial and John Fattorini. The legislative bills supported by the WSBA which survived Legislative Committee include legislation on protection of personality rights, provisions for additional judges in Snohomish, Pierce and Spokane Counties, regulation of unincorporated nonprofit associations, additional protection of vulnerable adults, modification of consent provisions under the Washington business corporation act, protection of a spouse's community property interest in an IRA account held in the name of a deceased spouse, revision of the act regulating dissolution of limited liability companies due to loss of members, technical revisions of probate provisions, and waiver or cancellation of interest or penalties for estate tax returns where the delinquency was beyond the control of the responsible person.

**Reciprocity?** A heated debate followed Governor Whitson's resurrection of the issue of whether or not the WSBA should pursue "reciprocity" with other state bar associations, so that Washington attorneys could practice law in other states without passing the bar exam, and vice versa.

Governor Perey voiced his conviction that given the chance to vote on the issue, the membership as a whole would probably reject the idea. He felt that the focus should be on the delivery of quality services to the Washington public, and that if a lawyer wants to practice law in this state, he/she should have to pass the bar exam here. Governor Powell, a law examiner, pointed out that the Washington bar exam is much tougher than that of many other states, but also acknowledged that you cannot necessarily judge a lawyer's competence by his/her ability to pass a bar exam. Governors Williams and Theiler both noted that the primary beneficiaries of a reciprocity agreement would likely be out-of-state lawyers who don't want to move to Washington but just want to practice in Washington for one or two limited cases. Governor Ehrlichman wondered aloud as to whether limited Board resources might be better spent in investigating other issues. Executive Harwick voiced concern that it might not matter what the WSBA concludes if the Supreme Court is not interested in extending reciprocity. Several onlooking liaisons mentioned that some Washington lawyers young and not-so-young would welcome the opportunity to practice in other states, and moving to other states would be more appealing but for the necessity of taking another bar exam. After much discussion, the Board voted to appoint a committee to study the matter further.

**Seventh Congressional District Governors:** The other hopping discussion of the weekend revolved around a Whitson proposal to amend the bylaws for nominating governors to the board, in essence morphing King County at-large governors into Seventh Congressional District governors. Governor Whitson reasoned that Bar members in the Seventh Congressional District were underrepresented compared to other congressional districts, and that King County now comprises several congressional districts. President-elect Fairhurst pointed out potential cost savings and efficiency in bar mailings to a smaller, easier-to-target group. Governor LaPorte acknowledged that while King County is now split into several congressional districts, the power base for King County is the Seventh District.

Governor Perey mentioned the big expense of mailing campaign literature to 9,000 lawyers in the general King County area. Governor Theiler thought reducing the number of lawyers balloting might encourage more candidates who are interested but up until now were deterred by the money and energy expenditure of campaigning to 9,000 lawyers. Judge Faith Ireland mentioned that the proposed bylaw amendment might have the effect of bringing forward more minority candidates. Governor McMullen was in favor of keeping the "cobbled-together mixture that we live with," not favoring moving toward a one-lawyer/one-vote concept. Governor Lee articulated the concern of bar members outside the metropolitan Seattle area that the board is essentially Seattle-controlled. He was concerned that the proposed bylaw amendment might further that perception. After extended discussion over both days of the meeting, the motion to amend the bylaws failed with a vote of 5 in favor and 6 against.

**Committee News:** The Board voted to reappoint James Hamilton of Vancouver to the Statute Law Committee and to appoint Roger Chase to the Statute Law Committee beginning April of 1997.

The Board also voted to grant the request of the Legal Aid Committee to change its name to the "Pro Bono and Legal Aid Committee."

The following current requirements applying to all section seminars cosponsored with the WSBA CLE Committee were briefly discussed: (1) the CLE committee must approve all seminar proposals; (2) a course book will be distributed at all WSBA CLE seminars and (3) WSBA committees, other than the CLE committee, will not sponsor CLE seminars, unless permission is obtained from the CLE director and executive director of the WSBA.

After some discussion, the Board voted to adopt a new policy that each governor would be limited to appointing only one funded and two unfunded appointments per bar committee each year. This policy change was in response to complaints by committee chairmen that very large committees (of up to 70 lawyers) are unwieldy and inefficient. Several senior governors walked the more recently tenured governors through examples of how to navigate the committee appointment process, emphasizing that the process is mechanically difficult and requires considerable time to complete. Dodie Prescott, who is responsible for compiling the final data, urged the governors to work hard at getting their appointments to her by the end of April so that they are not holding up the process.

**Mandatory ADR Court Rule:** Sandy Macdonald, chairman of the WSBA ADR section, presented a report to the Board on the activity of the Mandatory ADR Court Rule Task Force. The Task Force has divided into several work groups, and is working on analyzing the types of cases

which should be excluded from the rule and how to address the issue of pro se litigants, evaluating the selection and compensation of neutrals, considering ethical and confidentiality issues, and addressing the issues of autonomy of counties and the differing needs of judicial districts throughout the state. The Task Force's work is ongoing, with the hope of submitting a final report to the Board by May or June.

**LASER Project Report:** Sandy Macdonald also presented a report on the LASER project ("Lawyers and Students Engaged in Resolution"), which seeks to prevent youth violence by helping young people learn to resolve disputes peacefully and to deal effectively with small disputes before they grow. The LASER project began as a pilot project with 12 volunteer lawyers working in two Seattle schools, and currently has 71 trained volunteer lawyers and a hundred more interested in becoming trained. Eleven schools in five counties currently have LASER teams assigned and are in various stages of implementing and expanding peer mediation programs. The nonprofit foundation is actively seeking statewide funding through private and corporate foundations as well as through governmental funding sources. The Attorney General's office has donated (on a temporary basis) a half-time administrator to staff the project, and a comprehensive community grant through the Seattle Police Department has helped fund its Seattle-area training and other activities.

**Reducing Disciplinary Case Backlog:** Barrie Althoff, WSBA chief disciplinary counsel, outlined for the Board the Office of Disciplinary Counsel's plan to reduce the remaining backlog of disciplinary prosecutions and investigations. ODC's goal for 1997 is to reduce to a negligible figure by the end of 1997 the 600+ pre-1996 grievances still in investigation, while at the same time maintaining the prosecution docket on a relatively current basis. To accomplish this goal, ODC staff time will be concentrated on the backlogged cases, and an alternate dismissal standard will be applied to older "low-end" discipline cases which might in the future qualify for the not-yet-operational "diversion" program approved by the Board of Governors and awaiting Supreme Court approval. Under this program, older cases would be dismissed despite the possibility of establishing some violation of the RPCs where there is "low-end" misconduct, the misconduct appears to be an isolated incident, not part of an on-going pattern, the degree of harm to the grievant is minimal and dismissal would not violate the integrity of the disciplinary system. Individual disciplinary counsel would recommend to their respective team leaders those cases on their respective dockets which they believe meet these criteria. If the team leaders as a group concur with the recommendations, the cases would be dismissed using the alternate standard, subject to review by the Review Committees if appealed.

The ODC will also strive toward increased openness to stipulations in lieu of hearings where a result within a reasonable range of sanctions can be achieved. Martha Potter from the WSBA Random Audit Program explained the process of random auditing of trust account records which approximately seven to 10 percent of WSBA members experience each year. Potter emphasized that many lawyers comment afterward that they are glad to have been through an audit, as it gives them the opportunity to be clear about trust account procedures.

**Budget Report:** Governor Williams gave a report from the Budget and Audit

Committee on the year-to-date financial report, with some discussion by Governor Ehrlichman of specific line item expenses and why they were proportionately higher than others. The governors also discussed the timeline for budget proposals for the coming year, and the process involved.

**Internal Board Committees:** The Board heard committee reports from some of the internal Board committees. Board members have established a Communications Strategic Planning Committee and lobbied for continued funding for legal services organizations with the legislature. The Awards Committee is in the process of recommending award nominees for the year, and the Electronic Communications committee is hard at work with webpage discussions and plans to increase visibility. The Supreme Court Relations Committee has set a goal of increasing regular dialogues with the state supreme court to at least three per year, with careful attention to submission of key reports and breaking news to Supreme Court personnel. The Walsh Commission Committee has decided not to take up any of the issues brought to light by the Walsh Commission report without known implementation specifics.

***Washington Journal* Proposal:** The Board discussed the recommendation of the Editorial Advisory Board to reject a proposal by the *Washington Journal* to publish the *Bar News*. President Chambers will ask for a response from the *Washington Journal* and discuss the matter further at the May meeting.

Executive Harwick and President-elect Fairhurst reported on the Western State Bar Conference in Scottsdale, where many issues common to all bar associations were discussed. Harwick also announced the candidates who have filed for board positions: Stewart Estes and Walt Krueger in the First Congressional District and James Rigby and Richard Manning in the King County at Large position. Richard Eymann is unopposed in the Fifth Congressional District.

President Chambers reported on the special board meeting convened by conference call to decide whether the board should oppose the proposed "tort reform" legislation. Chambers also reported on setting up another meeting with the Supreme Court later in the Spring.



*Short candidate bios: page 57*

# Holcomb's "Valid Assumptions" on Appellate Brief-writing

*by* **Byron Holcomb**

### *As To Preparation of Appellate Briefs:*

#1: If a brief absolutely, positively, and without fail has to be mailed by 5 p.m. that day, your secretary calls in sick that morning.

#2: If that brief has to be mailed as indicated and there is one case for which you have argued for 40 pages of a 45-page brief why decision should be rendered in your favor, you find out with two hours to go that the case was overruled by a unanimous decision of an *en banc* panel yesterday.

#3: A corollary of VA #2 is: if you cannot find the Shepard's summary you did on that controlling case and have 12 minutes to get to a law library, the law library closes in 10 minutes; or with 12 minutes to get there and it takes 10, your car won't start; or, if your car starts, parking around the library has been cordoned off for blocks because of a bomb threat.

#4: With a four-line conclusion to be entered on a 45-page brief and two hours to go, electrical power fails (with a companion loss of all data).

#5: If it takes 50 pages of white paper to prepare all necessary copies and you have 51, two will get mangled in the copy machine and become unusable.

#6: With the original and all copies assembled and collated with 20 minutes to go, no one can find the box of staples specially purchased for the thickness of the brief; or the large stapler, which was there all day, cannot now be found anywhere. (All stores and nearby offices are also closed early due to a holiday.)

### *As to Filing of Appellate Briefs:*

#7: With the original and the proper number of copies in the correct envelopes and with five minutes to spare at the U.S. Postal Service before closing, the postage is $25.05, and you have $25 and no checks.

#8: With the original and the proper number of copies safely in the hands of the overnight express person, and having ever in mind the stern warning of the appellate motions panel that the last extension has been granted, the worst snowstorm in history blankets the destination city, snarling traffic for hundreds of miles in every direction and preventing all airplanes from landing.

#9: If there is one copy which has been mis-assembled or improperly collated (this "VA" is especially true if there is a missing page of critical importance linking up all other arguments), the clerk of the court randomly selects and delivers that copy to the judge who is the strictest on form and precision; or to the judge who is most likely to vote against your position in the first place; or to the judge who chastised you from the bench during the last oral argument before him or her questioning your competence, thoroughness or brief-writing ability.

### *As to Review of Appellate Briefs:*

# 10: After achieving success in overcoming all of the above "VAs" and after being emotionally drained and physically exhausted, you arrive back at your office the next morning only to find that the court *sua sponte* remanded the case because of a ruling in a companion case.

#11: After all of the above and at oral argument, the court is not interested in your brief, but desires further briefing and argument on a point not previously raised.

#12: After all of the above and at oral argument, you find that none of the panel has any interest in your brief and is only interested in the argument of your opponent.

Nothing, and I mean nothing — not pestilence, disease, mayhem or anguish, will ever again phase you after having to comply with federal court appellate rules as to brief assembly and service.

**THE WASHINGTON STATE BAR NEWS**

# FAX POLL


Washington Supreme Court Justice Richard Sanders was recently before this state's Judicial Conduct Commission on a complaint that a speech he made at a pro-life rally expressing his own personal values violated judicial ethics canons. Supporters of Sanders contend that judges should be able to exercise the same constitutional rights of free speech and religion as other citizens.

Others argue that it is improper for judges to publicly express personal or political beliefs.

Please check the statement which most reflects your opinion, along with any comments or qualifications which you may have, and fax (or mail) this entire page to the number/address below. No cover sheet is necessary.

1. ____ I strongly support judges publicly expressing their personal values.
2. ____ I somewhat support judges publicly expressing their personal values.
3. ____ I am undecided, but I believe the Judicial Conduct Commission should carefully consider the issue.
4. ____ I somewhat oppose judges publicly expressing their personal values.
5. ____ I strongly oppose judges publicly expressing their personal values.

Comments/Other:_____

_____

_____

_____

Name and city of attorney (required): _____
(This will not be printed unless your comments are chosen for publication along with poll results in the June *Bar News*.)

Fax your response by May 15 to:
**(206) 727-8320**

Or, mail your response by May 11 to:
**ATTN BAR NEWS EDITOR**
**WASHINGTON STATE BAR ASSOCIATION**
**2101 4TH AVE 4TH FL**
**SEATTLE WA 98121-2330**

*Please send suggestions for future polls to the above address.*

# RESULTS

of

## THE WASHINGTON STATE BAR NEWS

# FAX POLL


In last month's *Bar News*, we asked your opinion regarding the Walsh Commission's recommendations that judicial conduct canons be revised to impose limits on campaign contributions by persons and organizations and impose aggregate limits on expenditures by a judicial candidate's campaign committee. The results:

| | | | |
|---|---|---|---|
| 1. | 5 | (33%) | strongly supported the campaign and expenditure limits. |
| 2. | 1 | (7%) | somewhat supported the campaign and expenditure limits. |
| 3. | 0 | (0%) | were undecided, but believed the concept should be studied. |
| 4. | 0 | (0%) | somewhat opposed the campaign and expenditure limits. |
| 5. | 9 | (60%) | strongly opposed the campaign and expenditure limits. |

Overall, 15 valid responses were received.

## *Your Comments*:

"Full and timely disclosure of all contributions is all that is necessary. Candidates are always capable of declining contributions to maintain the appearance of judicial impartiality."

*Art Dulemba, Portland, OR*

" Limits on contributions and expenditures should apply to *all* elected officials."

*Harold E. Norwood, Lacey, WA*

"The public needs to know more, not less, about judicial candidates. Money equals publicity."

*Gregory Moravan, Bellevue, WA*

"Electoral reform, including mechanisms to prevent monetary purchase of elections, is not only essential to protecting meaningful voting rights, but it must include curbing or avoiding media costs, two-party designation and revisiting the antiquated, regressive misapplication of First Amendment to access to the political process."

*Leonard W. Schroeter, Seattle, WA*

*Although these statistics accurately reflect the viewpoints of the individuals who responded, they do not necessarily reflect the overall opinion of the WSBA membership.*

## Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in April 1997 is 5.52%. The maximum allowable interest rate permissible for May 1997 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 appeared on page 41 of the July 1996 *Bar News*.

## Notice of Deadline for Filing WSBA Resolutions

Pursuant to WSBA Bylaw Article VII, Section F — "Resolutions," any ten (10) active members of the WSBA may present a written resolution to the Board of Governors for consideration at the WSBA's Annual Business Meeting, which will be held this year on Friday, September 12, 1997, beginning at 2 p.m. at the WSBA Office, Fourth Floor, 2101 Fourth Avenue, Seattle, Washington.

Resolutions must be filed with the WSBA Executive Director at least ninety (90) days before the Annual Meeting (by 5 p.m. on Monday, June 16, 1997) and must be accompanied by a written report explaining the resolution. The resolution and explanatory report together shall not exceed a total of one thousand (1,000) words. The Executive Director's office is at the WSBA, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330.

The Board of Governors will refer any resolutions addressing issues within the purpose of the WSBA to the WSBA Resolutions Committee. Those purposes are set forth in Article I of the WSBA Bylaws and General Rule 12 of the Washington Court Rules.

The Resolutions Committee will hold a public hearing to consider the views of the proponents and opponents of resolutions on Thursday, September 4, 1997, beginning at 1:30 p.m. at the offices of the WSBA (2101 Fourth Avenue, Fourth Floor, Seattle). Proponents and opponents of resolutions are urged to attend the hearing or to present their views in written form for consideration by the Resolutions Committee.

Proposed resolutions will be published in the July 1997 issue of the *Bar News*.

Members of the WSBA Resolutions Committee are: Lee Kraft (chair), John Caldbick, William Fleck, Stephen Pfiefer, Edward Ratcliffe, Robert Redman, John Riley, John Schultz, Stacey Smythe, Phillip Thom and Ted Zylstra.

## Suspended

Kirkland lawyer James J. Stefnik (WSBA No. 5364, admitted 1973) has been suspended from the practice of law for two years, effective February 16, 1997. The discipline arises out of two proceedings. In the first proceeding, following a hearing, Stefnik was found to have violated RPC 1.2, RPC 1.3, and RPC 1.4, by failing to timely file a community property agreement, failing to prepare a will in accordance with client instructions and failing to follow client instructions for an estate plan. Stefnik was also found to have violated RPC 1.7(b), and RPC 1.8(a), by borrowing $40,000 from that client, under terms that were not reasonable and without obtaining the required written waiver of the conflict of interest that arises in borrowing money from a client.

In the second matter, Stefnik stipulated that he violated RPC 8.4(c), by making a materially false statement on a mortgage application when he substantially overstated his income, violated RPC 1.3, by failing to act diligently to avoid the entry of a default judgment against clients in two separate matters, and violated RPC 1.4, by failing to inform the two clients of the entry of the default judgments. Stefnik must receive psychotherapy treatment during the period of suspension as a condition of reinstatement. In addition, an independent psychologist or psychiatrist selected by the Association must certify that Stefnik has been so rehabilitated as to make it unlikely that Stefnik's personality disorder, depression or other mental impairment would contribute to any further ethical misconduct. Stefnik is also required to make six substantial monthly payments of restitution to his former client. Upon reinstatement, Stefnik will be on probation for two years and must complete restitution within the probationary period, unless the repayment term is extended by Disciplinary Counsel or by order of the Disciplinary Board. Stefnik must pay disciplinary costs of $8,092.40.

Respondent lawyer was represented by John G. Cooper of Seattle. The hearing officer was R. Michael Kight of Everett. The Association was represented by disciplinary counsel William G. McGillin and Jean K. McElroy.

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at (206) 727-8280 leaving the case name, your name and address.

## Interim Suspension

Seattle lawyer Whitney G. Rupprecht (# 21139, admitted 1991) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered March 11, 1997.

Joy McLean represented the Bar Association.

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

## Board of Governors Elections

Next month, members will vote for Governors in the First and Seventh Congressional Districts and King County at Large. See page 57 of this issue for brief biographies of the candidates.

## In Memoriam

**Robert M. Barry**, Boeing attorney, died in Lawrence, Kansas, on February 15 at age 85. He handled contract negotiations worth millions of dollars in Wichita, New Jersey and Seattle, and became a top-ranked trap and skeet shooter after his retirement.

**Daniel Giboney** of Spokane, author of *So You Want A Divorce: How to Do It Yourself*, and former State Representative, died February 10 at age 85. He fought at Okinawa in World War II, established Giboney's Men's Wear in Dishman and was active in family law reform.

**Karl Herrmann**, former State Senator and Insurance Commissioner, died at age 81 from complications of diabetes. As insurance commissioner he was responsible for developing both the Personal Injury Protection Program and the Washington Guarantee Fund.

**Leslie A. Lee**, former Whatcom County District judge, died February 26 at age 68. Member of a pioneer Bellingham family, he was president of Lee Grocery Co. in Everett, the state's oldest wholesale grocery company.

**Hugh Ralph Ridgway**, Sedro-Woolley civic leader and judge known for his wit, died January 7 at age 68 after a two-year battle with lung cancer.

**Paul Woo**, Seattle Chinatown community advocate and defender of the underprivileged, died in January at age 66.

# The WSBA Real Property Deskbook


*reviewed by* **Hal White**

As an attorney who worked several years as in-house counsel for a Seattle real estate company, I consulted the second edition of the *WSBA Real Property Deskbook* with great regularity, and found it to be an invaluable resource. Thus, I eagerly awaited publication of the third edition of this series. I was not disappointed.

The second edition, bulging at the seams from various updates accumulated over 11 years, was initially published in 1986. It comprised four volumes, and was the staple of many a real estate practitioner. The third edition weighs in at *nine* volumes, and contains 121 chapters authored by 164 practitioners.

Perhaps the biggest change is the increased emphasis placed on environmental regulations. The third edition devotes three volumes (vols. 6-8) to land use and environmental law, dwarfing the space allotted to this subject in the previous edition. In recognition of the increasing number of attorneys who limit their practice to this area, these three volumes, plus volume nine (the index) can be purchased separately from the first five volumes at the lower price of $325 ($352.95 with tax). The first five volumes, dealing with "traditional" real property law, can also be purchased separately (along with the index) for $475 ($513.95 with tax).

The land use and environmental volumes include 33 additional chapters not contained in the second edition, including regulation of adult entertainment, underground storage tanks, historic preservation, developer fees, land use appeals, the Washington Model Toxics Control Act and lender and fiduciary liability.

Although the environmental volumes focus on Washington law, they also reference federal law when necessary. This is in apparent contrast to *Washington Environmental Regulations and Liability* (reviewed in the February 1996 *Bar News*), which the reviewer asserted did not address federal laws to any significant degree. This difference may be important when deciding whether to purchase these volumes.

The volumes which deal with more traditional real property issues contain 11 new chapters, including liability of owners to third parties, real estate appraisals; selecting proper entities in real estate transactions, oil and gas issues and excise taxes. There is also a much-needed chapter discussing relationships between owners and design professionals.

Although it may not be fair to compare the first five volumes of the *Deskbook* against a two-volume set, a comparison between the non-environmental portion of the *WSBA Deskbook* and *Real Estate Property Law* and *Real Estate Transactions* (volumes 17 and 18, respectively, of West's "Washington Practice" series), may nevertheless be useful. For example, any collection of reference materials is only as good as its index, and there is a major difference between the two in this area. To illustrate, the Washington Practice volumes have no listing under "Deeds of Trust;" its index demands that the reader utilize the term "*Statutory* Deeds of Trust" to locate this topic. Additionally, state & federal tax liens have no entries in its index (although they are discussed in the text), and the term "Purchase & Sale Agreements" can only be found under the more archaic phrase "Ernest Money Agreements." Other examples exist.

Fortunately, the *Deskbook* contains an excellent index. In addition to a standard table of cases, it also includes extensive citations to the WAC and various federal laws and regulations. The *Deskbook*, however, is not perfect. Its index contains no listing for the doctrines of merger or marshalling — at least they aren't easily located — and there is no excuse for this in an index which comprises an entire volume. I am assuming that both topics are covered somewhere within this publication; if not, what was a minor annoyance becomes a significant flaw.

Regarding the more substantive content of the two collections, one example is fairly illustrative: Labor & material liens merit three paragraphs in the Washington Practice volumes, while the *Deskbook* devotes an entire chapter (ch. 65) to this topic. In making these comparisons, please don't misunderstand me; the reason that I can compare the two collections is because I *own* the Washington Practice volumes, and I encourage all attorneys who emphasize real property law to purchase a set. If, however, you can afford only one collection, the *Deskbook* is the way to go.

Overall, I was impressed with the content of each of the chapters of the *Deskbook*. However, the title insurance chapter — as every title insurance chapter has done since time immemorial — wastes valuable space (239 pages!) reproducing page after page of title insurance forms which few read and which are freely available from title insurance companies for the asking. These pages would have been better spent discussing the typical reason attorneys contact title insurance companies — title insurance claims — and how they are viewed and acted upon by title insurers.

Despite these quibbles, the *WSBA Real Property Deskbook* is an essential set of books for any attorney who practices in this area. The editors and authors have produced a fine product which will provide years of productive use for Washington practitioners.

*Former* Bar News *editor* ***Hal White*** *temporarily resides in Houston, TX, where he is working on his first novel.*

photo by Jack Young

# Managing Anger in the Workplace: A Difficult but Essential Task for Today's Lawyer

*by* **Joseph Shaub**

Pressure that makes your head feel like it will explode . . . constant deadlines . . . demanding, often abrasive and angry opposing counsel . . . dissatisfied supporting staff . . . telephone calls that must be returned immediately . . . tremendous competition . . .financial stresses . . . unresolved interpersonal conflict in the office . . .

This is the background noise of your professional lives. Sometimes it may be a light background buzz. Sometimes it is a cacophony that is painfully distracting. And when we feel pressured or under a moderate to high degree of stress, we often react with anger. Unfortunately, because the practice of law is often a decidedly aggressive avenue for plying our trade, anger is countenanced — even encouraged. One of our cultural myths is that there is nothing wrong with blowing off a little steam.

Yet chronic anger, also known as "free-floating hostility," is a killer, snuffing out valuable interpersonal relationships and, eventually, destroying your heart. Dr. Myer Friedman is a cardiologist who was the first physician to describe the association of Type-A behavior and heart disease.

Of the major characteristics of Type-A behavior, which include a sense of time urgency, is an intense striving for accomplishment. Myer Friedman notes that "free floating hostility" is the most dangerous characteristic and also often the most difficult for a person to recognize and acknowledge in him/her self.

How often are you irritated by the day-in, day-out events of life? Probably more than you might think. I counsel a young man who is in his third year in law school. In my first couple of meetings with him, I noticed that he would often react angrily in describing his life. I asked him to spend the next week being very aware of every time he was angry and come back and report to me what he learned. The next week I asked whether he had felt angry that week and he said, "Not much." Traffic had irritated him a couple of times, and an abusive professor (actually, "The Socratic Method") angered him another time. "But that was about it," he said.

"Nothing else?" I asked. He thought for a moment and said, "Nope."

I asked him, "Did you have to wait in line this week?" and he went off on people who don't know how to use ATM machines.

I asked him if anything inanimate broke or malfunctioned this week and he said, "Yesterday, I was in a hurry to get out of the house. I put on a shirt and a button popped off. I almost ripped the shirt off my body and popped all the rest of the buttons off."

I asked him if anyone had been inconsiderate this week and he said, "I could have killed the jerk who took a *California Reporter* off the shelf at my office and didn't put in a checkout card."

He was beginning to get the message. I suggested that he try it again the next week and see what he found. His list was longer when he returned.

A wonderful example of this appears in a recent book by Dr. Friedman in which participants in his Type-A/Coronary Research Project were asked whether their hostility had diminished after a year's participation in the study. One participant wrote:

> "I do not believe that I have excess hostility; this is due in part to the fact that my intellectual, physical, cultural and hereditary attributes surpass those of 98 percent of the bastards I have to deal with. Further-

more those dome-head fitness freak, goody-goody types that make up the alleged two percent are no doubt faggots anyway, whom I could beat out in a second if I weren't so damn busy fighting every minute to keep that 98 percent from trying to walk over me. To answer your question however, if I could curb my innate modesty and empathy for my fellow man, perhaps . . . ."

While the enormous irony of this response might be humorous, the tragedy of this affliction is sobering. Not only does a life immersed in this hostility and cynicism predict an untimely death, but it also restricts the quality of a person's life.

Recently, a doctor working with Redford Williams, MD, a Duke University researcher in hostility and heart disease, made a fascinating discovery. The Minnesota Multiphasic Personality Inventory, or MMPI, is an enormous, very old and very popular personality test which has been given to millions of people over the past 40 years. It is one of the most widely used instruments in research. This colleague of Dr. Williams unearthed a collection of MMPI results of law students in the 1950s. There is a scale on this test reflecting a person's innate hostility. When they looked up these students they found that of the students who scored in the top quarter in hostility, 20% of them were already dead by the age of 50. Of those in the bottom quarter in hostility, only 4% were dead by 50. Today, it is beyond serious dispute that hostility and longevity are inversely related.

How can you tell if you or others around you have an excess of "free-floating hostility?" Dr. Friedman suggests that you ask yourself the following questions:

1. Do you become irritated or angry at relatively minor mistakes of your family members, friends, acquaintances or complete strangers or find such mistakes hard to overlook?
2. Do you frequently find yourself critically examining a situation in order to find something that is wrong or might go wrong?
3. Do you find yourself scowling and unwilling or unable to laugh at things your friends laugh at?
4. Are you overly proud of your ideals and enjoy telling others about them?
5. Do you frequently find yourself thinking or saying that most people cannot be trusted or that everyone has a selfish angle or motive?
6. Do you find yourself regarding even one person with contempt?
7. Do you frequently use obscenities in your speech?
8. Do you find it difficult to compliment or congratulate other people with honest enthusiasm?

An important rule in handling your own anger is *know your triggers*!

In 1894, G. Stanley Hall conducted an anger survey in which he received 2,184 completed questionnaires and found that people grouped the causes of their anger into, roughly, three categories. As you will see, things haven't changed so much in a hundred years. These categories included:

1. *Stupid Inanimate Objects* — "Our returns abound in cases of pens angrily broken because they would not write, brushes and pencils thrown that did not work well, buttonholes and clothes torn, mirrors smashed, slates broken, paper crushed, toys destroyed, knives, shoes, books thrown or injured, etc."

2. *Special Aversions* — "Earrings on men, thumb rings, bangs, frizzes, short hair in women, hat on one side, baldness, too much style or jewelry, single eye glass, flashy ties, heavy watch chains, many rings, etc."

3. *One Person's Treatment of Another* — "Injustice, stupidity, cheaters, bootlickers, insults, condescension . . . ."

Why is it important to know your triggers? Primarily so that you can protect yourself both personally and professionally. Rather than react with anger you can, hopefully, say to yourself, "Ah-h well, so that's my trigger." Take a deep breath, and put it into perspective.

What else can you do in addition to recognizing your triggers?

An excellent key to dampening your own angry response at another person is to be able to empathize. A good friend's recent experience illustrates this point: She was on her way to lunch and was driving slowly in a residential neighborhood behind the restaurant looking for a place to park. Suddenly, she noticed a man come tearing out of a house, jump into his car, and jam it into reverse. She sat on the horn, but to no avail as he, oblivious to her presence, rammed his car into hers. She had to climb over the console to get out, as the driver's door was jammed shut. By the time she had emerged, rather shaken, the guy was pacing back and forth, shot her a nasty glance and said, "Don't give me attitude, this was a small accident." She asked for his license and he yelled at her, again, not to give him attitude. He grabbed the paper out of her hand and scribbled his name and address on the paper (completely illegibly) and

shoved it back in her face. She asked him to decipher what he had written and he disgustedly gave her the information. He then said, "I have to go to the hospital," jumped in his car and drove off, leaving my friend standing in the middle of the street.

Now, if this had happened to you, would you have gotten angry?

How angry?

The next part of the story is that a man who had been standing on the porch of the house the driver had run out of walked up to my friend. He was holding a baby and he said, "I want to apologize for my friend's behavior. He was just beeped and told that his mother had suffered a massive heart attack, she was in the hospital and that he may not be able to get to the hospital in time to see her alive." What's the level of your anger now? A bit dampened?

Dr. Friedman counsels us to view people through "The Lenses of Understanding, Pity and Forgiveness." This is especially valuable advice in dealing with all personnel in your firm, from partners, through associate attorneys, to secretaries, clerical and other staff.

Ask:

1. What is this person's background, and what possible circumstances may have led to this sort of behavior (which you find irritating)?
2. How would I feel or act if I were in this person's position, given the pressures he is under, his capacities and his expectations?
3. How long has it been, if ever, that anyone patted this person on the back and said, "Well Done. I am proud of you."?
4. Has my own initial response to this person been gracious?
5. If I do become irritated or angry at this person whom do I benefit? What do I accomplish?

For centuries, we have been counseled to avoid angry outbursts. If we are angry, we should pause.

Seneca wrote, "Hesitation is the best cure for anger . . . The first blows of anger are heavy, but if it waits, it will think again." Thomas Jefferson counseled, "When angry, count ten before you speak. When very angry, a hundred."

Mark Twain, obviously moved by Jefferson's wisdom, wrote, "When angry, count four; when very angry, swear."

Yet this flies in the face of our contemporary wisdom which says, "Don't hold it in or you'll get a heart attack or ulcer. Let it all out. Express yourself freely."

Probably, the greater wisdom may be found in the ancient Japanese story of the Samurai warrior who traveled for weeks, seeking out a venerated old Buddhist monk and teacher.

He approached the monk and humbly said, "Father, please, teach me, what is the difference between heaven and hell." The monk looked up at him with contempt and said, "Why should I teach a stupid oaf like you the difference between heaven and hell. You are too foolish to understand anything I can ever tell you. Now be off and do not desecrate my home again with your presence." The Samurai, who was a great warrior, had

never been spoken to like this and he was enraged. He drew himself up to full height, drew his sword and held it overhead, thundering, "You old fool, those are the last words you shall ever utter." To which the monk replied, "That, my son, is hell." The Samurai, as if struck across the face, dropped his sword, sank to his knees sobbing and said, "Father, forgive me. My head was clouded and my heart was numbed with anger." To which the monk replied, "That, my son, is heaven."

The work of anger expert and author of the excellent book, *Anger: The Misunderstood Emotion*, Carol Tavris, dismisses the "ventilation is good" theory of anger. She cites many studies that have reached the same conclusion — ventilating anger usually makes you feel worse than before you began spitting venom. As a rule, if you ventilate your anger all over someone, you will like him less afterwards, the relationship will be damaged, and you will likely not feel any resolution.

Tavris concludes that there are certain circumstances in which ventilating anger will make you feel better, but the conditions are very restrictive. The following five conditions must be met:

> *First*, anger must be directed at the target of your anger. *Second*, the expression of anger must restore your sense of control over the situation and your sense of justice; it must inflict appropriate harm on the other person. *Third*, the expression of anger must change the behavior of the target or give you new insights. *Fourth*, you and your target must speak the same anger language. *Fifth*, there must be no angry retaliation from your target.

Murray Straus, a sociologist in the field of family violence, notes,

> There is an element of truth in the catharsis notion, but not in the usual idea of physiological relief. If a couple doesn't deal with what is causing their anger, it will remain, or worsen. Unfortunately, most people don't know how to express anger without attacking or belittling.
>
> Verbal aggression usually fails because it riles up the other person and makes him or her inclined to strike back, whereas a description of your state of mind constitutes less of an attack, inspiring the other person to make amends. People who shout and yell when they feel angry thus tend not to get the results they hope for (that is, apologies and changed behavior from the yellee), so next time they feel angry they yell louder. The object of their wrath either counterattacks or ignores them.

Anger can be handled constructively, it can be managed. You can master it without it mastering you. Some of the key approaches are:

1. Get to know yourself. Recognize the attitudes, environments, events, and behaviors which trigger your anger.
2. Recognize and allow yourself to believe that anger is a natural healthy, non-evil, and not inherently virtuous, human feeling. Everyone experiences it. We just don't all express it.
3. Remember that you are responsible for your own feelings. You got angry at what happened; the other person didn't "make you angry."
4. Remember that anger and aggression are not the same thing. Anger can be expressed assertively and clearly. You don't have to "blast someone out of the water" to express your anger adequately.
5. Don't "set yourself up" to get angry!
6. Develop several coping strategies for handling your anger, including relaxation, physical exertion, "stress inoculation," statements, working out resolution within yourself.
7. Develop and practice assertive methods for expressing your anger; be spontaneous; don't wait and build resentment; state your anger directly; avoid sarcasm and innuendo; use honest, expressive language; avoid name-calling, putdowns, physical attacks, oneupmanship, and hostility.
8. Work toward resolution, not victory.
9. Practice active listening and empathy.
10. If it's appropriate, leave the scene momentarily.
11. Ask yourself:

Is the matter worth my continued attention?
If Yes, ask:
Am I justified?
If Yes, ask:
Do I have an effective response?
If Yes, use assertive techniques.

When the situation calls for you to express anger, how is this best done?

As Aristotle noted over 2500 years ago, "Anyone can become angry, that is easy, but to be angry with the right person, to the right degree, at the right time, for the right purpose and in the right way, that is not easy."

It sounds like a tall order — and it is. But consider this question whenever you want to express anger at someone — What do you want from them? Do you want an apology? . . . or an argument? Do you want to injure them in some way? . . . and, if so, to what eventual end? Do you want "justice" and, if so, what, exactly would that look like? As Carol Tavris advises, ventilation of anger will seldom bring you the relief that you seek. Injuring another person through personal attack will only damage the relationship, and, unless you plan not to have to deal with that person again, verbal abuse will do more to undercut your influence with that person than virtually any other approach.

As we travel through life, we are bound to bump into one another. We will step on others' toes and have our own stepped on. We will be shown disrespect sometimes, or someone will jeopardize our professional image by their work. Our needs will be disregarded by others, sometimes because they are simply unaware of our needs and at others because they don't care. Some "transgressions" by others will cause irritation, and others will cause us to feel deeply offended and to "see red." Yet whatever the affront, it is true that the other person can't do anything different until they know that you have been affected, and the intensity of the impact.

The purpose of expressing anger is to communicate, not to injure. Communication is the life blood upon which any organization of individuals survives and managing your anger is a key ingredient to effective communication.

✣ ✣ ✣

***Joseph Shaub*** *is a family law attorney and certified marriage and family therapist.*

# Lawyer Advertising and Solicitation

*by* **Barrie Althoff**
*WSBA Chief*
*Disciplinary Counsel*

**Z. BEST LAW FIRM**
**WORLD'S GREATEST LAWYER**

**1-800-REVENGE**

**NO RECOVERY - NO COST TO YOU!!**
**FREE LATTE WITH EACH REFERRAL**

**EXPERT IN PERSONAL INJURY CASES**

**CLIENT TESTIMONIALS**

**"She's great, and she listens!"**
**Lotty Winner, former client**

**"She got me 100 million for a sprained ankle!!"**
**Awn Eze Strete, former client**

Clients need you and you need clients. They cannot retain you, however, unless they know you exist, what you can do for them, and where to find you. Your right to advertise for and solicit clients is part of your right to freedom of speech under the First Amendment to the U.S. Constitution. This right is, however, subject to the Bar's interest in protecting the public from deceptive practices and undue direct solicitation. This article surveys some of the principal ethical considerations found in Rules 7.1 through 7.5 of the Rules of Professional Conduct ("RPCs"), which may arise when you advertise for and solicit clients.

## Prohibition on False and Misleading Communications

RPC 7.1 prohibits false or misleading communications about yourself or your services. A communication is false or misleading if: (a) it materially misrepresents a fact or law, or omits a fact necessary to make the communication not materially misleading, or (b) it is likely to create an unjustified expectation about results you can achieve, or (c) it compares your services with other lawyers' services, unless the comparison can be factually substantiated.

RPC 7.1(a) generally permits you to say anything so long as you are truthful and do not mislead clients. Your communication is misleading, for example, if you offer legal services on a contingent fee basis ("no fee if nothing is recovered") but do not mention your client's responsibility for costs incurred. See *WSBA Informal Opinion 88-3,* and *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985). Similarly, you mislead your clients if you tell them about a $60 bankruptcy court filing fee, but do not disclose your own $600 legal fee. See *Leoni v. The State Bar of California*, 704 P. 2d 183 (Cal. 1985).

RPC 7.1(b) precludes you from creating unjustified expectations about what you will accomplish for your client. Exaggerating your education, skills, expertise, training, the size or capability of your staff, or your "connections" with important persons, would not only be material misrepresentations under RPC 7.1(a), but would also likely create unjustified expectations of what you are capable of accomplishing and thus violate RPC 7.1(b). You generally may not use testimonials, or describe results you have obtained for other clients, because potential clients likely would expect similar results without regard to their own particular and unique factual and legal circumstances. In a face-to-face meeting with a potential client you may be able to compare the client's unique factual and legal circumstances to other cases you have handled. But you run a significant risk with any but the most sophisticated and experienced client that any reference to your track record, particularly in the context of litigation, will be considered misleading and give rise to unjustified client expectations, as your skill is merely one of many factors that lead to particular results in any given legal matter. Thus, while you could freely state to a potential client, if true, that you have handled 45 personal injury cases, you should not state, even if true, that your past clients on average recovered $85,000.

RPC 7.1(c) prohibits nonfactual comparisons with other lawyers. Often such comparisons are indirect. *WSBA Informal Opinion 91-2*, gives several examples of statements violative of RPC 7.1, such as "largest jury verdict," "largest recovery ever obtained," "Attorneys who get results," "Over 50 years combined experience," and "Lawyers who work hard." If you want to avoid disciplinary charges, and want the future respect and cooperation of your fellow lawyers, use caution and common sense when comparing yourself to other attorneys.

## Truthful Advertising Permitted

You have a constitutional right to advertise your legal services. *Bates v. State*

*Bar of Arizona*, 433 U.S. 350 (1977). Given the highly competitive nature of today's law practice, you probably also have a necessity to do so. Your right to advertise is governed principally by RPC 7.2(a) which provides that "a lawyer may advertise services through public media, such as a telephone directory, legal directory, newspaper or other periodical, outdoor, radio or television, or through written communication." Your advertisements must be truthful as required by RPC 7.1 and, if the advertisement is a direct solicitation, it must also meet the additional requirements of RPC 7.3. RPC 7.2(d) in effect prohibits anonymous advertisements by requiring each advertisement to contain the name of at least one lawyer responsible for its content. There are no requirements, however, that your advertisements be "dignified" or "tasteful," nor are there any different or additional restrictions on advertisements for broadcast media as compared to print media.

RPC 7.1 (a) clearly envisions the use of traditional print and electronic media, such as newspapers, television and radio. For example, *WSBA Formal Opinion 141* (1969), relying on several ABA opinions and the predecessor to the RPCs, concludes that an attorney may participate as a host or moderator in a televised series of high school debates where the attorney is identified as an attorney, but no mention is made of the attorney's law firm name. The opinion implies that an attorney could even commercially sponsor such a program. The rule today would likely be interpreted not to limit sponsorship merely to an individual attorney.

While listing several forms of media, RPC 7.2(a) does not limit your advertisements to those media. Subject to the limitations on direct personal solicitation discussed below, you might, for example, use other means of communication not specifically mentioned in the rule, such as sponsoring a film festival film, a Seafair float, a local sports team, a video, or a music or computer compact disk, or you might engage a sky-writer, a wearer of sandwich boards, or hire a driver with a megaphone to cruise the streets announcing your communication. More practically, you might establish a home page on the Internet, provided that the site complies with Title 7 of the RPCs and is not so flexibly structured as to amount to personal solicitation prohibited by Rule 7.3. On the other hand, since Washington has not adopted the ABA's 1989 amendment to Model Rule, which would permit prerecorded telephone solicitations, such direct "recorded communications" to individual potential clients would likely in Washington violate RPCs 7.3(a) ban on direct telephone solicitation of persons. Similarly, sending unsolicited electronic mail advertisements for legal services to individuals in Washington may well also constitute a direct solicitation prohibited by RPC 7.3.

RPC 7.2(b) requires you to keep a copy or recording of each advertisement, and a record of when and where you used it, for two years after the advertisement was last disseminated. There is no requirement to file the advertisement with the Bar, nor that the Bar review it before you use it. The rule requires you to provide, how-

ever, copies, dissemination information, and supporting information, to the Bar if it asks for it. While compliance with the rule is fairly easy as to traditional print or broadcast media advertisements, it is considerably more perplexing if you advertise on the Internet with a frequently-updated home page having links to other websites or materials. There is also some uncertainty as to whether everything on, or linked to, your home page site should be viewed as constituting advertising. There is presently no formal guidance for Washington lawyers on how the RPCs apply to use of the Internet. While several state bars (for example, Florida and Texas) have issued detailed guidance on Internet advertising, they are not consistent with one another and some states (for example, California and Iowa) have specifically restricted electronic advertising. Thus, Washington lawyers will have to do their best on their own to apply pre-computer enacted RPCs to current advertising practices.

RPC 7.3(d) permits you to pay reasonable amounts for advertising. You may also pay the usual charges for participating in a not-for-profit lawyer-referral service or other legal service organization. You may not, however, pay a referral fee to someone for recommending your legal services. Thus, you may not pay for persons — for example, "runners" or "shills" — to recommend you as a lawyer to other persons. Similarly, you may not discount your fee for a client on the client's agreement to recommend you to others.

## Prospecting for Clients

Although RPC 7.1 and 7.2 permit you to communicate broadly and advertise for clients, RPC 7.3 restricts your ability to directly contact persons to become your clients. RPC 7.3(a) applies to solicitations in person or by telephone, while RPC 7.3(b) applies to written solicitations. The concern underlying these restrictions is the high probability of undue influence, intimidation, and over-reaching in direct solicitations of vulnerable clients.

RPC 7.3(a) prohibits you from directly, or through a third person, soliciting professional employment from a prospective client with whom you have no family or prior professional relationship, either in person or by telephone, when a significant motive for your doing so is your pecuniary gain. Thus, you may not contact such persons in person or by telephone, either yourself or through the use of third parties, if the reason you are doing so is to solicit their paid legal representation. Such restrictions on direct in-person solicitation for gain have been upheld, for example, in *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, reh'g denied, 439 U.S. 883 (1978). If you are not soliciting the client for gain, but are part of a nonprofit organization seeking to advance a group right or interest, or are pursuing a federal class action, you may be able to engage in some direct solicitation of clients. See, for example, *In re Primus*, 436 U.S. 412 (1978), and *Gulf Oil Company v. Bernard*, 452 U.S. 89 (1981).

The limitation on direct in-person solicitation does not prohibit you from directly contacting organizations, such as medical facilities, retirement homes, labor unions, business trade associations, educational institutions, or other organizations that may have access to groups of people who may have need for your services, and arranging with the organizations for you to either make in person presentations to such assembled groups, or for the organization or you directly to send such persons letters soliciting their business. You may not, however, pay such organizations for such opportunities or referrals. You may make presentations to such assembled groups, and may send mailings directed to the members or attendees at your presentations. While the attendees or recipients on their own initiative may thereafter contact you for legal services, you may not follow up such group presentations or direct mailings with in-person or with telephone (or likely, e-mail) solicitations seeking their legal business.

RPC 7.3(b) prohibits you from sending a written communication to a prospective client only if the person has made known to you a desire not to receive communications from you. If you have not been so notified, you may freely engage in direct mail solicitations so long as your solicitations are not false or misleading. They are, in effect, treated like any other advertisement subject to the nonmisrepresentation and advertising rules of RPC 7.1 and 7.2.

Your right to freely solicit prospective clients by mail — even targeting specific

clients you believe may need your specific services — has been upheld in *Shapero v. Kentucky Bar Association*, 486 U.S. 466 (1988) (lawyer solicited by mail persons whose homes were possibly in foreclosure). Thus, you may, for example, send truthful letters (although perhaps not postcards) about your ability to perform legal services generally to the public at large, as well as to specific persons whom you believe are in need of your specific legal services. Such groups might include, for example, accident victims, persons filing for marriage dissolutions or bankruptcy, or persons purchasing houses. Unless such persons on their own thereafter contact you, however, you may not follow up these letters with direct telephone calls or in-person visits, nor may anyone else do that for you. Similarly, you may review recent court filings or police reports, to help you identify persons whom you believe are likely in need of legal services. If you engage in direct mail solicitation of potentially vulnerable prospective clients, however, you should recognize that many persons consider such solicitations at such a time as "ambulance chasing" and in poor taste. You may equally well alienate potential clients, as well as other attorneys, particularly attorneys who are already representing the people you have contacted.

The right to directly solicit clients may also be further limited to protect particularly vulnerable potential clients. For example, the Supreme Court upheld the right of the Florida Bar to prohibit solicitation letters targeted to relatives of deceased accident victims until 30 days after an accident; see *Florida Bar v. Went For It, Inc.*, 115 S. Ct. 2371 (1995). The Washington bar, not having yet experienced the types of abuse found in that case, has not yet adopted such restrictions on the right to solicit clients in writing.

You may also directly communicate with an existing client, by mail or in person, when you are moving your practice from one firm to another. RPC 1.4 may obligate you to notify a client of your intent to move and of the client's right to decide who will continue to represent the client. You may not, however, directly solicit the client to move with you. If you do, you may open yourself to charges by your old firm of breach of contract, breach of fiduciary duty, or tortious interference with business relationships.

## Communicating Your Fields of Practice

RPC 7.4 provides that you may communicate that you do or do not practice in particular fields of law. Thus, you may state: "practice limited to family law", or "practicing in the areas of real estate and commercial law." If you state that you practice in an area, your statement must be true and not merely an aspiration on your part. The mere statement that you practice in a particular area impliedly represents that you are competent to practice in that area.

RPC 7.4 limits your ability to claim or imply to be a specialist. RPC 7.4(a) permits you to state, if true, that you have been admitted to engage in patent practice before the United States Patent and Trademark Office and to use the designation "patent lawyer." RPC 7.4(b) permits you, upon issuance of an identifying certificate, award or recognition by a group, to use the terms "certified," "specialist," or "expert" or similar term. To do so, however, the reference must be true, verifiable and not misleading; the group so certifying or identifying you must be identified; and the reference must clearly indicate that the Washington Supreme Court does not recognize certification of specialities in the law and that such certification is not a requirement to practice law in Washington. See *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985), *In re R.M.J.*, 455 U.S. 191 (1985), and *Peel v. Attorney Registration and Disciplinary Commission*, 496 U.S. 91 (1990) (upholding right of Illinois lawyer to list on his letterhead "Certified Trial Specialist by the National Board of Trial Advocacy"). The trade-off for listing yourself as a specialist, of course, is that by doing so you are representing you have an expert's abilities and skills and, in case of a malpractice charge or disciplinary complaint, your performance will be measured against the higher standard of an expert rather than the standard of a general practitioner. See, for example, *Duffey Law Office, S.C. v. Tank Transport, Inc.*, 535 N.W. 2d 91 (Wisc. Ct. App. 1995). You may also more narrowly advertise to other lawyers (either by directly mailing announcements or by publication in legal journals directed to lawyers, for example, the *Washington State Bar News*) your availability to provide to other lawyers specialized services, such as appellate advocacy. If these announcements are directed to lawyers only, and not to the general public, and provided they are not self-laudatory, but are merely factual, they are not subject to RPC 7.4, but merely to the nonmisrepresentation provisions of RPC 7.1.

## A Rose by Any Other Name is a Thorn

RPC 7.5 generally prohibits you from using trade names in private practice, although a recent informal opinion of the WSBA RPC Committee recommends removing this prohibition. Under the current rule, you may, use the term "legal clinic" alone or in conjunction with the name of one or more lawyers connected with the practice, or in conjunction with a geographical name, so long as the name is not deceptive. Thus, if your name were John Doe and you practiced law in Des Moines, Washington, you could practice under the name of "John Doe Legal Clinic" or "Des Moines Legal Clinic." In certain cases you may also use, if not otherwise deceptive, the name of a deceased or retired partner of a firm.

If your Washington law firm also has out-of-state offices, RPC 7.5(b) allows you to use the same name in each jurisdiction, but each office must identify the jurisdictional limitations of lawyers not licensed to practice in the jurisdiction where the office is located. The firm name must, however, satisfy Washington's requirements. If your letterhead lists all your partners, some of whom are not admitted in Washington, you need to indicate where they are admitted. Usually, this is done with parentheticals or asterisked footnotes.

RPC 7.5(c) prohibits your firm from using your name as part of its name if you are holding public office during any substantial period in which you are not actively and regularly practicing with the firm. Thus, if you were a named member of the firm and were elected or appointed to a public office, your firm would not be able to continue using your name as part of the firm name during the time you hold public office. This rule applies only to holding a public office on a substantially full-time basis, and would not apply, for example, if you held public office on a part-time basis but continued practicing law or if you took an extended leave of absence to serve as an executive with a

private corporation. If you are absent from the firm for a substantial period and are not practicing law, however, even though RPC 7.5(c) might not require you to delete your name from the firm name, RPC 7.1(a) might suggest not doing so was a deceptive communication.

RPC 7.5(d) allows you to state or imply that you are practicing in a partnership or other organization only when that is the fact. If you are practicing out of the same office, but are not a partner, shareholder of a professional corporation, or a member of a professional limited liability company or partnership, you may not join your name together with the names of others in the office. In such a case, each of you must have separate letterheads, cards, and pleading paper, and each of you must sign your name individually at the end of all pleadings and correspondence and not in conjunction with the names of other lawyers, unless, however, you are employees or "of counsel" to another such person or entity. If you are a sole practitioner, you may not practice under the name "John Doe & Associates," unless you in fact regularly have lawyer employees; similarly, you may not use the term "of counsel" unless you are an active WSBA member and have a close, that is, regular and frequent, continuing relationship with a lawyer or law firm, for example, as a retired or semi-retired former partner who remains available to the firm for consultation and advice. See *WSBA Formal Opinion 178 (1984).*

## Further Information

Advertising and soliciting are extensively discussed in the ABA Center for Professional Responsibility's one volume *Annotated Model Rules of Professional Conduct*, Third Edition (1996), in the two-volume Hazard & Hodes, *The Law of Lawyering — A Handbook on The Model Rules of Professional Conduct* (Prentice Hall, Second Edition, as supplemented), and in the multi-volume *ABA/BNA Lawyers' Manual on Professional Conduct* (which also discusses advertising and the Internet in the February 21, 1996, and March 3, 1996, current reports). Washington's RPCs are largely based on the model RPCs. You may wish to informally discuss specific questions with the WSBA Professional Responsibility Counsel at (206) 727-8284, or you may seek an informal opinion of the WSBA Rules of Professional Conduct Committee by writing to that committee at the WSBA.

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**Portland, Oregon**. Associate General Counsel—reporting directly to the Senior Vice President/Chief Legal Officer, this position will provide leadership to the legal function including supervision and development of staff attorneys. Will manage all areas of regulatory compliance, business planning, and contract development, review, preparation and negotiation. Requires a minimum of 10 years' experience in healthcare law in a law firm or corporate setting plus at least two years in a management role leading, supervising and developing other attorneys. Must have deep transactional experience and a demonstrated expertise and knowledge of the broad range of legal issues affecting healthcare providers. Admission to the Oregon State Bar or the bar of any state and qualified to take the Oregon State Bar also required. Legacy Health System, an integrated network of exceptional healthcare facilities and ranked one of the 10 best employers in Oregon for the third year running, was the recipient of the 1996 Oregon Quality Award. For immediate confidential consideration, send résumé with salary history to: Legacy Health System, Human Resources, 1919 NW Lovejoy, Portland, OR 97209, (503) 415-8799, fax (503) 415-5909, e-mail: resume@lhs.org (no attachments please). AA/EOE.

**Mid-sized Seattle law firm** is seeking an associate with at least four years' litigation experience in areas of insurance coverage (environmental), environmental law (experience with the regulatory process). The position requires excellent academic credentials, effective communication. Send résumé in confidence to Barbara Margolies, Carney Badley Smith & Spellman, 701 5th Ave., Ste. 2200, Seattle, WA 98104.

**Partnership position available** for experienced business lawyer with established practice. Growing 28-lawyer Seattle office seeks to broaden its business department. Reply in confidence to Miller Nash, Attention: Libby Matheny, 4400 Two Union Square, 601 Union Street, Seattle, WA 98101-2352.

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## MISCELLANEOUS

**Mature student/faculty wife** seeks attorney: experienced in discrimination law, familiar with academic community, willing to confront the status quo in popular university. If you have courage, I have documentation. Send description of practice, experience and education to A. Nelson, 2442 NW Market St. #112, Seattle, WA 98107. Fax (206) 784-2141.

**Attorney/aspiring writer** seeks PNW house-sitting position(s) June-Sept. to work on Pulitzer. Will care for yard, pets, etc. (970) 731-3439; PO Box 1622, Pagosa Springs, CO 81147.

**Berlin — Elegant apartment** in exclusive Grünewald district, directly on lakeshore of Koenigs See. Completely furnished, large balcony overlooking lake, sleeps two, weekly $850. **Italy — Tuscany** — 18th C. farmhouse, end of private road on wine and olive estate, views of San Gimignano's medieval towers, 30 miles from Florence, completely furnished, sleeps 6, weekly $700-$900. Law Office of Ken Lawson, fax (206) 632-1086, telephone (206) 632-1085.

**Punta del Burro, 20 mi. N. of PV**. Casa Singapura, two acres, pool, tennis, sleeps 12+. $3200/week. Casa Mitchell, beach cottage, sleeps six. $800/week. whidbey.com/villamex; e-mail howard@whidbey.com. (800) 826-2247.

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**Orcas Island farmhouse** — 30 acres with marine/island views, meadows, stream and waterfalls. Fully furnished, woodstove, sleeps six. Available by weekend, week or month year 'round. From $700/week. No smoking. (206) 781-2715.

**Roche Harbor**. Three waterfront lots remain. Facing west, perfect beach, dock for 50-foot boat. Ready to build. These are premium, from $380,000. Terms available. Represented by Pat O'Day at Orca Properties, Friday Harbor. (360) 378-4111.

**Lump sums cash paid** for remaining payments on seller-financed real estate contracts, notes & deeds of trust, notes & mortgages, business notes, insurance settlements, lottery winnings. Cascade Funding Inc. (800) 476-9644.

**Newport, OR** — One-bedroom cottage overlooking Yaquina Bay. Five minutes from Oregon Coast Aquarium, bayfront and beaches; $49/night; $294/week; (541) 265-8553.

# 1997 WSBA Board of Governors Election

## *Biographical Sketches*

### First Congressional District

**Walter Krueger:** I have practiced law for 21 years. My practice emphasizes estate planning, trusts, and probate. Last year I chaired the WSBA Court Rules Committee. I was a member of the Board of Directors of WSTLA, and Editor-In-Chief of the Trial News. I am committed to volunteer service: ELAP 1996 Volunteer of the Year, Mandatory Arbitrator, Settlement Now Mediator, Bellevue Legal Clinic Attorney, Lake Washington School District Mentor, Kirkland Interfaith Transitions in Housing Secretary, Holy Family School Commission President and Track Coach.

I want to share my experience with the Board and help the public understand the good work attorneys perform.

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**Stewart A. Estes:** Stewart Estes has been active in WSBA work for many years, serving on the Legal Aid and Civil Rights committees. Stew began his practice with Spokane Legal Services before moving to the Attorney General's Office in Olympia. He is a shareholder with Keating, Bucklin & McCormack in Seattle where he represents small cities and towns. He and his wife have three children.

Stew will bring a well-rounded perspective to the Board and be free of any commitments to particular interest groups. He will continue his efforts to promote access to justice, and to reform our judicial selection process.

### King County at Large

**J. Richard Manning:** Before I become a certified "has been", I would like to help with the following knowledge, voice, network and experience:

President, King County Bar Association (1995-96); President, King County Bar Foundation (1991-93); Chair, Washington State Bar Leaders Conference (1996); Chair, 1st Statewide Access to Justice Conference (1996); Chair, WSBA Legislative Committee (1990-92).

Being on the Board of Governors is about: knowing what are the Bar related concerns of King County lawyers; being a voice for those lawyers in a way that will be heard; having the network of leaders and the experience to get the job done.

◆ ◆ ◆

**James Rigby:** James Rigby is the principal of Rigby & Associates, a three-attorney firm which focuses on bankruptcy matters. Rigby founded his firm in 1980 after graduating from the University of Puget Sound School of Law and has been a bankruptcy trustee since 1984. Rigby has served as the Chairman of the King County Bar Association Bankruptcy Law Section and on the Local Rules Committee of the U.S. Bankruptcy Court. He has also spoken on bankruptcy issues. Rigby is a life-long Washington resident and lives in Seattle with his wife Susan and their 8-year-old daughter.

### Fifth Congressional District (uncontested)

**Richard C. Eymann:** Richard Eymann is a University of Oregon graduate (1968) and received his Juris Doctorate from Gonzaga University School of Law (1976). He worked as a policeman, consumer investigator and intelligence officer in the U.S. Army prior to law school. As a partner in the Spokane law firm of Feltman, Gebhardt, Eymann & Jones, P.S., his trial practice emphasizes personal injury, sexual abuse and assault cases, business torts and medical negligence. He is the President of the Washington State Trial Lawyers Association, was selected WSTLA's 1995 Trial Lawyer of the Year, and has served in numerous offices and committee chairships for WSTLA and the ABA. He and his wife, Susan, have two toddlers, Taylor Marie and Houston.

## Ryan, Swanson & Cleveland Celebrates Centennial with Community Service

Ryan, Swanson & Cleveland, PLLC of Seattle is celebrating its 100th anniversary since John Ryan Sr. opened his law office in 1897.

"Our firm has been privileged to assist and serve persons from all walks of life in countless different circumstances," Managing Director Jerry Kindinger said in a press release. "Our growth and success is a monument to the clients we have served, the community in which we live, and the dozens of men and women who preceded us and who devoted their careers to serving others."

The firm is saying thanks through a series of monthly donations and contributions: March — the firm delivered 100 blankets to the homeless; April — 80 people, including their partners at Commerce Bank, took part in the Christmas in April program (for the fifth year) by renovating a homeless shelter; May — the firm will plant 100 trees through the Mountains to Sound Greenway; June — will contribute 100 books to Washington Literacy; July — will donate 100 teddy bears to the Teddy Bear Patrol; August — will deliver 100 balloons to the Children's AIDS Ward at Harborview Medical Center; September — will volunteer 100 hours of time to various community service groups; October — will render 100 hours of free legal advice coordinated through the Allied Arts Foundation; November — will sponsor a family at Thanksgiving and donate 100 pounds of food to them; December — the firm will fulfill a child's wish through the Make-A-Wish Foundation. ◆

## Business Law Section Schedules Midyear Meeting & Seminar

The WSBA Business Law Section is having its midyear meeting on Friday and Saturday, May 30-31 at the Seattle Hilton. The seminar is titled "The Life Cycle of a Business — Dealing with Transitions."

Featured luncheon speaker is Tom Alberg, a principal of Madrona Investment Group. He will discuss "The Business Lawyer in the 21st Century." The seminar counts for 14 CLE credits, including 2 ethics credits (pending.)

Other seminar topics include: venture capital financings, analyzing bank loan documents and negotiating improved terms, the impact of an actual or threatened bankruptcy on a financing or acquisition, ways for the business lawyer to add value to an initial public offering, recent changes to Washington's Business Corporation Act, changes to state and federal securities regulations, and avoiding ethical missteps.

Early bird tuition, if received by May 9, is $235. After May 9, standard tuition is $265. For more information, call (206) 727-8202.

A block of rooms has been reserved at the Downtown Hilton, 1301 Sixth Avenue, Seattle, at the special rate of $162+tax per night, single or double occupancy; each additional person is $15. To take advantage of this special rate, you must call the Hilton by May 8. Be sure to specify that you are using the Washington State Bar Association block. In-state calls (800) 542-7700; out-of-state calls (800) 426-0535. ◆

## WSBA Annual Awards Moves from September to June

The Bar's Annual Awards Luncheon has been moved up from September to June this year. Instead of coinciding with the fall annual meeting, it will be held in conjunction with the Access to Justice Conference and the Bar Leaders Conference, held June 20-22 in Yakima at the Doubletree (formerly the Red Lion).

Awards have already been solicited and include: Award of Merit, President's Award, Board of Governors' Award for Professionalism, Angelo Petruss Award for Lawyers in Public Service, Outstanding Judge Award, WSBA Pro Bono Award, WSBA Courageous Award, Affirmative Action Award.

The luncheon is at noon on Saturday, June 21. Cost is $13. To register, call Sharlene Steele at (206) 727-8262.

The Doubletree is located at 1507 N. First St. in downtown Yakima. ◆

## Seattle Attorney John McKay Selected President of Legal Services Corporation

### His Pro Bono Efforts Have Helped Lead the Way in This State

John McKay, a managing partner at Seattle's Cairncross & Hempelmann, was named President of the Legal Services Corporation after a nationwide search. McKay, a long-time advocate of legal services for the poor and recipient of the WSBA's 1995 Pro Bono Award, will take a leave of absence from his firm to head the private, non-profit corporation in Washington, D.C., which works to assure equal access to justice for all Americans. He assumes office in May.

John McKay gets a kiss from Barbara Clark of the Legal Foundation of Washington after receiving the 1995 WSBA Pro Bono Award

"I look forward to this great challenge and appreciate the opportunity to work on behalf of those who are less fortunate," he said.

McKay, 40, has been extremely active with the Equal Justice Coalition, serving as its first chair when it was formed two years ago as a statewide grassroots effort to help eliminate LSC budget cuts. Based on the EJC's winning efforts, it is now a national model for other states to follow.

"He was a very charismatic leader who inspired our Equal Justice Coalition to work hard," enthused Joan Fairbanks, WSBA's Access to Justice Manager. "He is passionate about legal services. He's also a great guy — kind, funny, charming, thoughtful, sincere and down-to-earth. He has a big fan club here, and we're definitely going to miss him."

"Our firm is very excited that John has the opportunity to promote equal access to the justice system at such a high level," said John Hempelmann, chairman of the board at Cairncross & Hempelmann. "We have appreciated and supported John in his efforts as a pro bono attorney and as past chair of the Equal Justice Coalition here in Washington, and we fully endorse his decision to accept this important position."

McKay also served as a White House Fellow in 1989-90 as special assistant to the Director of the FBI, and as a legislative aide to Rep. Joel Pritchard (R-WA), formerly Washington State's lieutenant governor, in 1978-79. He also has served on the WSBA's Task Force on Opportunities for Minorities in the Legal Profession, WSBA's Task Force on Government, the ABA's Board of Governors and in the House of Delegates, and was president of the WSBA Young Lawyers Division from 1989-90. He is the founder and director of the Northwest Minority Job Fair. He graduated from the University of Washington and Creighton University School of Law.

In a nominating letter for the WSBA 1995 Pro Bono Award, a joint letter from the Legal Services Programs of Washington wrote of McKay, "The heart and soul of pro bono has always been the passion for equal justice. There is nobody in the State of Washington who better embodies this passionate belief in equal justice than John McKay."

LSC was established by Congress in 1974 and is headed by a bipartisan board of directors appointed by the President and confirmed by the Senate. It receives funds annually from Congress and makes grants directly to independent local programs providing civil legal assistance to those who otherwise would be unable to afford it. LSC's budget of $287 million funds about 280 local programs which serve every county in the nation. Last year those programs handled more than 2.1 million cases involving five million individuals. ◆

*Washington State Bar Association*

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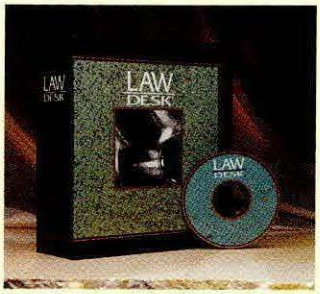


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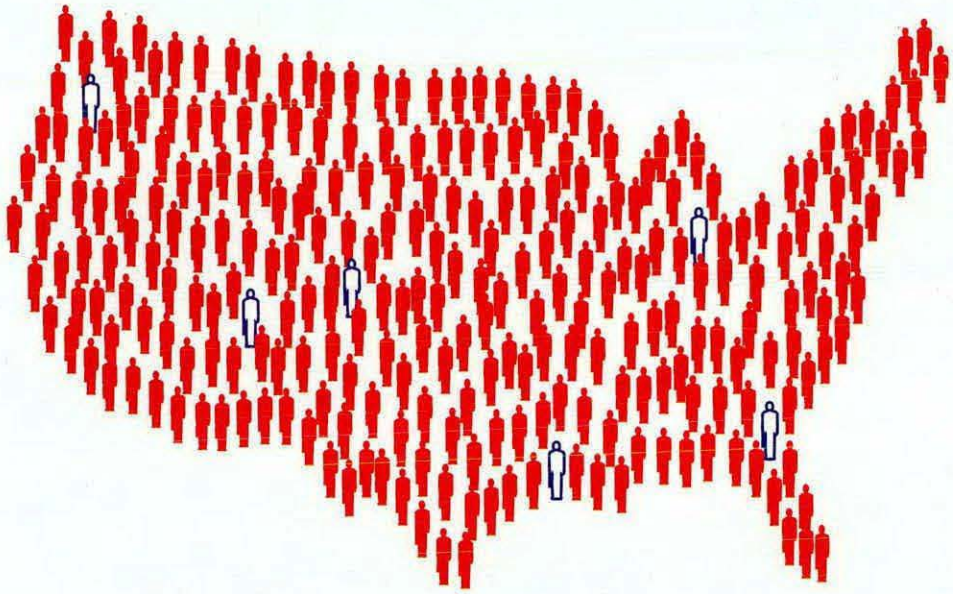

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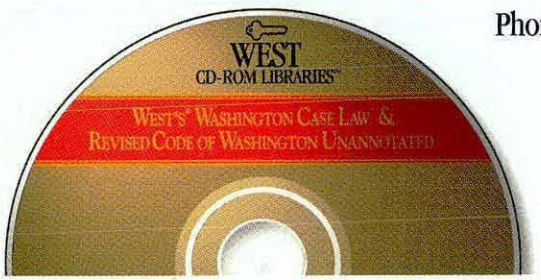


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