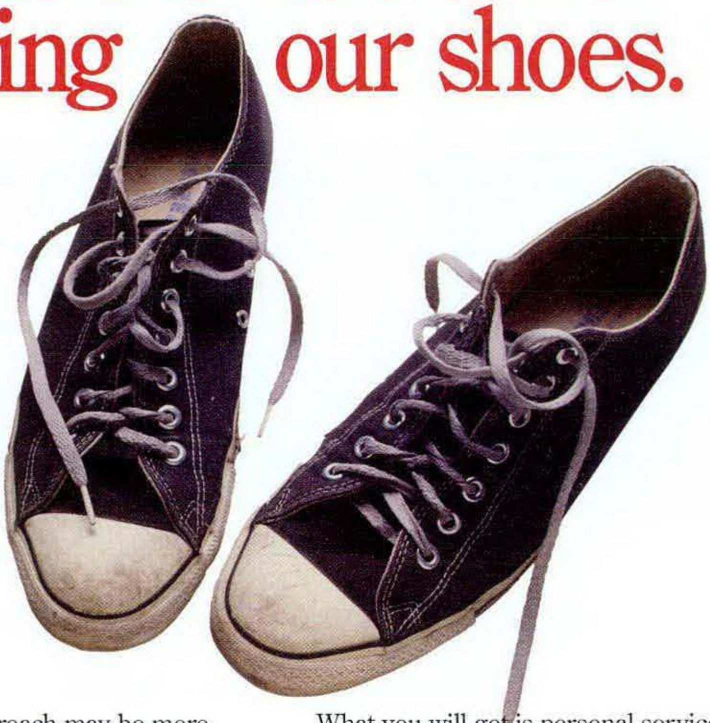
Washington State Bar News

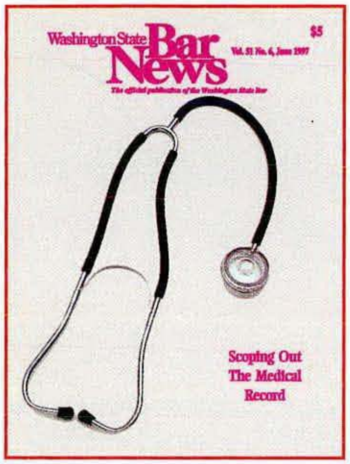
$5

Vol. 51 No. 6, June 1997

The official publication of the Washington State Bar

Scoping Out The Medical Record





Scoping Out the Medical Record.

BAR NEWS

SHERRIE BENNETT
Editor (206) 283-4015

BONNIE KAM
Production Supervisor (206) 727-8212

JENNIFER KLAMM
Managing Editor (206) 727-8215
jennifer_klamm@dBug.org

JACK YOUNG
Advertising Manager (206) 727-8260

DOREE ARMSTRONG
Editorial Assistant (206) 727-8214

SUBMISSION GUIDELINES

The *Bar News* encourages correspondence and article submissions. The submission deadline is the 15th day of the month for the second issue following: e.g., June 15 for the August issue. We request a 3 1/2" disk (in any conventional format) and hard copy at the time of submission. Please include a SASE if you would like your material returned. Article submissions should run approximately 1,100 to 3,500 words. Graphics and illustrations are welcome. Address all correspondence and submissions to: *Bar News* Editor, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Washington State Bar News

Vol. 51 No. 6, June 1997

The official publication of the Washington State Bar

ARTICLES

COLUMNS

DEPARTMENTS

Published by
WASHINGTON STATE
BAR ASSOCIATION

2101 FOURTH AVENUE
FOURTH FLOOR
SEATTLE, WA 98121-2330

DENNIS P. HARWICK
Executive Director

BONNIE D. KAM
Director of Communications

Printed by Valco Graphics, Seattle

Washington State Bar News (ISSN 986-5213) is published monthly by the Washington State Bar Association, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330, and mailed second-class in Seattle, WA. $14.47 of a regular member's dues is used for a one-year subscription. The annual subscription rate for inactive members is $15. Nonmembers subscription rate is $24 a year. Washington residents add 8.6% sales tax.

POSTMASTER: Send changes of address to WASHINGTON STATE BAR NEWS, 2101 4TH AVE, 4TH FL, SEATTLE, WA 98121-2330.

Printed with soy-based ink on recycled paper

ADVERTISING

Display: Contact Jack Young at (206) 727-8260.
Professional: Boxed ads. WSBA members only. $40/inch. Billed at publication. Contact Doree Armstrong, (206) 727-8214.
Classified: Advance payment required.
Members — $25/first 25 words; .25 ea. add'l word.
Nonmembers — $35/first 25 words; .75 ea. add'l word.
Blind box number service — $7. (Responses will be forwarded.)
Call Erik Schwab (206) 727-8213.
Notes: 1) Positions available are automatically posted on a 24-hour jobline [(206) 727-8261] and in looseleaf binders at the WSBA offices for immediate consideration.
2) State and federal law allow minimum, but prohibit maximum — e.g., no ranges — qualifying experience.
Deadline: Copy received - not postmarked - by first of each month for issue following. No cancellations after deadline.
For classifieds and professionals, submit typed copy (no phone orders) to BAR NEWS, 2101 4TH AVE, 4TH FL, SEATTLE WA 98121-2330.

BOARD OF GOVERNORS

EDITORIAL ADVISORY BOARD

SELECTED WSBA TELEPHONE NUMBERS

General Information	**(206) 727-8200**	
Fax	**(206) 727-8320**	
WWW Homepage		http://www.wsba.org
Administration	(206) 727-8200	admstaff@wsba.org
Admissions	(206) 727-8209	
CLE	(206) 727-8202	cle@wsba.org
Communications	(206) 727-8203	comm@wsba.org
Executive		barchief1@aol.com
Jobline (recording)	(206) 727-8261	
L.A.W. BBS .... Modem	(206) 727-8312	
.... Voice Message	(206) 727-8314	
Lawyers' Assistance Program	(206) 727-8268	
Office of Disciplinary Counsel	(206) 727-8207	discipln@wsba.org
Licensing	(206) 727-8210	license@wsba.org

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.

Constitutional Scam Artists Run Rampant

Editor:

After reading Tom Chambers' column in the April *Bar News*, I tallied the instances of the unlicensed practice of law I have seen. Few if any have been the run-of-the-mill, monetarily motivated scam artists cited in the column. Most if not all have been politically motivated, constitutionalist scam artists who coach the woefully ignorant from the sidelines on presenting specious arguments based on patent misreadings of the law, misreadings that are often deliberate and often blatantly racist. Party after party comes into court with the same old Posse Comitatus forms and arguments and the same old battery of "advisors" in the gallery. It has been going on for over 20 years. It is a waste of everyone's time and is nothing short of a fraud on the courts. Until the courts are willing to step in and crack down on these abuses, any action by the Bar will have little effect.

KNUTE A. RIFE
Glendale

Board of Governors Should Not Take Stand on Divisive Legislation

Editor:

Bar News readers should be aware that the Board of Governors of the Washington State Bar Association formally opposed legislation proposed by the Liability Reform Coalition ("LRC"). I am particularly concerned that the Board took a position on controversial legislation when it was clear that WSBA members were divided on the issues involved.

When the LRC proposed far-reaching legislation on seven tort-related issues (ranging from regulation of lawyers' contingent fees to joint and several liability to seat belt use as evidence at trial), BOG President Tom Chambers called a special telephonic meeting of the Board to discuss the legislation. The meeting was arranged on very short notice, with a flurry of written material being supplied to the Governors.

As an officer of the Washington Defense Trial Lawyers ("WDTL"), a statewide association of more than 600 attorneys who specialize in the defense of civil litigation, I attended that telephonic BOG meeting on the evening of March 3, 1997. While the WDTL is not a member of the Liability Reform Coalition, the LRC gave us a few minutes of its time to present our position to the Board of Governors.

On behalf of the WDTL, I advanced the position that the Board should remain neutral on the legislation and allow individual attorneys and the various specialty bars to lobby and advise the legislators.

To illustrate the obvious division between attorneys on the issues, I said that even a specialty bar as tightly knit as WDTL could only formally support four sections of the legislation (certificates of merit, joint and several liability changes, access to medical witnesses, and seat belt use into evidence).

We took no position on the other three sections (contingent fee changes, statute of limitations for minors, and construction claim changes), due to potential disagreements among our members. However, our neutrality should not be construed to suggest opposition; many of our members would support those three sections as well. I then briefly discussed each of the four sections we supported.

After hearing from the LRC and from Steven Toole opposing the legislation, there was debate among the Governors for 90 minutes. The BOG then voted seven in favor, three opposed and one abstention on a motion to inform the Legislature that the Board opposes the legislation. As President of the Board of Governors, Tom Chambers sent a fax to the State Legislature and Governor Locke the following day.

[Editor: I am enclosing a copy of Mr. Chambers' short letter, and ask that you publish it as well.]

Obviously, the Board was not unanimous in its decision to oppose the LRC legislation at that time, but that fact was not included in Mr. Chambers' fax. The Board also voted to discuss the legislation again at its next regular meeting, following additional input from the Legislative Committee of the WSBA.

The WDTL is concerned that the State Legislature and Governor Locke accepted the pronouncement from Mr. Chambers as an indication that all attorneys opposed all of the legislation advanced by the Liability Reform Coalition. In fact, WDTL supported those sections mentioned above, and attorneys who are WDTL members held strong opinions on the other sections, both pro and con. We encouraged those members to contact their legislators to express their individual views.

The WDTL also questions the method by which the Board reached its position. While the debate ranged far and wide over the sections, it simply was not possible for the Board to take a separate position on each of the seven sections involved in the short time allotted.

Also, there was no input from other sections of the Bar: It seems to me that, at a minimum, the Legislative Committee should be consulted before taking a stand on legislation! The Legislative Committee chair was even present, and said that committee members could respond quickly to any Board request to provide guidance.

Despite the fact that legislation, by its very nature, is time-sensitive and requires rapid consideration, the Board of Governors was not leaping into an information vacuum to provide input not available from other attorney groups. As past president of the Washington State Trial Lawyers ("WSTLA"), the plaintiff's specialty bar, Board President Tom Chambers was well aware of the massive WSTLA effort already underway to defeat the LRC legislation.

Similarly, Steven Toole emphasized his recent past membership on the Board in his remarks opposing the legislation, and even characterized himself as a "WSTLA Advocate."

The WDTL is disappointed that the Board of Governors chose to throw the weight of the entire Bar membership against the LRC legislation, particularly when the merits of each separate section were not adequately addressed. This clearly was a situation where the Board of Governors should have left the lobbying and debate to specialty bars and individual attorneys.

JAMES E. MACPHERSON
WDTL Secretary
Seattle

Re: HB 1804; F16 1820; and SB 5733

Dear Chairs Roach and Sheahan:

On March 3, 1997, the Board of Governors of the Washington State Bar Association adopted a resolution opposing so-called tort reform legislation, HB 1804, HB 1820 and SB 5733.

How the proposed legislation would affect lawyers was never the focus of the debate. Each member of the Board represents the citizens of a geographic area and often votes against the desires of lawyers if it is felt that the welfare of the citizens of the State is better served. The Bar Association does not take a position on legislation unless it falls within the Bar's stated mission. Among the principle purposes of the association is to promote the effective administration of justice and to assure access to justice for all. It is felt that the proposed legislation would not only tip the playing field, it would alter the landscape. The proposed legislation would create barriers, in some instances unprecedented barriers, for citizens of the State — particularly the working poor — to access the courts.

Tom Chambers
Seattle

Saying "Yes" to Mediation

Editor:

Your "If You Ask Me" column in March featured an article by Doug Becker advocating against mandatory mediation of family cases by non-attorneys. The editor's note stated that it was a contrasting view to my article in the December *Bar News*. Yet, my article was on how mediation can reduce the sad tendency for noncustodial fathers to drop out of parenting responsibilities. It did not address mandatory mediation or whether non-attorneys should be mediators. It contrasted Mr. Becker's piece only in the general sense that mine promoted mediation and Mr. Becker's opposed a certain kind of mediation.

Lest there be any confusion, I would like to clarify some of the issues raised in Mr. Becker's piece. Perhaps his most central concern is that mandatory mediation will result in many parties settling family law cases without the benefit of legal counsel. To support this prediction, he points out that currently upwards of 50% of all family law cases have at least one unrepresented party. I agree with Mr. Becker that the high number of pro se family law litigants is of concern — these people are more likely to agree to unfair settlements than those who have legal counsel. I also feel that the family law bar should work on how to remedy this problem. However, I disagree with Mr. Becker's assertion that excluding non-attorney mediators will help.

Mr. Becker acknowledges non-attorney mediators can be trained to flag the legal issues, and then encourage the parties to seek legal counsel, but he states that they cannot be trained to address the legal issues because that would be too complicated and also would be the unauthorized practice of law. What he doesn't say is that attorney mediators also cannot address the legal issues, because such behavior will almost always run afoul of the Rules of Professional Conduct on Conflict of Interest (RPC 1.7). Thus, attorney mediators are also almost always limited to flagging the legal issues and encouraging the parties to seek legal counsel. It may be argued that attorney mediators will be better at flagging legal issues. On the other hand, attorney mediators may also more frequently be tempted to conclude that they can dodge the requirements of RPC 1.7 and simply explain the law to the parties. As for non-attorney mediators, because their training in legal issues is limited, they may be more likely to encourage parties to seek legal advice.

In any case, if we are concerned with the fact that many family law litigants are unrepresented, we should remedy that problem directly. To figure out the remedy, we need to know why so many family law litigants are not seeking legal counsel. I see two main reasons: first, legal services are too expensive for most families; second, many people fear that getting attorneys involved will exacerbate the family conflicts. These people need attorneys who work with couples on a consulting basis and attorneys who do not promote adversarial dispute resolution. The KCBA's unbundled legal services panel is a step in the right direction in solving this problem.

Mr. Becker focuses on the reasons why non-attorney mediators should be excluded without considering why they should be included. The reasons are many, and to understand them we need to know a little of the history of the mediation movement. Until about 30 years ago, formal mediation was used in labor and international disputes, and little else. In the '50s and '60s, the first efforts were made to expand the use of mediation to the broad array of disputes that typically emerge in communities. The initial impetus came mostly from the Quakers and other groups involved in the grass roots community-building movement — it did not come from lawyers. Over the last 25 years, they formed a network of Dispute Resolution Centers and other mediation services around the country, have mediated millions of disputes, and developed specialized knowledge, procedures and techniques. Academics and trainers have also contributed substantially to the growth of the mediation movement — there is now substantial literature in negotiation theory and dispute resolution as well as highly developed trainings, conferences, advanced degrees and professional journals. National professional associations have developed qualification requirements and standards of practice.

On the whole, attorneys have only fairly recently become interested in the mediation movement. More and more attorneys are including mediation in their practices now that it is increasingly seen as a marketable service. And now Mr. Becker suggests that the people who founded and developed the modern practice of mediation should be excluded from a substantial portion of that work? Not only is Mr. Becker insulting these good people, he is also throwing out the baby with the bath water. Rather than shoving these people away, the legal community should be collaborating with the people who have done such wonderful work in developing the modern practice of mediation — lawyers can learn a great deal.

There are significant challenges ahead if we adopt mandatory mediation. The name itself is troubling to those of us who feel that voluntariness is the *sine qua non* of mediation. Perhaps we could call it the mandatory attempt at mediation — and make sure it happens early in the process so parties are not trapped by the courthouse steps phenomenon. In addition, there are substantial, but not insurmountable, challenges in determining how to screen inappropriate cases from mediation. Finally, we must develop qualifications for family mediators, and they should not be minimal. We should set high standards, but they need not include a J.D.

I hope the discussion on this important subject will continue and, in fact, develop into a dialogue between the legal community and larger mediation community. Perhaps there is not a win/win solution to this question, but I know there is a "both gain" solution.

ANDREW KIDDE
Seattle

Mandatory Mediation With Non-attorneys? Eight Reasons to Say "Yes"

As a non-attorney mediator, I welcomed Douglas Becker's article in the March 1997 *Bar News* in which he expressed eight objections to using non-attorney mediators for family law cases. I welcomed it not for its content, but for the opportunity for a more open debate of some important issues. Some of Mr. Becker's concerns are valid and deserve more attention; some point to problems in specific proposals for mandating ADR (alternative dispute resolution), but much of his analysis shows a lack of understanding of the mediation process.

First, Mr. Becker reasonably objects to mandating an ADR process for all family law cases. I am also opposed to blanket mandating. Appropriate cases for mediation cannot and should not be determined solely by statute or court rule. It is the parties themselves who must have the last word in whether they will mediate. Certainly attendance at an initial mediation session can be mandated, but parties should always have the right to withdraw once they have been educated as to the process and the issues in dispute. Continued participation must remain voluntary. If a party wants to mediate but fears violence, then the option of shuttle mediation should be available. While parties cannot be forced to negotiate, skilled mediators are frequently able to demonstrate in their introductions that trying mediation is in the best interests of both parties even if they are initially resistant. In most jurisdictions, mandated attendance at an initial session or orientation has successfully resulted in more mediations.

Second, Becker argues that one party could force the other party to mediate with a non-attorney mediator and thereby steer the agreement away from legal norms. I fail to see how this might occur.

Even if it did happen, the court would most likely have an opportunity to review and reject the agreement. As stated above, participation is always voluntary. A fundamental value in mediation is the promotion of self-determination of the parties. Parties not only need to decide for themselves whether they will mediate, they must also agree upon who their mediator will be. There are many ways of accomplishing this relatively simple task.

Third, Becker fears for the fate of the unrepresented party. It is the unfortunate reality that not everyone can afford competent legal representation, but that is not hardly the fault of mediators. In a perfect world, everyone in mediation would have equal access to high quality legal advice before making final decisions, but using this problem to justify the giving of legal advice by an attorney-mediator is not the solution. Contrary to Becker's belief, the ADR community has dealt with this point extensively. The giving of legal advice in mediation is simply unethical because it severely compromises the mediator's neutrality.

Fourth, Becker believes that the subject of money is so complex that its discussion is far beyond the capabilities of non-attorneys, and that law is the only reasonable approach to be used for resolving financial conflicts. Obviously it takes many years of hard work and study to attain even a basic level of competence as a legal professional, but there is much more to conflict than law, despite all of the system's best efforts to avoid that reality. While laws set important community standards and are much needed for enforcing minimal expectations of behavior, our society's preoccupation with law has tended to divert attention away from the more complicated task of solving underlying interpersonal problems. This is the message that many attorneys find so difficult to hear. True, law is very complex, but human conflict is so complex that it defies strict rules for complete resolution.

Mediators do not need to know the law to the extent that attorneys do, because mediators approach conflict from a different (alternative) perspective. According to some theories, conflict is rooted in a perceived inability to satisfy basic human needs. These needs include such concepts as security, meaning, respect, self-esteem, recognition, control, and rationality. To truly resolve a dispute, these unmet needs must be uncovered, acknowledged, and accommodated by all parties. Once this complex task is accomplished, and a more cooperative relationship is established between the parties, settlement of the substantive issues typically becomes a relatively straightforward matter. Of course, mediators are not always successful, but a lack of an agreement is not necessarily an indication of failure if the parties finish with a more in depth understanding of the conflict, themselves, the other party, and their options.

Becker's fifth problem again relates to the issue that unrepresented parties may not be able to get the kind of legal advice they may need. Making pro bono legal services more widely available seems like the most sensible response to this concern.

Becker's sixth problem is that mediation cannot guarantee a solution while trial can. His experience seems to indicate that mediators are not able to deal effectively with highly positional parties or with any power imbalances between the parties. He also states that "probably 50% of all family law cases are inappropriate for mediation if the parties don't have attorneys with them in the mediation sessions." It is true that mediation cannot guarantee a settlement, but it is not true that trial can guarantee an end to the dispute. An imposed settlement that is ordered but does not work, should not be considered a true settlement. These fake settlements are one reason that many people view the justice system as unjust. In contrast, completely unsuccessful mediations by skilled mediators rarely occur.

Empowerment is another one of the benefits of mediation. In most cases it is simply a matter of helping disputants realize and utilize the power that they already have. There is much in the conflict resolution literature about power, how power is perceived, how it can be utilized, and how perceived imbalances can be adjusted. Unfortunately, not enough of this information has filtered into the typical mediation training (or into legal training for that matter). While the presence of attorneys in mediation can be useful in balancing power, their presence can just as easily contribute to a further imbalance and even to the abuse of power. If attorneys would learn how to be more supportive in mediation, mediators would not be as reluctant to involve them, and all would benefit.

Seventh, Becker has difficulty with the idea that unrepresented parties be given the opportunity to invent their own solution. Interfering with this basic right to make one's own decisions seems to me to be rather paternalistic, over-protective, and condescending.

Finally, Becker suggests that outcome is more important than process and that justice is not the goal of mediation, since parties can agree to whatever they want. He seems to think that as long as a settlement is roughly the same as what a court would impose, then justice will be served. If parties are ignorant as to what a court would impose then justice is impossible. Aside from the fact that the growth of mediation is in part fueled by an overall dissatisfaction with the injustice system, Becker is right: there is a difference in philosophy here. The core value in mediation is self-determination. The dispute belongs to the disputants, not the lawyers or anyone else.

Mediators try to help people accept more personal responsibility for their own problems, encouraging less dependence upon professionals and government. However, before disputants can fully benefit from mediation, they must be reasonably informed and capable of negotiating. When parties need support and assistance, those resources should be sought and provided. If the available resources are inadequate, and parties still want to mediate, they will at least be further ahead in mediation (even with a nonlawyer mediator) than if they were left completely on their own.

Problems can occur when neither the parties nor the mediator can anticipate the likely negative consequences of a proposed agreement. This is a valid concern. The greater the mediator's (lawyer or nonlawyer) knowledge concerning the subject matter of the dispute, the more likely it will be that s/he can be an effective reality tester for the parties. Mediators should therefore not mediate disputes involving unfamiliar subjects where the disputants might incur legal, psychological, economic, or physical harm as a result of the mediator's lack of knowledge or expertise. However, this must be kept in perspective. Reality testing is only a part of what mediators do.

The real question with regard to a mediator's qualifications is not are they an attorney, but, how well do they actually perform all of the skills associated with mediation. If a court is going to maintain a roster of mediators and mandate mediation, then the court has a responsibility to insure that those mediators are qualified to mediate the court's cases. Determining who is qualified, however, is not as easy as looking for certain initials after the name. Numerous studies support the Society of Professionals in Dispute Resolution's (SPIDR) recommendation that "no degree should be considered a prerequisite for service as a neutral." In fact, experience as an attorney may be detrimental to carrying out the majority of a mediator's tasks simply because mediation requires a completely different approach to conflict. Some attorneys, because of their total immersion in the adversarial system, are just not able to see or accept any other way of looking at conflict. While many have been successful, it is not easy for attorneys who practice as advocates and mediators to be good at both.

Above all, one must be careful in criticizing possible shortcomings of non-attorney mediators without considering the whole of what mediators do. Mediation is not always appropriate, but it is, and will remain, an alternative to adversarial settlement and litigation for almost any case. For the most efficient progress to be made, attorney and non-attorney mediators need to be working harder at understanding each other so that they can work together with the bar and the courts in promoting a truly effective mediation program in Washington.

CRIS M. CURRIE
Mead

Lobby for Continuation of *Cumulative Subject Index*

Editor:

After reading the letter of Thomas M. Blake concerning the *Cumulative Subject Index* which letter was published in the March edition of the *Washington State Bar News*, I wrote to the Commission on Supreme Court Reports. Enclosed is a copy of the Commission's response.

I would encourage members who desire the continuation of the *Cumulative Subject Index* to address their comments to Lawyers Cooperative Publishing.

THOMAS J. MAJHAN
Port Townsend

Dear Mr. Majhan:

Thank you for expressing your support for continuation of the Cumulative Subject Index in your letter of March 10, 1997.

Due to budget reductions and staff downsizing, the Commission on Supreme Court Reports is no longer publishing an annual cumulative subject index. The 1995 edition was our last. However, representatives of Lawyers Cooperative Publishing have recently expressed interest in possibly publishing the Index *and we are working with them as they explore its feasibility. I have taken the liberty of forwarding a copy of your letter to Lawyers Cooperative but you may also wish to send additional comments in support of the* Index *to: Susan Van Knapp, Director/Primary Law Information Group, Lawyers Cooperative Publishing, Aqueduct Bldg., Rochester, New York 14694.*

Sincerely yours,
Deborah Norwood
State Law Librarian &
Reporter of Decisions

Editorial Content Suggestions

Editor:

Most of my practice is devoted to ethics defense. I'm having some difficulty understanding the heading in your publication, to which I subscribe.

Although I may be mistaken, until recently I do not believe there was a heading "Ethics and the Law." Now that there is, it seems to me that lawyer discipline information should be included under that heading rather than the section entitled "Briefly Noted."

I can find what I need, but I think your approach is inconsistent.

STEPHEN R. MOORE
Portland, OR

Editor:

Because my bar number is "10," I am often asked how old I am. Let me clear this matter up once and for all.

Back in the early '70s, while I was serving on the Board of Governors, we decided to issue permanent bar cards instead of the yearly ones. Each Board member picked a number. In those years a gleefully exotic movie was being much watched and discussed. The name—"10." I carry both the card and the memory of the romping movie ever since.

While I have your attention, please consider bringing back the newsy items of lawyers about the state. The *Bar News* (now that the annual convention is ashcanned) is the only thread tying us together as "persons."

NEIL J. HOFF
Tacoma

Editor's note: Beginning with this issue, we are reviving the popular column on lawyers around the state (see page 43).

TRAVELER'S COUPON SPECIALS!

For Attorneys in Northern, Eastern, Southern Washington & the Peninsula

Because you live outside King, Pierce, Snohomish or Kitsap County, we know that your participation in our Seattle seminars is harder to achieve. We would like to see more of you join us in Seattle this Summer. We've arranged for you to receive special discounts from local hotels and are offering you a lower registration fee for WSBA seminars offered in July & August.

Join us in Seattle this Summer for a Seminar, Great Weather and Exciting Seattle Events like **Mariners Games,** the **Bite of Seattle** and **Seafair.**

Call us at (206) 727-8202 for a brochure or more information.

CLE

July & August Seminars

JULY 1997 - Seattle

7/11/97 The Estate Planner's Guide: Estate Planning with Will Substitutes (6.0 CLE credits est.) #730SEA

7/16/97 Analyzing & Handling Accounting & Financial Issues for Your Clients (6.25 CLE credits est.) #728SEA

7/17/97 Land Use & Environmental Law Issues for the Real Estate Attorney (7.0 CLE credits est.) #740SEA

7/18/97 Essentials of Evidence (7.0 CLE credits including .75 Ethics est.) #732SEA

7/25/97 Employment Discrimination (6.75 CLE credits including 1.0 Ethics est.) #738SEA

AUGUST 1997 - Seattle

8/1/97 Advising Your Clients on Rights of the Disabled (7.0 CLE credits including .75 Ethics est.) #789SEA

8/14/97 Advising the Small Business (6.0 CLE credits est.) #764SEA

8/15/97 How to Handle Estate & Trust Litigation (6.0 CLE credits est.) #751SEA

8/22/97 am- ADR from the Advocate's Perspective (3.0 CLE credits est.) #723SE1
pm- ADR Skills Training (3.0 CLE credits est.) #723SE2

TRAVELER'S COUPON

Hotel Discount

West Coast Vance Hotel

620 Stewart St., Seattle (800) 426-0670

$95 single/$115 double
or call the Hotel for discounts on deluxe room rates

- Make your reservations early. Special rates are offered on a space available basis
- Mention WSBA Traveler's Coupon Special when making your reservation with the hotel
- All room rates are subject to state & local taxes
- Offer good in July & August, 1997 ONLY in conjunction with a WSBA CLE Seminar

TRAVELER'S COUPON

Hotel Discount

Ramada Inn - Downtown

2200 Fifth Ave., Seattle (800) 272-6232

$109 single/$119 double

- Make your reservations early. Special rates are offered on a space available basis
- Mention WSBA Traveler's Coupon Special when making your reservation with the hotel
- All room rates are subject to state & local taxes
- Offer good in July & August, 1997 ONLY in conjunction with a WSBA CLE Seminar

TRAVELER'S COUPON

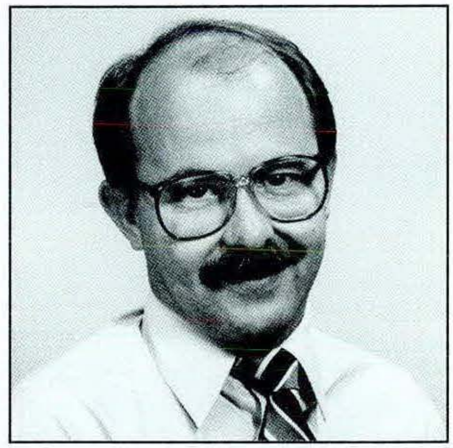
WSBA Seminar Discount

Attend a WSBA Seminar in July or August, 1997 for $110

- Not valid with any other coupon or discount
- Original coupon MUST be attached to your registration form
- Payment must accompany registration form
- Offer only good for WSBA Members residing outside King, Pierce, Snohomish or Kitsap County
- Offer good for "live" WSBA Seminars held in Seattle in July or August 1997

CLIP & ATTACH TO REGISTRATION

The Original Sin



Jeff Tolman

by **Jeff Tolman,** *Guest Editor*

I don't know much about the Original Sin in the Garden. I have more information, though, about the original sin in the law. I was there, sort of.

The scene is forever embedded in my mind. Two weeks into law school my pals and I go to the then-popular movie, "The Paper Chase." As Professor Kingsfield, John Houseman tells his incoming students:

> I am going to take your brains and turn them into mush — and then teach you how to think like a lawyer!

It was a magic moment. Almost a religious experience. Over the next three years, I didn't mind my mind being turned to mush, if, in the end, I would reach nirvana — and be able to think like a lawyer.

No lawyer in life or film has ever set such a miserable agenda.

Over my 19 years in practice, I have represented a couple of dozen lawyers and thousands of non-lawyers. My kids eat and stay warm because I think like a non-lawyer (my client) more than like a lawyer.

Houseman gave all of us attorneys the impression that we were different from our family and friends who had not gone to law school. How right could they be, really? They hadn't been taught to think like lawyers.

And, so, lawyers began thinking like lawyers.

Seminar after seminar discusses the importance of returning a client's phone call — as if that were a provocative thought. It isn't. If I called my doctor and said, "I'm spitting up blood, should I come into the office?" and he didn't call me back for three days, I would find another physician. If I asked the grocery clerk, "Where is the sloppy joe mix?" and she didn't answer me for two hours, I would find another store.

Lawyers complain about the phone ringing and how we can't get caught up on our work. Isn't this good? I can't imagine any retailer complaining about too many customers. I guess they just didn't see "The Paper Chase."

Lawyers commonly answer the question, "How's business?" by saying how overworked they are. This tells potential clients, "Do me a favor — call someone else." No non-law business would ever market such a message.

While lawyers are complaining about being overworked, they are also concerned about decreasing incomes. This is because — apparently as part of the turning to mush — all business sense is removed from lawyers' brains.

Most lawyers don't know what costs go into their common products. What does a will really cost an office to produce? Every other business knows its costs — and the profit margin to aim at.

Most lawyers haven't thought about what areas of practice make them money. We just work every day and hope we get paid.

Most lawyers know nothing about marketing. If a client came in and said, "I'm opening up an office with no signs indicating what I do, when I am open, or what my product costs," the lawyer would advise the client of impending bankruptcy.

Yet lawyers do much the same thing all the time. When people call the office and ask what a will costs, our staffs are counselled never to quote an amount, as if callers are asking for illegal arms. Would you buy a new car battery from a place that wouldn't give you a price range over the phone?

What other business would continue to expend time for a person who owed money and wasn't making payments?

The point is that "thinking like a lawyer" in most cases is the worst thing that a lawyer can do. Rather, we need to think like the people we serve. Does your office present as you would want your lawyer's office to look? Does everyone in the office treat a client as a welcome guest — and potential employer? Are you giving advice in a way understandable to a seventh grader (the level of communication at which newspapers are written?) Are you thinking like the good business people you represent?

If I could turn back time to the Original Sin, Houseman would be right this time. He would say,

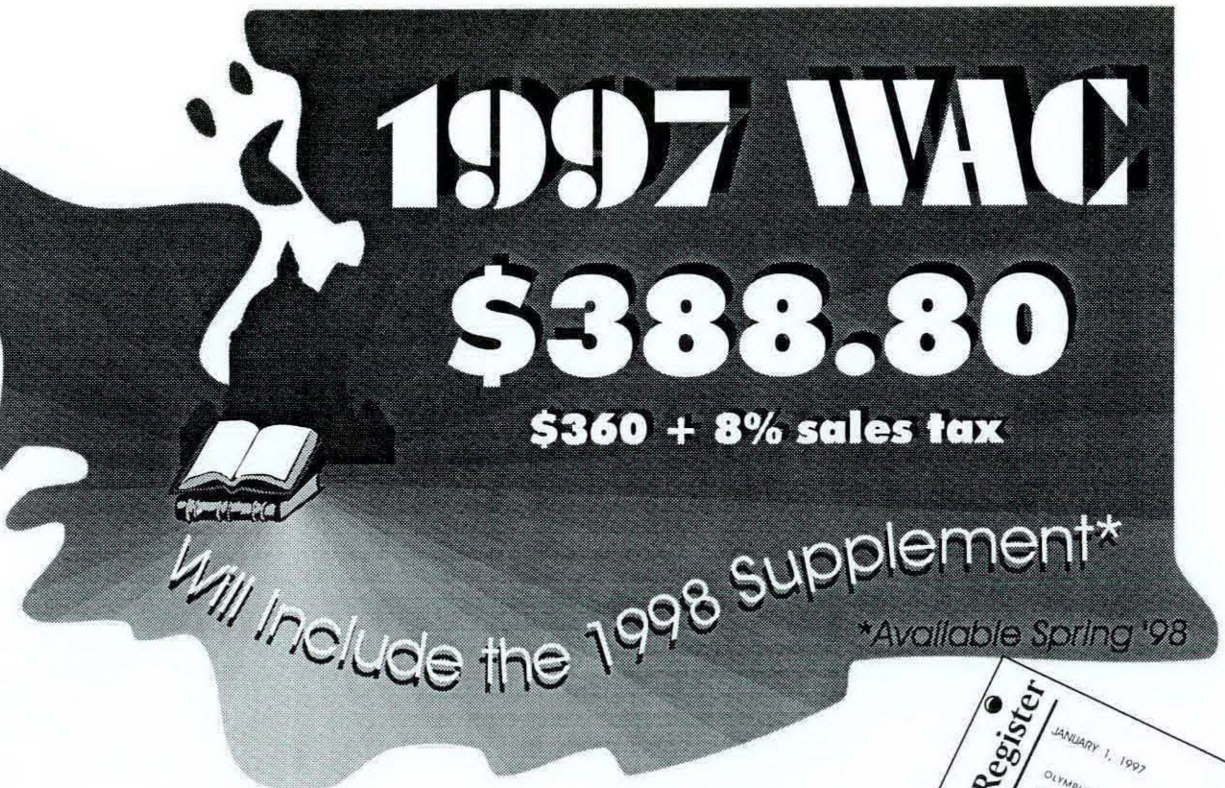
> I am going to take your brains and turn them into mush — and then teach you how to think like a client!

❖ ❖ ❖

Poulsbo attorney ***Jeff Tolman*** *is a frequent* Bar News *contributor.*

Washington Administrative Code

To order, use the form below



If you do not already subscribe to the Register you can add it to your WAC order for $189 *($175+ 8%tax)*

Make checks payable to: Office of the Code Reviser
Send to: PO Box 40552 Olympia, WA 98504

PREPAYMENT REQUIRED

Please send ___sets of the 1997 WAC, at a cost of $388.80 ($360 + 8% tax) per set.

Price to include the 1998 supplement

I would like ____ subscriptions to the 1997 Washington State Register at $189 ($175 + 8% tax) per subscription.

State agencies and out-of state subscribers are not required to pay sales tax

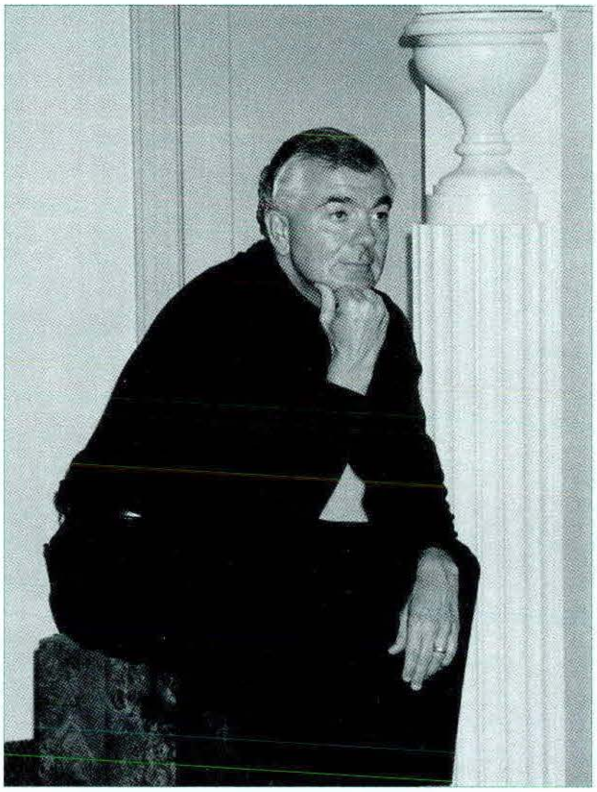
Ship To: ____________________ Attn: __________

Address ____________________ Mail Stop __________

We cannot ship to PO Boxes

City ____________________ St ____ Zip __________

Questions, Questions, Questions



by **Tom Chambers**
WSBA President

The practice of law — whether viewed as a profession or a business — has certainly changed over the centuries. And like so many other institutions, that change has greatly accelerated in the past 50 years.

We at the Bar Association focus on competency, confidentiality and congeniality. So entrenched are we in our dedication to the rule of law and adherence to *stare decisis* that we naturally tend to look backward to discern the meaning of our profession.

I would like to take that familiar look into the past, but instead use it as our vehicle for looking to the future and asking what our profession ought to be.

A Learned Profession

Let's start by looking in a very familiar place: *Black's Law Dictionary*. The 1891 edition tells us that "profession" means:

> A public declaration respecting something. In ecclesiastical law, the act of entering into a religious order. Also a calling, vocation, known employment; divinity, medicine and law are called the "learned professions."

The legal profession, like the other two learned professions — divinity and medicine — required a commitment to the service of others.

The New York Court of Appeals stated in *Matter of Freeman*, 311 N.E.2d 480 (1974):

> A profession is not a business. It is distinguished by the requirements of extensive formal training and learning . . . admission to practice by qualifying licensure, a duty to subordinate financial reward to social responsibility, and notably, an obligation on its members, even in nonprofessional matters, to conduct themselves as members of a learned, disciplined and honorable occupation.

Is this noble concept of a learned profession just a thing of the past?

Ultimate Responsibility

Are we ultimately responsible to the client, to the courts, or to the legal system? When there is a conflict, how is it to be resolved? We are taught that we are to represent our client zealously within the bounds of the law. That's a rather vague standard — and one that my teenage children certainly would have easily found a way around.

Wouldn't we be better off simply to state that our duty is to enforce the body of rules and laws that form our legal system and carefully draft specific exemptions for client representation?

2,000 Billable Hours Per Year

The ABA's Commission on Evaluation of Professional Standards asked a question of its own in the introduction to its report ". . . In the Spirit of Public Service: A Blueprint for Rekindling Lawyer Professionalism." Back in August 1986, the commission mused:

> Has our profession abandoned principle for profit, professionalism for commercialism? The answer cannot be a simple yes or no. Lawyers, like any other group of citizens, are affected by the mores of the time.

Consider what today's brand new lawyer faces: expectations of a large income coupled with unprecedented student loan debt. Today's law firms, meanwhile, face increased overhead and that same — often unrealistic — income expectation. The combination has everyone looking at the bottom line.

Given the nature of the services lawyers provide, the only apparent solutions are increasing the hourly rate or increasing the number of hours billed. Often the solution is to do both.

The overwhelming number of billable hours required of lawyers — especially new lawyers — casts a pall over their lives. The work load can obscure the principles and ideals that enticed most of us to law school in the first place. We have reached the point of oversaturation in both fees and billable hours.

Where do we go from here?

Corporations Hiring Corporations

When I was called to the Bar, there were two types of lawyers: sole practitioners and partners. Now we have shareholders. Don't get me wrong — I have nothing against corporations. I myself have practiced as a professional service corporation. It's just that it changes the image for me.

Corporations do not have emotion. I believe their purpose is to limit liability and increase profit. Yes, I realize that the individual lawyers who are shareholders have emotions. I know that they are ethical people. But in the public eye, one corporation hiring another corporation to do legal work does not convey the same image as the esteemed country lawyer.

Have we gone too far in the business of being lawyers? Where will it end?

Solicitation — Embrace It or Ban It

Our once-strict rules barring solicitation have been criticized as an attempt by the established members of the Bar to prevent newcomers — particularly immigrants — from competing. Maybe that was wrong. I know that I will never accept predatory solicitation that targets accident victims or those who have recently suffered a death in the family.

We lawyers now have business free speech, corporate entities and other trappings of the business world.

Should we embrace advertising and other forms of solicitation and establish standards of advertising etiquette for ourselves?

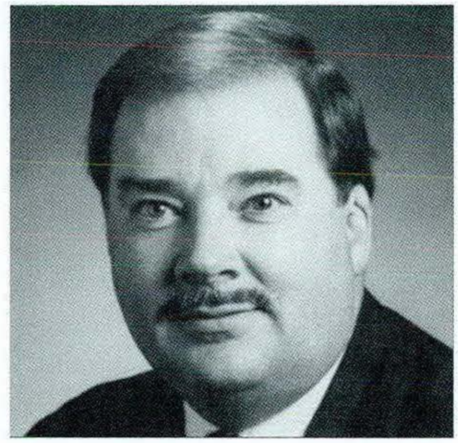
Unless There is Justice for All, There is No Justice

How do we match resources with needs? Anecdotally, it would appear that there are lawyers unable to find work with existing firms or agencies. At the same time, we know that many residents of our state need — but cannot afford — legal representation. The free market has not solved this problem.

How do we match the needs of lawyers, particularly new lawyers entering the profession, to the unmet need for legal services for middle- and low-income citizens?

These are tough questions, but we must never stop asking what ought to be.

Tyranny of the Majority — Let's Get the Judges!



Dennis P. Harwick

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

I usually don't use this column as a soap box, but . . . I am horrified at the most recent wave of judge-bashing. It seems more than the usual anecdotal "can you believe what this judge did?" kind of criticism. It appears to be an orchestrated attempt to attack the very foundation of our system of government — the balance of power inherent in having three branches of government with separate powers and functions.

Some people may think I'm making this up, but . . . there was a serious attempt to overturn *Marbury vs. Madison* in the recent legislative session. It was named, interestingly enough, the "Balance of Powers Restoration Act." Yes, the legislature would simply pass laws and declare them constitutional. If a court happened to rule that the law wasn't constitutional, the legislature could simply overrule the court — even when the legislature wasn't in session! Next there was a memorial introduced "petitioning Congress and the President to support a Constitutional amendment to limit the federal judiciary's ability to increase taxes." I suspect that most federal judges will be surprised to find out that they had the power to increase taxes! Finally, there's a novel approach in Congress. If you don't like a federal judge's ruling, impeach him or her for "high crimes and misdemeanors"!

Others, more articulate than I, have explained the folly of such efforts. My favorite comes from Robert Bolt's play "A Man for All Seasons" about Sir Thomas More, who was then serving as Lord Chancellor of England. More's family pleads with him to use his power to arrest a former friend who is on his way to the king to betray More. More refuses to use (or abuse) his power because, however evil the former friend might be, he has committed no crime. More's son-in-law argues that, to catch the devil, he (the son-in-law) would cut down every law in England. More responds by comparing laws to trees:

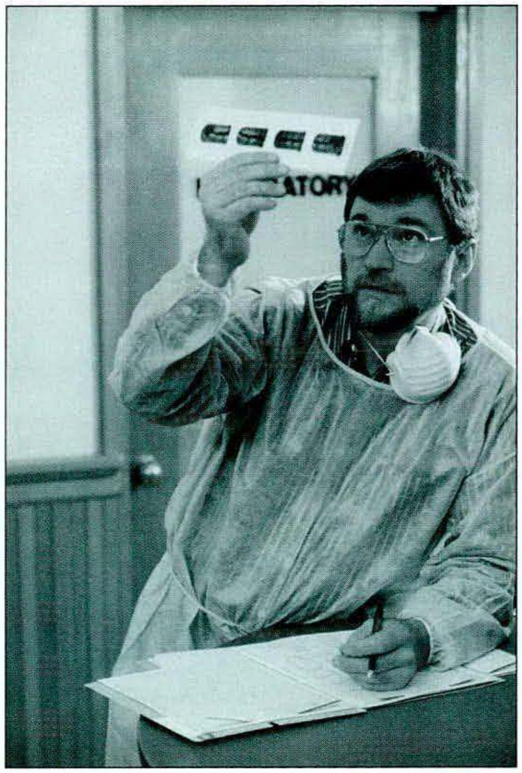
"Oh? And when the last law was down, and the Devil turned round on you — where would you hide, the laws all being flat? This country's planted thick with laws from coast to coast . . . and if you cut them down . . . d'you really think you could stand upright in the winds that would blow then? Yes, I'd give the Devil benefit of the law, for my own safety's sake."

In our system of government, judges are like trees. They shelter us from unjust winds — the winds of majority opinion. But the winds change, and those who were once in the majority deserve the protection of the judiciary from unjust (and unconstitutional) laws.

For our own safety's sake, let us preserve the independence of the judiciary. Let us resist the temptation to cut down the trees when the winds blow our direction. The winds will shift.

Scoping Out the Medical Record: The Key to Understanding Medical Care

by **Elliott B. Oppenheim,** *M.D., J.D., LL. M. Health Law*



Medical licensure requires a practitioner to practice medicine according to the standards of the profession.[1] All jurisdictions require practitioners to generate medical records. Litigating medical issues frequently involves interpretations of what in the medical records, aside from personal recollections, are the remnants from the patient care episodes.[2] None of the sights, sounds or feelings of any of the persons involved persist in perpetuity, and the only reliable record of the incident in question are the medical records.

The key to understanding the medical record in litigation where the medical condition is at issue is to learn to spot inconsistencies within the medical record. This is critical in the areas of medical negligence, social security, personal injury, labor-related injury, product liability and even in probate work and in some family law contexts. In order to analyze departures from the standard of care in medical negligence litigation, for instance, you must be able to find the medical inconsistencies in the record.

Whether your case is a medical malpractice matter or one where the significance of medical records remains at the evidentiary periphery, you will best serve your client if you approach the record analysis with a methodical and objective eye. You must know what should be in the record, what may be missing, what the records really mean and what the records fail to state.

Most medical records are accurate and valuable,[3] and most practitioners are excellent. In general, for most medical litigation where the care itself is not at issue, there will be no concerns over the medical record. The system would grind to a halt if this weren't the case. When written contemporaneously, to a great degree these records actually reflect what was done in the patient's behalf. They are "kept in the course of the regularly conducted activity"[4] and constitute the best evidence.

During the course of a hospital stay,[5] however, ten or more persons may make entries into the records in varying capacities. Several years later, when the care is called into question, it may be very hard to find out not only who actually created the precise document but also upon what factual basis they made their entry. Often sub-agents have made important entries into the record memorializing events which they really learned about vicariously.

Records actually belong to the practitioner, but the practitioner must make them available to the patient or must permit inspection, copying or transfer, when requested or required for other legitimate purposes under certain circumstances.[6] The rules and regulations vary from state to state.[7] Always have the client obtain *all* medical records within the period covered by the statute of limitations and have him do this himself (or at least, even with your help, without using your letterhead or authority). Later on, if litigation commences, you should compare every record the patient obtained with every record subsequently obtained in a comprehensive discovery process. Discrepancies, alterations and additions to the record then become obvious. Obtaining a clear, accurate, unedited version of the record forms the heart of the plaintiff's case.

Whether well-founded or not, physicians harbor general enmity for legal machinery and often make what they term *medical-legal* entries.[8] Through this misperception, some physicians clutter the record with long and detailed exculpatory notes which eventually operate as admissions against interest, or they write frankly deceptive, sanitized versions of facts which are inconsistent with the nurses' notes. Some practitioners write nearly nothing under the theory that if little is in the record, then there will be little about which *those lawyers* can complain. These practitioners discover that their plans are easily foiled when a knowledgeable analyst examines the records.

There are several technical problems the outsider confronts with medical records. They are generally poorly written in confusing and illegible scrawls, and even when they are well-typed, there is a language problem. Medicine has developed its own precise technical language and its own shorthand. Another daunting matter is that of sheer heft: a recent record I reviewed was in excess of 3,000 pages.

The first task is to understand the area of medicine involved, and the best way is through immersion. Identify the clinical area and begin reading. It is unnecessary to spend a fortune on expensive medical texts in order to understand medicine for litigation purposes. There are a number of excellent books which are not as expensive as major texts and easier to read. I often recommend *Current Medical Diagnosis & Treatment* and *Current Emergency Diagnosis & Treatment*.[9] In addition, there are a number of books designed for nurses and paraprofessionals which contain medical abbreviations.

The second task is to understand what is in the record. Much of what appears in the chart reflects how much a practitioner *cares* about patient care. Does the record, in general, reflect impeccable care or incredible chaos? Let your impressions guide your analysis, and you will find you are probably correct. Doctors who care about the patient tend to behave in an orderly fashion.[10]

First, sequentially number and tab the record by document type and document source.[11] Similarly, arrange the billing sheets and correlate that which was billed to that which appears in the record. It is not unusual to uncover very important bits of evidence in this process. Tab or label each major division in the record: Admission history and Physical; Surgical Report; Pathology Report, etc. Then you should see whether the clinicians followed through on clinical plans, ordered medicines consistent with the diagnosis, and whether the nurses' notes conflict with physician observations.

In the early 1970s Dr. Lawrence Weed[12] transformed medical record-keeping with his "SOAP" system. Prior to Weed, physicians kept notes sections organized under the following categories: Chief Complaint,[13] History of Present Illness, Physical Examination, Diagnosis, Lab and Disposition. The national variations were numerous, and there was no step in which the process was self-auditing either within a visit or with other visits. Under the

"Does the record, in general, reflect impeccable care or incredible chaos?"

former system, a whole jumble of signs, symptoms, lab data, plans and medications would be thrown into one note. Weed developed "problem-oriented medical records" recording,[14] where each problem was divided and scrutinized as Subjective,[15] Objective,[16] Assessment[17] and finally, Plan.[18] The modern record should comport to SOAP.

The hospital record begins with an identification sheet which is actually completed in three stages: upon admission, at discharge and again when the medical records custodian certifies that the chart is complete and files the chart into the hospital medical records repository. This important document is called the "face sheet" and contains all of the personal patient information, discharge diagnoses, whether or not there were complications, and finally, an attestation that this chart was checked by the attending physician as complete and that it meets all state and federal requirements.

Attending physicians sign these routinely and give this little thought. One may learn the identity of all consultants who treated the patient as well as all the diagnostic-related grouping codes and diagnoses. No hospital chart is complete without it, since it is required by the various regulatory bodies who oversee hospital care at state and federal levels. Identify the attending physician: he is the captain of the ship.

In a complete hospital chart, the next sequential sheet is the discharge summary which should be dictated and transcribed on the same day as patient discharge. There are "D&T" notations in the lower right or left of most hospital-created dictated documents. These reflect the dates the document was dictated and transcribed. If a patient was discharged on February 1 but the discharge summary was not done until June 1, the physician was forced to recreate the discharge summary from his memory based upon the hospital chart. When that occurs, the discharge document may dimly reflect the care rendered.

Typically, the discharge summary is dictated along with a pile of other incomplete charts and, if the physician is a procrastinator, this too will receive little attention to detail. Generally, careful physicians do not get into negligence trouble; hurried and confused doctors do. Good doctors know how important these documents are and dictate these right after signing the discharge orders, on the same day at the same time. They sit down with the chart and review the care and treatment, note incomplete information[19] and create a careful rendition of all surgeries, consultations, a review of the lab, and a general overview of the course of treatment. When care has resulted in tragedy, it is in this document that the practitioner will make exculpatory explanations and shift blame around. Correlate the events in this record to those reflected in the clinical chart and note serious discrepancies. Look for self-serving statements. Note, also, if the discharge summary was dictated by a resident rather than the attending physician. Attending physicians frequently delegate this important task and, since statements here can operate as admissions against interest, correlation of this document with others is an important step to complete chart analysis.

Consent forms typically follow the discharge summary and are executed upon admission of the patient to the hospital and at each turn of events when procedures or operations become necessary. If a death has occurred, the consent for autopsy is included here. Carefully read these consent forms, since they frequently have boxes where important information should have been presented to the patient but where the patient waived options with no explanation. These consents are frequently signed when serious clinical deterioration forces the physician's hand. The consent is placed into the patient's hands with little more than, "If you want us to operate, sign this."

If an autopsy was requested by the family but this was not done, the reason will appear on the autopsy consent form.

Clinical sheets are the day-to-day notations about patient conditions. There is wide variation among hospitals and health care systems with respect to these forms, but these represent the software necessary to take care of patient care. Joint Commission of Accreditation of Healthcare Organizations rules require that there be a physician visit for each day the patient is in the hospital. There should be notes which include the nursing admit forms, physician history and physicals, [20] pre-surgical anesthesia consultation and a whole host of other paraprofessional care giver evaluations. [21] All of these forms are required by various accrediting agencies.

In a dictated "H&P," look for the D&T notations and who made them. A medical student should not be the one dictating an H&P without substantial direct supervision. Note date, time and substantive inconsistencies. Correlate all facts to the other notations in the chart looking at all times for consistency and inconsistency.

"The consent is placed into the patient's hands with little more than, "If you want us to operate, sign this."

Progress notes are made daily by physicians and at least at every shift change by nurses. There are at least two ways for physician- and nurse-generated notes to appear in the hospital record: independently, in separate sections; or together, a multi-disciplinary format. Nursing notes may best reflect what really happened[22] and it is not unusual to resolve physician inconsistencies through nurse insights.

Look for medical gibberish and confusion. Physician progress notes should be legible but frequently are not. They should be signed and dated, and then co-signed in a teaching institution. This seldom happens. Physicians are imperfect and they perform imperfectly. Look for words such as "*idiopathic*,"[23] "*idiosyncratic*"[24] and "*iatrogenic*."[25] The presence of these words can mean that the physician or staff messed up.

In order to satisfy state and federal law, hospital procedures and bylaws, and the rules and regulations of all accreditation agencies, everything a patient undergoes will be recorded in the hospital setting by a form. If not, all events should be memorialized in progress notes or in nursing notes. This includes operative reports, pathology reports, all laboratory and e-ray procedures. At a minimum, these forms should tell what the procedure was, when it was performed, by whom and what the result was, and it should be time/date stamped or noted. In the case of operative reports, always look for the D&T notation.

Two forms require special attorney attention: the physician order form and the medication administration sheet. These should correlate exactly. In order to help patients, nurses carry out physician orders. State law, hospital rules and accreditation agencies mandate that nurses may do nothing unless expressly ordered by the physician[26] or unless impliedly authorized to act. The physician writes an order and the nursing staff implements the order. These two forms must coincide.

The federal government controls narcotics and other substances, and nurses sign these out in a narcotic administration log. To not do this violates federal law and nurses are careful to meet these requirements, since a failure here also violates professional licensure rules.[27] The amounts, times, routes and orders must be consistent and must correlate exactly to the physician's order record, the nursing medication administration record and the narcotics log.

Vital sign sheets and special care sheets remain at the end of the chart. These are continuously created and reflect the vital signs documented according to the intervals the physician has specified in the order sheet. Physical therapy, respiratory therapy and dietitian notes are found here as well as other ancillary services such as hospice, social services and pastoral care. All of these require physician orders or patient request. If no order appears, or no patient request appears, the tasks were probably not done and could not be done lawfully, despite what the physician may later say at deposition and trial. Oral orders must be written eventually. Otherwise there is the potential for care with no documentation.

In general, all laboratory analyses and treatments should seamlessly interweave, and there should be no inconsistencies. There should be no ambiguities over who, what, when, where or why treatment was administered. Everything should meticulously correspond to the billings and this congruity extends to all dates and times.

As mentioned, nurses tend to take great care in making chart entries and seem to do so contemporaneously. Therefore, if a physician bills a *comprehensive* fee[28] for a ten-minute social call, that time notation in the nurse's chart will not support the physician's assertion that he spent an hour explaining fully all the complications of the intended treatments. Nurses generally also note who visits the patient. It is possible to then know whether a family member was in attendance when disaster struck or who was in the room when the physician later avers he gave an informed consent.

When questioned patient care is complicated or when a chronology becomes important, a basic chart of events can help reveal trends and deficiencies in much the same way that a diorama assists in understanding a crime scene. Use charts and graphs for lab values, times of treatments, temperatures, administrations of blood or medicines. There is no better way to *show* the data than by charts and graphs.

If something really goes sour in medical care in the hospital, often there will be an incident report created by each involved care giver. Paradoxically, these are not part of the medical record. You may obtain these through requests for production of documents if you suspect that they exist.

In summary, here are the ten most important points to remember in competently mining the medical record:

1. Always ask the plaintiff (or personal representative) to obtain all medical records directly from the health care provider at the earliest opportunity.
2. Compare patient-obtained records to the ones obtained through *subpoena duces tecum.*
3. Assume all records have been laundered or in some way altered.[29]
4. Remember, if it is not in the medical record, in general, it did not happen.
5. Always compare nursing notes to physician notes.
6. Remember that messy records frequently are created by a confused practitioner.
7. Chart complicated clinical courses and data.
8. Read about the clinical entries in a review book, not in a major text.
9. Always compare the dates of patient care with the date when documents were dictated and transcribed.
10. Present your medical cases to experts who understand something about tort law, or plan to spend time educating them in this area.

A final note: When attorneys litigate in the medical area, they are obligated to become knowledgeable or to refer the case to someone who is capable and who has the interest to undertake the representation. This recommended degree of preparation will at a minimum increase any attorney's medical knowledge and may promote and permit an attorney to begin to undertake medically related cases. While none of the techniques require medical expertise in terms of clerical skills, medical record chart analysis requires great skill and experience. For a definitive understanding after the initial attorney evaluation, it's time to call the doctor.[30]

Endnotes:

[1] *Pike v. Honsinger*, 49 N.E. 760 (N.Y. 1898). A horse kicked Pike and broke his kneepan, the patella.

> A physician and surgeon, by taking charge of a case, impliedly represents that he possesses, and the law places upon him the duty of possessing, that reasonable degree of learning and skill that is ordinarily possessed by physicians and surgeons in the locality where he practices, and which is ordinarily regarded by those conversant with the employment as necessary to qualify him to engage in the business of practicing medicine and surgery.

[2] *See McCord v. Maguire*, 873 F.2d 1271 (9th Cir. 1989); *Toth v. Community Hosp.*, 239 N.E. 2d 368 (2nd Cir. 1968); *DiFilippo v. Preston*, 173 A.2d 333 (Del. 1961).

[3] Medical records are admissible in Washington under R.C.W. 5.45.020. Three cases are interesting to read for a fundamental understanding of this area: *State v. Heggins*, 55 Wash. App. 591, 779 P.2d 285 (1989) (admissibility of autopsies); *State v. Garrett*, 76 Wash. App. 719, 887 P.2d 488 (1995) (hospital records admissible, but otherwise inadmissible material remains inadmissible); *Benjamin v. Havens, Inc.*, 60 Wash. 2d 196, 373 P.2d 109 (1962).

[4] Fed. R. Evid. 803(6).

[5] What follows here relates to in-hospital care. The evaluation of care rendered in the doctor's office or in facilities outside of a hospital is more difficult, since federal, state or professional statutes, rules or regulations do not have the same regulatory teeth as with hospitals. To the practitioner, it may appear as if "no one is looking." Office record-keeping need not fulfill Joint Commission on Accreditation of Healthcare Organizations standards or American Hospital Association guidelines. Doctors avoid most stringent Medicare/Medicaid documentation mandates (with the exception of the documentation necessary to fulfill audit requirements to support billing), or, in most cases, specialty board standards, and in the office setting practitioners evade the peer review process imposed by hospital bylaws.

[6] Physicians have tried to keep medical records from patients to avoid suit, and at

one time this practice was upheld in some courts but, fortunately for medical consumers, this is not the generally followed modern rule. Records are available as a result of legislative action and various court decisions.

[7] In *Hospital Law Manual*, University of Pittsburgh Health Law Center, 1962, Section 12, 12A. In New York state, as an example, the applicable statute requires a turnover of medical records only to another doctor or hospital, but, "it shall be unprofessional conduct to fail to make available to a patient . . . copies." Title 8, Section 29, 2(a)(6) N.Y. Comp. Codes R & R.

[8] If plaintiff attorneys could spend some time in the physician's surgical lounge, they would better appreciate how much record-keeping is devoted to avoiding *those lawyers*.

[9] Steven Schroeder, *et al., Current Medical Diagnosis and Treatment* (Appleton-Lange). These books are written for quick reference and contain criteria for diagnoses and treatments. They are not as comprehensive as the major tomes, but they cost 50% less, are readily usable, and present unambiguously the standard of care. Appleton-Lange: 800-451-3794.

[10] Don't confuse penmanship with the content. Most practitioners who *care*, however, write clearly in order that others may read what is written. Clear charting enhances patient care and patient safety.

[11] Type: Admission H & P; Lab; x-ray; Discharge Summary.
Source: St. Bob's Infirmary; Ambulance Service; City of Ralph Memorial Hospital.

[12] Blanchard, "Will You Switch to Problem-Oriented Records," 7 *Patient Care* 59-65 (1973).

[13] Why the patient came to the doctor's office.

[14] POMR.

[15] What bothered the patient.

[16] What the physician observed, including laboratory analyses.

[17] What were the diagnoses with respect to *that* problem.

[18] All management strategies including medicines, therapies, consultations, and follow-up.

[19] "At the time of this dictation, the pathology report from XXX is missing."

[20] In a teaching institution it is not unusual to see medical and nursing student admission forms, intern/resident admission forms, senior resident admission notes, and finally an attending note. The attending may ratify the work of the students and residents by a signature.

[21] For instance, respiratory therapy, physical therapy.

[22] There are several reasons this is true. Nurses, as hospital agents or physician agents, are rarely held liable for medical errors. Nurses not infrequently create contemporaneous notes rather than notes which would retrospectively cover care. Another reason: there is a professional antagonism between the two professions, and nurses may make notations which inculpate the physician or which portray the medical condition in such a way that critical review would inculpate the physician.

[23] Unknown cause.

[24] Very unusual.

[25] Induced inadvertently by a physician or his treatment.

[26] There are some changes in this regard which may allow nurses some autonomy, but it is unusual in the hospital setting. Nurses may provide patient care only pursuant to physician order.

[27] *See United States v. Green*, 511 F.2d 1062, (7th Cir. 1975); and also Federal Controlled Substances Act, 21 U.S.C. Section 801, *et seq.*

[28] This service visit should take 45 minutes or more.

[29] Spoliation of evidence is rampant in medical care. *See* Elliott B. Oppenheim, *Before and After: Spoliation of Evidence in Medical Negligence Litigation* (Terra Firma 1996).

[30] As with any area of technical analysis, the more experienced the analyst, the better the result.

✣ ✣ ✣

Dr. Elliott B. Oppenheim *practiced family and emergency medicine for nearly 20 years, then obtained a J.D. from Detroit College of Law, Michigan State University (1995) and an LL. M. in Health Law from Loyola University Chicago, School of Law, Institute of Health Law (1996). He graduated from University of California, Irvine School of Medicine, (M.D. 1973). He consults and writes in the areas of medical negligence litigation and health law.*

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

ACCESS TO JUSTICE UPDATE

The May 2-3 meeting of the Board of Governors was topped with reports from several committees of the Access to Justice Board.

Nancy Isserlis gave an overview report on the activities of the Access to Justice Board and related groups, and thanked the Board for help on getting the ATJ Board reauthorized as a constituted board. She reported that the restructuring of the framework and landscape of legal services within Washington state is complete, and the Washington plan is viewed nationally as a model toward which other states can strive. Ms. Isserlis reminded the Board of the Access to Justice Conference to be held concurrently with the Board of Governors meeting in Yakima the weekend of June 20-22.

Cindy Imbrogno reported on the work of the "systems impediment" committee toward preventing erosion of processing systems already in place in the legal services arena. She also reported on a new "accountability standards" committee which will hold legal service providers to statewide quality standards.

Jim Bamberger of Columbia Legal Services reported on the process involved in passing this year's legal services funding legislation. Highlights include reaffirmation of a bipartisan support for legal services, bipartisan legislative oversight committee which will give the chance to have ongoing dialogue with legislative representatives, a new ability to use state funds more flexibly to represent clients in the manner which is best for the clients, an affirmative recognition and deferral to separation of powers concepts (and no interference with attorney ethical guidelines of representation), expansion of a category of programs which qualify as Access to Justice providers, and new flexibility to decide which provider can best serve the clients' needs.

Sally Pritchard reported on the federal welfare reforms which will negatively impact on approximately 49,000 legal immigrants in this state, beginning in August. She talked about innovative methods for getting information out to the immigrant population, such as targeting English-as-second-language and citizenship classes.

Mary Seagrave reported on programs to reach out toward single-parent groups, family shelters and neighborhood centers which are likely to include single parents especially hard-hit by the welfare reform changes. She also discussed work on a regional service delivery plan to be implemented when the worst of the welfare cuts begin.

Pat McIntyre from the Northwest Justice Project discussed the placement of offices throughout the state and establishment of the CLEAR (Coordinated Legal Education, Advice & Referral) program in 21 counties with plans to expend into many other counties. The Board endorsed the Northwest Justice Project's application for funds from the Federal Administration on Aging to implement a statewide seniors' hotline integrated with the CLEAR system.

FINAL LEGISLATIVE REPORT

Ellen Conedera Dial gave a final update on action in the legislative session which just ended, including the passage of the following bills:

• Substitute Senate Bill 5107, An act relating to consent provisions under the Washington Business Corporation Act;

• Senate Bill 5108, an act relating to the transfer of a community property interest in an individual retirement account at death;

• Senate Bill 5109, an act relating to the dissolution of limited liability companies caused by the loss of members;

• Substitute Senate Bill 5110, an act relating to probate;

• Substitute Senate Bill 5121, an act relating to the waiver or cancellation of interest or penalties for certain estate tax returns;

• Engrossed Substitute House Bill 2276, an act relating to civil legal services;

• Engrossed Substitute House Bill 2259, an act relating to fiscal matters (which contained a $6.8 million budget for legal services, an increase of two million dollars over the present level); and

• Engrossed House Bill 1821, an act relating to consolidating business and occupation tax rates into fewer categories (which rolls the services B & O tax rate back to 1.5, the 1993 level, effective July 1, 1998).

Governor Terry Lee thanked Ms. Dial, John Fattorini and members of the legislative committee for their tireless efforts during the past few months.

Wayne Blair reported on the legislative activities of BAR-PAC, a WSBA political action committee which provides financial support to legislative candidates. The Board engaged in an open-ended discussion as to whether BAR-PAC should continue to exist, how the committee functions and whether there should be a closer relationship with the Board. Governor Ehrlichman thanked the BAR-PAC committee for their efforts during this year's legislative session.

APPOINTMENTS

The Board accepted the resignation of Governor Pat McMullen, who is resigning in order to devote more time to his family. William Nielsen was appointed to fill the second district vacancy.

The Board reappointed Paula Boggs as a state bar delegate to the ABA House of Delegates, and appointed Pamela Cairns and Tate London to fill the remaining state bar delegate vacancies in the House of Delegates.

The Board also nominated Marlin Appelwick, Paul Bastine and Isabel Safora to the Supreme Court for reappointment to the Access to Justice Board.

The Board appointed Mike Larson, Frank Slak, Brian Lane, Vicki Norris and Barbara Harris to a Committee to Study Reciprocity (between bar associations of various states and Washington).

GOOD GUY APPEARANCE

Washington State Supreme Court Justice Richard Guy made a brief appearance to discuss the Supreme Court's determination to meet with the Board more often to have candid, meaningful dialogue. He emphasized the court's dedication to Access to Justice issues at every level of the judicial system. He briefly described a study which the Court has commissioned on judicial structure and state funding in a "unified" judicial system (for example, where there is a single trial court rather than layers of trial courts). Governor Whitson expressed the Board's concerns regarding the unauthorized practice of law, and suggested that getting too far ahead of the Bar Association and Family Law practice section may cause a "backlash." Justice Guy replied that it is not fruitful to deny the realities of family law practice and *pro se* litigants. When questioned by Governor Lee on the Court's stance on reciprocity of bar membership between Washington and other states, Justice Guy voiced his doubt that court reaction would be unanimous in any direction.

In a related development, Governor Steve Crossland reported on the need of the Board to have a discussion with the state Supreme Court on defining the "practice of law" so that an exact determination of what is the "unauthorized practice of law" can be developed.

BAR LEADERSHIP CONFERENCE

Marijean Moschetto gave a report on the Bar Leadership Conference, which is scheduled to coincide with the Board's June 20-21 meeting in Yakima. The Board discussed ways to maximize Board participation in the Bar Leadership conference.

AMENDMENT TO CLARIFY JUDICIAL/BAR STATUS

The Board voted to amend WSBA Bylaw Art II, section 3 ("Judicial Members") to make clear that judges of federal, district and municipal courts may qualify for judicial membership status. The Board also amended the same bylaw to reflect the fact that all full-time commissioners and magistrates of these courts may also qualify for judicial status.

SECTION AND COMMITTEE NEWS

The Board approved a policy proposed by Governor Don Powell that a WSBA section shall be authorized to expend all money as budgeted without prior approval by the board, provided the section has paid or is in full compliance with the budget for all pro-rata expenses to the WSBA, the expenditure is within the goals of the WSBA as defined by supreme court rules or the WSBA bylaws, the expenditure does not violate the restricted acts of the WSBA or section bylaws and the expenditure is reasonably related to the subject matter of the section.

The Board also approved an *ad hoc* Electronic Communications Committee starting in September for one year, to discuss CLE dissemination, web site development, electronic imaging and communication via electronic means.

FEBRUARY BAR EXAM RESULTS

Bob Welden announced that results from the February bar exam were in, and of the 425 applicants who took the exam, 328, 77.2 percent, passed.

GONZAGA LAW SCHOOL

Dean John Clute from Gonzaga Law School reported on a series of racial harassment incidents at the law school, apparently aimed at African American law students. While the perpetrators have yet to be identified, the Dean noted that positive things have come out of the series of incidents, including the forming of task forces of racial diversity and understanding, a community "congress" on race relations, and a law school internal study into modifying curriculum to accurately reflect history and cultural differences.

EXECUTIVE SESSION

The Board met in two lengthy executive sessions to discuss disciplinary, litigation and personnel matters.

WSBA Presidential Selection Notice:
See page 57

Average Coupon Equivalent Yields from the Auction of 26-week Treasury Bills: 1987 to Date

These are the average coupon equivalent yields from the auction of 26-week treasury bills from December 1986 to date. The highest rate of interest permissible under RCW 19.52.020(1) is computed by the addition of four percentage points or is 12% per annum, whichever is higher.

The yields shown on the chart are those applied to the month shown, computed on the coupon equivalent for the first market auction average in the month preceding, as specified in the statute.

These limits apply to loans which are made during the designated month. Note: Any loan made pursuant to a commitment to lend at an interest rate permitted when the commitment is made is lawful.

The average coupon equivalent yield from the first May 1997 auction of 26-week treasury bills applicable to the computation of the maximum allowable interest rate for June 1997 is 5.60 percent. According to the state treasurer's office, the maximum allowable interest rate for June 1997 is 12%. Note that when the equivalent bond yield is below 8%, the maximum interest allowable remains at 12%.

MONTH	YIELD	RATE
1987		
January	5.69%	12.00%
February	5.79%	12.00%
March	5.83%	12.00%
April	5.76%	12.00%
May	6.07%	12.00%
June	6.46%	12.00%
July	6.40%	12.00%
August	5.95%	12.00%
September	6.45%	12.00%
October	6.66%	12.00%
November	7.33%	12.00%
December	6.55%	12.00%
1988		
January	6.42%	12.00%
February	6.67%	12.00%
March	6.41%	12.00%
April	6.20%	12.00%
May	6.21%	12.00%
June	6.41%	12.00%
July	7.05%	12.00%
August	7.04%	12.00%
September	7.52%	12.00%
October	7.79%	12.00%
November	7.86%	12.00%
December	8.13%	12.13%
1989		
January	8.73%	12.73%
February	8.86%	12.86%
March	9.04%	13.04%
April	9.18%	13.18%
May	9.38%	13.38%
June	9.16%	13.16%
July	8.44%	12.44%
August	8.05%	12.05%
September	8.12%	12.12%
October	8.31%	12.31%
November	8.36%	12.36%
December	7.89%	12.00%
1990		
January	7.69%	12.00%
February	7.93%	12.00%
March	8.15%	12.15%
April	8.22%	12.22%
May	8.24%	12.24%
June	8.28%	12.28%

MONTH	YIELD	RATE
1990, continued		
July	8.03%	12.03%
August	8.01%	12.01%
September	7.56%	12.00%
October	7.75%	12.00%
November	7.59%	12.00%
December	7.41%	12.00%
1991		
January	7.31%	12.00%
February	6.92%	12.00%
March	6.91%	12.00%
April	6.36%	12.00%
May	6.06%	12.00%
June	5.87%	12.00%
July	5.98%	12.00%
August	5.98%	12.00%
September	5.85%	12.00%
October	5.63%	12.00%
November	5.30%	12.00%
December	5.00%	12.00%
1992		
January	4.56%	12.00%
February	4.00%	12.00%
March	4.08%	12.00%
April	4.28%	12.00%
May	4.16%	12.00%
June	3.91%	12.00%
July	3.84%	12.00%
August	3.42%	12.00%
September	3.40%	12.00%
October	3.00%	12.00%
November	2.86%	12.00%
December	3.37%	12.00%
1993		
January	3.57%	12.00%
February	3.38%	12.00%
March	3.19%	12.00%
April	3.14%	12.00%
May	3.13%	12.00%
June	3.07%	12.00%
July	3.32%	12.00%
August	3.32%	12.00%
September	3.35%	12.00%
October	3.12%	12.00%
November	3.17%	12.00%
December	3.35%	12.00%

MONTH	YIELD	RATE
1994		
January	3.37%	12.00%
February	3.39%	12.00%
March	3.51%	12.00%
April	3.88%	12.00%
May	4.16%	12.00%
June	4.57%	12.00%
July	4.70%	12.00%
August	4.92%	12.00%
September	4.93%	12.00%
October	5.08%	12.00%
November	5.61%	12.00%
December	5.93%	12.00%
1995		
January	6.63%	12.00%
February	6.73%	12.00%
March	6.38%	12.00%
April	6.29%	12.00%
May	6.18%	12.00%
June	6.12%	12.00%
July	5.59%	12.00%
August	5.71%	12.00%
September	5.64%	12.00%
October	5.54%	12.00%
November	5.62%	12.00%
December	5.53%	12.00%
1996		
January	5.42%	12.00%
February	5.25%	12.00%
March	4.99%	12.00%
April	5.00%	12.00%
May	5.26%	12.00%
June	5.35%	12.00%
July	5.43%	12.00%
August	5.43%	12.00%
September	5.34%	12.00%
October	5.61%	12.00%
November	5.28%	12.00%
December	5.29%	12.00%
1997		
January	5.24%	12.00%
February	5.32%	12.00%
March	5.00%	12.00%
April	5.40%	12.00%
May	5.52%	12.00%
June	5.60%	12.00%

Digital Signatures Come to Washington

by **Scott G. Warner**

Most lawyers have probably used some form of computer network to communicate with clients, perform legal research or send or receive electronic mail. This may be in the form of dedicated inter- or intra-office networks. Or, more than likely, the Internet. More and more, this form of communication is supplementing, if not replacing, more traditional telephone and paper based forms of communication. In fact, not a day goes by without a newspaper or magazine article or television commentary heralding the arrival of the "paperless office," the "Net" and the dawning of a new business model called "electronic commerce."

Despite all the talk, however, it is not clear how much real business is actually getting done on-line. Indeed, Thomas J. Smedinghoff, chair of the Electronic Commerce and Information Technology Division of the ABA Science and Technology Section, described electronic commerce as "analogous to teenage sex in the sense that everybody says they are doing it, but not that many people really are . . . and those that are, aren't doing it very well."[1] While it may be true that "electronic commerce" is still relatively rare, the speed and ease of electronic communication make it inevitable that more and more business will be transacted electronically. However, before this occurs on a wide scale, several hurdles must be overcome. For example, it will be necessary to (a) establish technical standards to allow interoperability among platforms; (b) harmonize trade policies to eliminate legal barriers to global electronic commerce; (c) develop security measures to ensure the authenticity and integrity of paperless transactions; and (d) create a legal framework to recognize electronic transactions in general, and electronic signatures in particular.

In an effort to speed this process along, at least twelve states are developing or have already implemented legislation relating to the authentication and legal standing of electronic commerce. For the most part these efforts have followed the recommendations contained in the October 1995 Draft Digital Signature Guidelines (the "Guidelines") published by the Information and Security Committee of the Section of Science and Technology of the ABA[2] and implemented in the Utah Digital Signature Act (the "Utah Act") and the Washington Electronic Authentication Act (the "Washington Act").[3] Similar efforts have been undertaken by a variety of government agencies, standards organizations, and private business. The Guidelines and related state legislative efforts represent an important first step in the normalization of electronic commerce.

What is a Digital Signature?

A digital signature is not a signature in the traditional sense. That is, it is not simply a handwritten signature which has been scanned into a computer and attached to an electronic file. Rather, a digital signature consists of a unique "message digest" which is generated for the message being sent using a mathematical algorithm. The digest is then encrypted using a system known as "asymmetric cryptosystem" and a private key.[4] The encrypted digest is attached to the message and, upon delivery, the message digest may be decoded using a "public key" which is mathematically related to the sender's private key.[4] If the digest can be unlocked, the recipient of the message can verify that the message was actually generated by the person represented by the private/public key pair. When this is complete, the same algorithm used to create the message digest is applied to recalculate it. If the digests match, the recipient is assured that the contents of the message have not been tampered with in transit. Thus, the encrypted digest and the public/private key pair together constitute the "signature" for both the sender and the message.

What Advantages Do Digital Signatures Have Over Written Signatures?

Of course, it makes no sense to migrate to digital signatures if there are not significant benefits to doing so. One of the primary benefits is that digital signatures will foster computerized commerce by allowing parties to transact business remotely while maintaining hands-on involvement with the transaction. For example, in electronic transactions one may not have the opportunity to meet the person on the other end of the data link. As a result, the opportunities for authentication which normally attach with a paper and face-to-face transaction are not available. Use of digital signatures, while certainly no replacement for a personal meeting, allow the parties to realize the face-to-face benefits of authentication, without actually being in the same room. Digital signatures will also reduce instances of electronic forgery and establish a record for the transaction which can easily survive the participants.

All of this is not to say that digital signatures serve any different function than the traditional pen and ink signature. They do not. Like its counterpart, the function of a digital signature is to ensure that a message is authentic, its integrity has not been compromised, and that the sender cannot repudiate her message after sending it. The difference is that a digital signature will permit these functions to be done electronically.

Do Digital Signatures Satisfy the Signature Requirements of the UCC?

At present, there is little law on the legal status of digital signatures and electronic transactions. However, their legal status, even under the existing UCC, seems assured. Section 1-201 (39) of the Code defines a signature to include "any symbol executed or adopted by a party with present intention to authenticate a writing" while subsection (46) defines a writing as "printing, typewriting or any other intentional reduction to tangible form." The language of these two sections is clearly broad enough to include digital signatures. See Official Comments to § 1-201 (39) (signature may be printed, stamped or written and may be evidenced by initials or even a thumbprint).

Moreover, to the extent there is any question, recently proposed modifications to the Code make clear that digital transactions are going to be included, if they are not now. For example, proposed Article 2B replaces the concept of a writing in the current Code with that of a "record":

> "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

National Conference of Commissioners on Uniform State Laws, Revised Article 2B, § 2B-102(35) (Feb 1996 Draft). Similarly, Article 2B refers to "authentication," rather than signature:

> "Authenticated" includes any symbol or action that is adopted or performed by a party or its electronic agent with the present intent to authenticate or manifest assent to a record, a performance, or a message. Actions or symbols adopted or performed by an electronic agent are with present intent to authenticate a record or message on behalf of a party if the party designed, programmed or selected the electronic agent with an intent that the agent produce that result and the electronic agent performs in a manner consistent with its intended programming. A record or message that is authenticated is conclusively presumed as a matter of law if the parties agreed to an authentication procedure and the symbol or action taken complies with that procedure. Otherwise, authentication may be proved in any manner, including by a showing that a procedure existed by which a party must of necessity have taken an action or executed a symbol in order to have proceeded further in the use or processing of the information.
>
> § 2B-102(2), Feb. 1996 Draft.

The movement toward explicit recognition of electronic transactions evidenced by the proposed changes to the UCC, is being duplicated elsewhere. For example, the Draft Model Law on Legal Aspects of Electronic Data Interchange (EDI) and Related Means of Communication promulgated by the United Nations Commission on International Trade Law (UNCITRAL) is intended specifically for that purpose.

ABA Draft Digital Signature Guidelines

The ABA Guidelines were originally released for comment in October 1995 and finalized in June 1996. While they contain a number of recommendations, they were not intended for adoption as the text of a statute. Rather the Guidelines were developed in examining the differences between digital and electronic signatures and the need for secure methods of authentication, and proposing "unifying general principles" for digital signature legislation.

Shortly after the release of the ABA Guidelines, initiatives began in several states to adopt legislation to encourage the use of digital signatures. The first enactment of digital signature legislation in the United States was the Utah Digital Signature Act, signed into law on March 9, 1995 (Utah Code Ann. § 46-3-101, *et seq.*).[5] The Washington Legislature followed a year later with the Washington Electronic Authentication Act.

Washington Electronic Authentication Act

The Washington Act was developed following the lead of the Utah Digital Signature Act and the recommendations of the ABA Committee on digital signatures. The stated purpose of the Washington Act is to facilitate electronic commerce by: (a) reducing the likelihood of forged signatures and fraud in electronic commerce; (b) enabling the authentication of computer-based information; and (c) implementing standards for electronic communications.

Like the ABA Guidelines, the Washington Act contemplates the use of a public/private key pair and establishes a multistep procedure for verifying and authenticating digital signatures and the documents accompanying them. And, as with the ABA Guidelines, the Washington Act contemplates three main participants in an electronic transaction: the subscriber, the recipient and the certification authority. Generally, the process is as follows: (a) a subscriber generates her own public/private keys; (b) she then registers her public key with a certification authority licensed by the state at which time the certification authority confirms that she is who she says she is; (d) once confirmed, the certification authority issues the subscriber a certificate which is then filed with a licensed repository so that others may access it and obtain the subscriber's public key to unlock any electronic message she may send.

The key provisions of the Washington Act include:

Legal Effect of Digital Signatures.

The Washington Act accords digital signatures the same standing as handwritten signatures. In addition, the Washington Act recognizes the validity of a document "signed" with a digital signature and provides that a digitally signed message meets the requirements of an original under the law. RCW 19.34.300, .320, .330. However, the Washington Act provides that digital messages will not be deemed to be an "instrument" under Title 62A unless all parties to the transaction agree. RCW 19.34.320.

Certification Authority.

The Washington Act establishes the Washington Secretary of State as the primary authority with responsibility for implementing the Act (the "Secretary"). The Secretary is charged with the responsibility of licensing certification authorities to issue certificates to subscribers, auditing their performance on an annual basis, and publishing the results of the audits. In addition, the Washington Act gives the Secretary extensive oversight authority to investigate the activities of licensed certification authorities and to issue orders to secure compliance. The Washington Act also gives the Secretary the authority to restrict, suspend or revoke a license and establishes civil penalties in the event a licensed certification authority violates any provision of the Washington Act or any rule or order promulgated by the Secretary. RCW 19.34.110, .120, .130.

Although the Washington Act utilizes the certification authority approach contained in the ABA Guidelines, it does not prohibit parties to a transaction from relying on digital signatures which are verified by an unlicensed certification authority pursuant to a contract. However, the Washington Act does not grant such signatures a presumption of validity or permit an unlicensed certification authority to limit its liability. RCW 19.34.110(6).

Issuance of a Certificate.

The Washington Act establishes certain prerequisites to the issuance of a certificate. According to the Washington Act, a certification authority may only issue a certificate to a subscriber after certain conditions are satisfied. For example, before issuing the certificate the authority must confirm that the subscriber is, in fact, the person listed in the certificate to be issued. These conditions may not be waived or disclaimed by the certification authority or the subscriber. RCW 19.34.210(1).

Types of Certificates.

The Washington Act authorizes the Certification authority to issue three types of certificates: (1) transactional certificates — those issued in connection with a specific transaction; (2) limited certificates — those issued with reliance limits; and (3) general certificates — those issued without limitations.

Expiration, Revocation Upon Death and Suspension.

The Washington Act recognizes that despite best efforts, circumstances arise which affect the validity of the certificate. The Washington Act therefore provides for suspension and revocation of certificates under certain circumstances. RCW 19.34.210(2), (4), (5); 19.34.250; 19.34.260.

Warranties and Liability.

Given the critical role of the certification authority in the process, it is not surprising that the Washington Act establishes standards for their performance, including specific warranties regarding the information contained in the certificate which may not be disclaimed or limited by the Certification authority. In addition to warranties, the Washington Act imposes ongoing obligations on the certification authority to notify the subscriber and those who rely on information contained in the certificate of any facts which might affect the reliability of the certificate. RCW 19.34.220; 19.34.250.

The Washington Act contains similar responsibilities and representations for the subscriber. However, unlike the certification authority, the Washington Act adds an additional layer of risk for the subscriber by requiring the subscriber to take affirmative steps to keep her private key secret and to indemnify the certification authority for false and material representations of fact or failure to disclose a material fact. RCW 19.34.230; 19:34.240.

The Washington Act also provides that neither the subscriber nor any other person may disclaim or contractually limit the representations, "nor obtain indemnity for its effects, if the disclaimer, limitation or indemnity restricts liability from misrepresentation as against persons reasonably relying on the certificate." RCW 19.34.230(3).

Security.

One of the more significant provisions of the Washington Act relates to the ownership of the subscriber's private key and duty of care applicable to protect the key from unauthorized use. Under the Washington Act, the private key is the property of the subscriber and she assumes a duty to exercise "reasonable care to retain control of the private key and prevent its disclosure to any person not authorized to create the subscriber's digital signature." RCW 19.34.240.

Reliance Limits and Liability.

The Washington Act authorizes the certification authority and the subscriber to limit the total amount of risk associated with reliance on a certificate. This can be accomplished in two ways. First, a limit may be placed directly on the certificate notifying anyone using it to obtain the subscriber's public key, not to rely on the certification for transactions in excess of its face amount. This is referred to in the Washington Act as the "reliance limit". The second method of limiting liability (which is not available to the subscriber), is to limit the size of the "suitable guaranty" filed with the Secretary. RCW 19.34.100; 19.34.280.

In addition, the Washington Act specifically provides that unless waived, the certification authority will not be liable for damages arising out of a forged digital signature or other defects in the certificate, if the authority complied with all the material requirements of the Washington Act. The Washington Act also limits the type of damages which may ordinally be awarded against the certification authority, specifically excluding certification authorities from direct, compensatory damages which do not include (a) punitive or exemplary damages; (b) damages for lost profits, savings, or opportunity; or (c) damages for pain or suffering. Except for the cap on the reliance limit, no similar limitations from liability are available for the subscriber. RCW 19.34.280.[6]

The Washington Act also permits a claimant to recover from the proceeds of the guaranty until depleted, the attorneys' fees and court costs incurred in collecting the claim; provided that such costs cannot exceed the existing amount of the bond. RCW 19.34.290.

Adjudicating Disputes.

As indicated, a certification authority is required to post a bond or other suitable guaranty of its performance under the Washington Act. This guaranty constitutes a cap on the certification authority's liability. The Washington Act provides that a person may recover against the bond or letter of credit up to the full amount of the guaranty. However, if there is more than one such claim, the claims are only entitled to a ratable share of maximum total liability of the guaranty. RCW 19.34.290.

Any claim against the guaranty must be filed within three (3) years after the occurrence of the violation upon which the claim is based, with notice of the claim copied to the Secretary. RCW 19.34.290.

"One of the primary benefits is that digital signatures will foster computerized commerce by allowing parties to transact business remotely while maintaining hands-on involvement with the transaction."

Presumptions.

Finally, the Washington Act establishes presumptions to be applied in adjudicating disputes involving digital signatures. For example, it directs courts to presume that the information listed in a valid certificate and confirmed by a licensed certification authority issuing the certificate is accurate. RCW 19.34.350(2).

Comparison with the Utah Act and the Guidelines.

The Washington Act differs from the Utah Act and the ABA Guidelines in a few significant respects. However, some of these differences are significant. For example, the Washington Act includes an additional condition which must be satisfied before a digital signature meets the requirements of a "signed writing." It provides for recognition only if:

> No party affected by a digital signature objects to the use of digital signatures in lieu of a signature, and the objection may be evidenced by refusal to provide or accept a digital signature.

RCW 19.34.310. This addition is significant because nothing in the Utah Act appears to permit a recipient to reject a digital signature, except in circumstances where the signature is unreliable. While this change may have been necessary to avoid the problem of binding an unwilling recipient to an agreement signed with a digital signature,[7] it also presents problems. The language of this section refers to all parties "affected" by the signature. This could include persons who are not directly involved in the transaction.

Although the Washington Act follows the Utah Act and the ABA Guidelines, its enactment was not without controversy. For example, during hearings on the Washington Act, several witnesses testified that the legislation should contain an explicit statement that participation in the framework envisioned by the act was voluntary. They also argued that adopting a standard for digital signatures was premature given the relative infancy of the technology and that making a commitment to the procedures and technology of the Act would only serve to stifle innovation.

Perhaps more interesting and persuasive arguments against the Act as proposed were that it did not (a) include any requirement that the signer of an electronic document have an opportunity to review the entire document before signing or (b) address the issue of whether the document might be modified after the signer had reviewed but before signing. To address this, suggestions were made to incorporate language into the Washington Act which would make it clear that the signer and anyone else relying on her digital signature (c) viewed the message in plain text before signing; (d) signed the message with an affirmative act appropriate to the context; (e) signed it prior to transformation. Although these suggestions are consistent with the approaches taken in Draft Article 2B and UNCITRAL, they were not incorporated into the Washington Act.

Other State Efforts.

As indicated above, at least twelve states have already or are in the process of adopting legislation governing digital signatures. For the most part, these efforts mirror those of Washington and Utah. For example, Georgia's Digital Signature Act follows the Utah Act quite closely. The same applies to a majority of the states addressing digital signatures.

However, several states have chosen not to plunge ahead with digital signatures as envisioned by the Guidelines and the State of Utah. For example, California's statute — The California Digital Signature Act — allows government agencies and political subdivisions to use digital signatures in transacting business. But, it does not apply to transactions between private entities.

Another approach is that taken by Florida. There, the legislature acknowledged the legal effect of digital signatures, but rather than establishing the complex system of registrations, warranties, etc., simply directed the Secretary of State to study the issue and report back to the legislature in December 1996.

Conclusion

Given the pace of commerce and the need to protect valuable information, it is inevitable that some form of electronic signature will become standard in the not-too-distant future. The legislative actions described above represent the first steps in this effort. Practitioners need to stay abreast of these developments as they occur in order to ensure that their clients can take advantage of the opportunities presented by EDI and, at the same time, minimize the risks associated with remote on-line transactions.

". . .[I]t is inevitable that some form of electronic signature will become standard in the not-too-distant future."

Endnotes

[1] "Law Needs to Find New Ink for Electronic Transactions," *Chicago Daily Law Bulletin*, (December 22, 1995).

[2] The Guidelines were published in final in June 1996. A copy of the Guidelines may be obtained from: http://www.intermarket.com/ecl.

[3] The Washington Act (RCW 19.34) was passed by the Legislature on March 29, 1996 and signed by Governor Lowry in April 1996. The Washington Act is scheduled to take effect on January 1, 1998. Amendments to the Washington Act have been completed and are awaiting action by the Legislature. See S-1941.17. A copy of S-1941.1 is available at http://www.leg.wa.gov. The Amendments modify the Act in several areas, including adding provisions which: (a) set a one-year term for the license to a certification authority; (b) establish qualifications for auditors reviewing compliance of certification authorities; (c) authorize state and local government agencies to act as a certification authority; (d) permit the award of consequential damages against certification authorities; (e) require certification authorities to notify subscribers prior to discontinuing services; (f) establish factors for determining reasonable reliance upon a certificate; and (g) prohibit a person from refusing to honor any order, writ or warrant upon the basis that it is signed using a digital signature.

[4] The system described here is not the only system available. Indeed, one of the most frequent criticisms of the Guidelines and the recent spate of legislation is that they ignore other systems, such as pen based systems. The system proposed in Utah and Washington, however, comports with the ABA Guidelines.

[5] The Utah Digital Signature Act amended in February 1996. A copy of the Act is available on the Utah Department of Commerce web page at: http://www.commerce.state.ut.us/web/commerce/admin.

[6] The proposed Amendments to the Washington Act would modify this limitation. As amended, the certification authority would remain liable for any breach of the warranties given under the Act or by "lack of good faith," including damages for lost profits or opportunity. According to the amendment the standards by which will be measured by "Good Faith" may be determined by notice to or agreement by the person relying on the certificate, provided they are not "manifestly unreasonable."

[7] The extent to which this was necessary is open to question. The Washington Act does not purport to bind a party to an agreement by the mere fact that she has accepted receipt of the electronic message or even used the sender's public key to unlock the document. Thus, there is nothing in the Washington Act which prohibits a recipient from rejecting a non-conforming agreement. On the other hand, this provision could prove useful if the sender of the message is simply accepting an offer to contract previously made by the recipient and the recipient did not condition her offer by specifying the manner of acceptance.

❖ ❖ ❖

Scott G. Warner *is an attorney at Garvey, Schubert & Barer in Seattle, Washington and represents high-technology and other emerging growth companies.*

THE WASHINGTON STATE BAR NEWS

FAX POLL

The WSBA Board of Governors is currently considering a proposed bylaw change which would require anyone (including WSBA members) requesting WSBA records under the Freedom of Information Act to pay the costs of copying and staff time in retrieving the records. Proponents contend that this approach passes along the costs to the person/organization who is asking for the information. Opponents voice concerns that this requirement may make it economically impractical for members to ferret out information which the membership at large might find useful.

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 the bylaw change to require FOIA requesters to pay for WSBA staff time and copying.
2. ____ I somewhat support the bylaw change to require FOIA requesters to pay for WSBA staff time and copying.
3. ____ I am undecided, but I believe the matter should be studied.
4. ____ I somewhat oppose the bylaw change to require FOIA requesters to pay for WSBA staff time and copying.
5. ____ I strongly oppose the bylaw change to require FOIA requesters to pay for WSBA staff time and copying.

Do you believe this rule should apply to WSBA members as well as to the general public?

Yes ____ No _______

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 July *Bar News*.)

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

Or, mail your response by June 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 judges publicly expressing their personal values. The results:

1. 45 (66%) strongly supported judges publicly expressing their personal values.
2. 0 (0%) somewhat supported judges publicly expressing their personal values.
3. 9 (13%) were undecided, but believed the Judicial Conduct Commission should carefully consider the issue.
4. 1 (1.5%) somewhat opposed judges publicly expressing their personal values.
5. 13 (20%) strongly opposed judges publicly expressing their personal values.

Overall, 68 valid responses were received.

Your Comments:

"Judges, and especially judge candidates, should be encouraged and even challenged to express their personal values so the voting public may know their character earlier, rather than have their values seep out through rulings and opinions later."

Ken Eikenberry, Olympia

"Judges should not only be "above the fray" but should strive to appear to be "above the fray."

Charles Bates, Bellevue

". . . People's views on life will influence the way they respond. Not allowing judges and judicial candidates to express their views does not make them go away. It only makes my vote in an election less well-informed and may deprive my client of the ability to request (or require) a judge with strong views on a pertinent issue to be removed from a case."

L. Gene Middaugh, Seattle

"Justice Sanders' . . . comments don't warrant either the scrutiny or media attention they have been given. I don't agree with his views. But he has the absolute right to voice them. The bar and the public are not served by this dispute. Political correctness has reached an all-time low ."

William T. Lawrie, Seattle

"The injection of a judge's personal opinions into a public, political debate undermines both the appearance of judicial impartiality and the judicial election process. When political ideology becomes a part of judicial elections, the politics of the judge, and his or her cult of personality, inevitably draw the electorate's attention away from the more important, but more arcane and boring, issues of the judicial candidate's legal qualifications and his or her ability to uphold the rule of law."

Ben Cushman, Olympia

"Justice Sanders set a bad example by violating the ethical canon in the manner he did. If he disagreed with the canon, he should have challenged it through a declaratory judgment action or similar legal action. I would expect an attorney who disagreed with an ethical rule to follow the rule anyway, and challenge it through proper channels and procedures ."

Richard L. Bartholomew, Olympia

"Hopefully, our judges would not *be* judges unless they already had a track record of character and integrity — both of which tend to be found in persons who do have well-developed views. Why obscure that? Is it better to have bland, wishy-washy puppets?"

Mary Ortega, Seattle

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 May 1997 is 5.60%. The maximum allowable interest rate permissible for June 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 appears on page 32 of this issue.

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 Pfeifer, Edward Ratcliffe, Robert Redman, John Riley, John Schultz, Stacey Smythe, Phillip Thom and Ted Zylstra.

Suspended

Seattle lawyer Thomas C. Bierlein (WSBA #13425, admitted October 27, 1983) was suspended by order of the Washington Supreme Court entered February 20, 1997, effective February 25, 1997, entered after a disciplinary hearing and review by the Disciplinary Board. Bierlein was also ordered to pay costs and expenses associated with his disciplinary proceedings, in the amount of $9,961.69.

The disciplinary proceedings were based on Bierlein's actions in representing seven clients while he was an associate at a law firm. In one client's case, Bierlein endorsed a settlement check, deposited it to his personal account, attempted to disburse the settlement amount to the client, and attempted to keep, without authorization or entitlement, the legal fees due to his employer.

In the second client's case, Bierlein endorsed a $50,000 settlement check, deposited it to his personal account, and listed the funds as a personal asset in his residential loan application and stated in the loan application process that such funds represented respondent's earned fees. Bierlein submitted false information and made false statements to disciplinary counsel when questioned regarding the relationship of his residential loan application and the funds.

In the third client's case, Bierlein endorsed a settlement check, deposited it to his personal account, and disbursed the funds to the client. He failed to maintain complete contemporaneous written records upon his receipt and disbursal of the settlement.

In the fourth and fifth clients' cases, Bierlein personally collected the 1/3 contingent fee due to his employer from the clients' settlements and failed to maintain complete contemporaneous written records upon his receipt and disbursal of these settlements.

In the sixth client's case, Bierlein endorsed a settlement check, deposited it to his personal account, and disbursed funds to the client and to his employer. He failed to maintain complete contemporaneous written records upon his receipt and disbursal of the settlement.

In the seventh client's case, Bierlein endorsed a settlement check, deposited it to his personal account, disbursed the settlement amount to the client and then appropriated the legal fees due to his employer without authorization or entitlement.

Bierlein's actions violated the Rules of Professional Conduct (RPCs) as follows: misappropriating the firm's fees and listing the client settlement as a personal asset violated RPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation; commingling client funds in his personal account and failing to maintain complete contemporaneous written records violated RPC 1.14; failing to provide written settlement statements to clients violated RPC 1.5; and, providing false information and statements to Disciplinary Counsel violated Rule of Lawyer Discipline 2.8 which requires a lawyer to make full and complete responses to the Association. These violations subjected Bierlein to discipline pursuant to Rules for Lawyer Discipline 1.1(a) and (i).

The Association was represented by Disciplinary Counsel Lisa E. Crawford and Leslie Ching Allen. Respondent was represented by Kurt Bulmer. The hearing officer was Thomas J. Greenan of Seattle.

Transferred

On March 27, 1997, Therese M. Wheaton (WSBA #18208, admitted 1988) became an inactive member of the Association.

Censured

Seattle lawyer Jeremiah McCormick (WSBA #3802, admitted 1959) has been ordered censured by the Disciplinary Board after a hearing held December 19 and 20, 1995, and oral arguments on appeal to the Disciplinary Board held September 20, 1996. In three separate events involving a client McCormick represented in a dissolution/child support matter, he engaged in conduct involving a conflict of interest between his interests and those of his client.

In the first event, McCormick had his client assign to him judgments to be entered on her behalf in an upcoming presentment hearing for payment of his fees, in violation of RPC 1.7(b) and 1.8(a). In the second event, McCormick directed his associate employee to represent the client in the presentment hearing despite the fact that at that point, McCormick owned the judgments to be presented for entry, in violation of RPC 1.7(b) and 8.4(a). In the third event, McCormick defended a subsequent post-judgment motion which sought to apply the judgments to back and future child support owed by the client, in violation of 1.7(b) and 8.4(a). The Hearing Officer recommended a sanction of reprimand for this misconduct. The Disciplinary Board reduced the sanction to a censure, without elaboration.

McCormick represented the wife in a dissolution action involving children of the marriage and few assets. The client had been a "special ed" student who read at a third-grade level. The client did not have the resources to pay legal fees. McCormick agreed to represent her and seek payment from her husband through an award of attorney fees in the divorce action. McCormick did not put in writing the fee agreement or an explanation of the fee and never billed the client for the fees, although he did generate billing statements to submit to the court to obtain a court award of fees.

Before trial, McCormick directed his employee/associate to represent the client at trial. McCormick remained personally active in the case. After trial, the Court placed the children with their father and ordered McCormick's client to pay support. The Court also ordered that the husband pay McCormick's client half of the husband's pension and $7,000 in attorney fees. The presentment of the orders and judgment for half the pension and attorney fees was scheduled for December 17, 1992. Several days before presentment, McCormick called the client to his office and requested she sign an Assignment of Judgment he had prepared which would transfer to McCormick all of her interest in the pension and attorney fees to him. He did not explain the purpose of the Assignment in terms the client could understand, and she did not consent to the terms in the Assignment.

McCormick's associate presented the final orders and judgments regarding the pension and attorney fees to the Court on December 17, 1992, unaware that the judgments already had been assigned to the employer, McCormick. Two weeks later, the husband filed a post-dissolution motion seeking to use the judgments as setoff and security for back and future child support owed by McCormick's client. McCormick and his associate opposed the motion, ostensibly on the client's behalf, even though McCormick owned the judgments sought to be used for setoff and security. It would have been in the client's interest to have the judgments applied for that purpose because of her very limited income.

Disciplinary Counsel Lisa Crawford and Joy McLean represented the Bar Association; McCormick represented himself; Claire Cordon served as the Hearing Officer.

Disbarred

Bremerton lawyer Eric H. Lind (WSBA #12141, admitted 1981) was ordered disbarred by the Washington Supreme Court on April 17, 1997. The order of the court was pursuant to a Stipulation to Disbarment, approved by the Disciplinary Board on March 27, 1997.

In two matters, in violation of RPC 1.4, 1.5, 8.4(b), 8.4(c), and 8.4(d), Lind created fictional documents relating to fictional lawsuits he claimed he was pursuing for his clients. These fictional documents included fictional court orders on which Lind had forged the signatures of state and federal judges and Washington Supreme Court Justices, fictional letters on which Lind had forged the signatures of state and federal judges, other lawyers, Assistant United States Attorneys, and federal investigators, and a fictional grand jury indictment. Lind presented these documents to his clients to convince them he had performed work on their behalf. His clients paid him for the work he had falsely represented had been done.

In a third matter, in violation of RPC 8.4(b) and 8.4(c), Lind transferred to himself as "bonuses" funds totaling \$44,521.94 from the law firm in which he acted as treasurer. These bonuses were unearned.

In a fourth matter, in violation of RPC 1.4, 1.14(a), and 8.4(c), Lind advised a client that he had settled a lawsuit on his behalf, when in fact he had not initiated litigation on the client's behalf. He paid the client nearly \$21,864.33 in "settlement advances" with funds drawn from his law firms's general account. He then deposited \$22,000 of his own money into his firm's trust account, representing to the firm's bookkeeper that the deposit had been made by the client's insurer.

In a fifth matter, in violation of RPC 1.4, 1.5, 8.4(b) and 8.4(c), Lind signed a contract with a state agency to act as an expert witness in a case. Lind billed the agency \$26,054 for work which he claimed he had performed, when in fact he had not performed the work. The agency paid the bill.

In a sixth matter, in violation of RPC 1.4 and 8.4(c), Lind created fictional documents relating to a lawsuit he actually was pursuing for a client. These documents included a fictional restraining order and a fictional order of contempt, purportedly signed by a state judge. Lind presented these documents to his client to convince him that he had performed work on his behalf.

Joanne S. Abelson represented the Bar Association in this matter. Mark G. Beard represented Lind.

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

This feature is a reincarnation of the "Around the State" column previously seen in the* Bar News. *Whether it continues forward depends upon the input of readers. If you've got news you think other WSBA members would like to hear, please submit it. If we don't get enough information, we won't continue this feature.

BISHKEK, KYRGYZSTAN — Justice Keith Callow, former Chief Justice of the Washington State Supreme Court, is serving for three months with the Central and East European Law Initiative as a Judicial Specialist in Bishkek, Kyrgyzstan. He will work with the Kyrgyzstan Court Department to enhance the administration of the developing court system, and will guide the development of the newly formed association of judges.

MONROE, WASHINGTON — Stephen Moore, a former King County prosecutor and active judge pro tem in eleven judicial districts in Snohomish and King Counties, slips out of judicial robes and into less secular robes on a regular basis as an Episcopal priest. Says Moore of this unlikely combination:

"Life's too short. I found out I very much enjoy being a judge and being a priest. The possibility of doing both is almost too much to expect. One sort of balances the other."

DAVENPORT, WASHINGTON — Attorney Rusty McGuire recently served as a mock trial judge for Davenport fifth-graders. The class enacted a courtroom drama while learning about various legal roles and judicial procedure.

OLYMPIA, WASHINGTON — Judge John E. Turner has announced his retirement from the Washington State Court of Appeals, and his return to law practice in Olympia.

Wlliam Helsell, Seattle attorney, has contributed $610,000 toward a fountain in Olympia just north of the Capitol, in memory of his wife, Virginia Satterberg Helsell. He said, "The fountain has a very shallow pool and no fence, so that kids can splash in it any time they want."

CLARK COUNTY, WASHINGTON — From the desk of John (you can call him "Judge") Nichols, here are the long-awaited Beagle Awards for dubious distinction in the field of yellow page advertising:

The *Madame Tussaud Award* for best wax-like impression goes to Jeff Jacobs. When I first saw this picture I didn't recognize Jeff, so I immediately checked for a toe tag. Stay away from hot lights, Jeff!

The *WSBA* Bar News *Award* for violations of their personal ad policy goes to Al Armstrong for his personal impersonation of George Costanza.

The *Back To The Future Award* for the best retro-picture of what someone looked like a long time ago was a toss-up between Mary Kay Gaffney and Bob Bennett. Bob won with the label pin that stated, 'I like Ike.'

The *Celebrity Look Alike Award* goes to newcomer Marya Fuller for her ad(s) on page 71 impersonating Rosie O'Donnell. Marya also garnered the Dyslexia award for placing the identical ads right next to each other and proclaiming her emphasis on "Errors" cases.

The winner in the *Slogan* category is Jay McInvale for his intriguing "Most People Wait Too Long." Maybe I do, but really, do you think this color TV thing is real or just a phase?

Winner in the newly-created *Bankruptcy Ad* category is Ed Dunkerly appearing in the AAA Attorneys Bankruptcy Service. No membership is required but you do get your car (assuming you still have one) towed free into your first consultation. Rumors of Ed changing his name to Aaron A. Aardvark for next year remain unconfirmed.

The winner by default in the *Areas of Expertise* category was Reed & Johnson with the always popular "Nursing Home Accidents." Highlights include speeding down the hall, hit and shuffle away, and of course the profitable walker rear-ender. Make sure you bring in three estimates.

This year's *Beagle of the Year* winners went out of their way to garner the award by completely redoing their ad. The highlights include a hospital bed scene under the question, 'Are you the victim of someone else's negligence?' The next scene depicts a young man walking hand in hand with a little boy on the beach under the caption: "Divorce/Separation." The final coup de gross photo is that of a cop, a handsome devil straight from CHIPS talking on his mike, illustrating criminal and DUIs. But what's this? Why, yes, it's the same guy who appeared in John Meader's *Beagle* winner two years ago getting divorced from the woman in the bridal gown. Could it be this guy is a professional yellow page model? It's the little details like this that earned the firm of Ihringer, Dunkerly & Yoseph their first Beagle of the Year. For the rest of the contestants, you didn't lose, you just had too little capital and too much taste. Always remember, it's an honor just appearing in the yellow pages!"

GRANITE FALLS, WASHINGTON — Snohomish County deputy prosecutor Ed Stemler moonlights as a Granite Falls City Council member. Wearing both hats apparently gives him a unique perspective on Granite Falls' ongoing debates regarding funding of jail services.

NEWPORT, WASHINGTON — Republic attorney Rebecca Baker is the first woman to be elected as Superior Court judge in the Tri-County (Stevens, Ferry and Pend Oreille) area. She has recently promoted a counseling service that steers parents with dependent children who are embroiled in a divorce toward a brief education program on the effects of divorce on children and how parents can make the transition easier for their children.

KING COUNTY, WASHINGTON — Johnson & Associates law firm is once again Lawyers Basketball League Champion. Team members included James H. Clark, Michael S. DeLeo, Anthony C. Johnson, Dean F. Martin, Eric S. Nelson, Charles T. Paglialunga, Shannon Smith and Bradley P. Thoreson.

The Commuter Challenge, co-sponsored by the Economic Development Council of Seattle and King County and a partnership of 21 local and state government agencies, has named seven law offices "1996 Pacesetters" for outstanding employee transportation programs: Bogle & Gates, Davis Wright Tremaine, Graham & James/Riddell Williams, Karr Tuttle & Campbell, Perkins Coie, Preston Gates & Ellis and the Washington State Attorney General's Office.

Kevin Raymond, former Chief of Staff for Gary Locke when he was King County Executive, has joined the Seattle law firm of Cairncross & Hempelmann.

Bellevue attorney Douglas L. Cowan has been selected to serve as Dean of the National College of DUI Defense during its annual session at Harvard University Law School, and will serve as the spokesperson for this nation's DUI defense lawyers.

A tight budget usually means doing more with less money, but purse strings are drawn so tight that presiding Superior Court Judge Dale Ramerman has taken to vacuuming his own courtroom. Not one for quick touch-ups, the fastidious judge even moved chairs aside the half dozen times he's vacuumed his bailiwick.

RAYMOND, WASHINGTON — Attorney James Foley reports that the Pacific County bar met on April 1, 1997 to discuss the following proposed "Ultimate Dispute Resolution" ("UDR") Local Rules:

"The purpose of the rules is to ultimately resolve all disputes in Pacific County in accordance with ancient, common and Roman laws as well as to recognize recent trends in our society. Upon assignment to UDR, the parties shall meet at the designated time and hour at the Pacific County Courthouse parking lot, or half time at local high school football and basketball games during the school year. All parties to family law matters must appear in diapers and Doctor Denton style pajamas. All parties to 'civil' matters must appear in formal eveningwear. The parties shall physically and verbally abuse each other until the dispute amongst themselves is resolved. The prevailing party shall be the party who causes the opponent to cry 'Uncle' or slap the ground three times."

Attorney Foley anticipates that costs for this innovative dispute resolution method will be paid for through sales of television rights and 'pay-per-view' broadcasting.

✦

Limiting the Scope of Your Representation: When Your Client Wants, or Can Afford, Only a Part of You

by **Barrie Althoff**
WSBA Chief Disciplinary Counsel

Often your client cannot afford, or does not want, to have you handle every aspect of a transaction or piece of litigation, and nearly equally often you cannot afford to do the work for free. Thus, both you and your client may want to limit the scope of your representation. This article considers some of your ethical obligations under the Rules of Professional Conduct ("RPCs") and some of the risks you may encounter.

Introduction

For some clients you are a counselor or adviser, while for others you are an advocate. Your client may want only limited representation from you in either or both roles. Such a limited representation is generally both permissible and common. Although many legal problems involve complex legal issues and inter-relationships and might not be appropriate for such a limited representation, many other legal matters are essentially routine and amenable to limited representation. You may be able to serve well, for example, a client wanting merely a brief office consultation as to a narrow aspect of a particular matter, or seeking help drafting a particular clause in a document.

Limiting the scope of your representation as an advocate is also possible, although there does not appear to be a specific Washington court rule for generally doing so. For example, you might advise a client acting pro se in court as to litigation procedures or strategy, or draft pleadings for the client which lists the client as pro se (recognizing that such drafting constitutes the practice of law in the jurisdiction such pleadings are being used). Likewise, a pro se client might retain you to argue only one motion in a much larger piece of litigation. Where you are the attorney of record, you and your client might also agree, for example, in order to keep costs down, that you will undertake no discovery in a case, or will waive cross-examination of witnesses or opening or closing arguments (although your obligation to handle client matters competently might limit such a very narrow representation).

RPC Requirements of Client Consultation & Client Consent

RPC 1.2(a) requires you to abide by your client's decisions concerning the objectives of the representation. RPC 1.2(c) permits you to limit the objectives of the representation "if the client consents after consultation." Thus, the two stated requirements to limit the scope of your representation are: (1) consultation with your client, and (2) your client's consent after that consultation.

Consultation with your client is required to assure that your client's decision is an informed decision. The RPCs define "consultation" as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question." RPC 1.4(b) independently requires you to provide your client with the information needed to make informed decisions by requiring you to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Communication means exchanging information between two persons wherein each person understands the other. Thus, you must be reasonably assured that your client understands the information you are providing.

The type and extent of information needed to satisfy the "consultation" requirement varies with each client and the client's ability to understand. If your client has not regularly used a lawyer, you should take care that the client truly understands the limits of the representation and consequent risks, since he or she may well think of you as his or her lawyer and that you are representing him or her generally. While a client's subjective belief of the scope of the representation is important, it is only one factor to be considered, and does not control unless it is reasonably formed based on the attending circumstances. *Bohn v. Cody*, 119 Wn.2d 357, 363 (1992), *Leipham v. Adams*, 77 Wn. App. 827, 833 (1995).

After your client has consulted you, your client must consent for you to limit the scope of your representation, and that consent must be an "informed consent." Although the RPCs do not require the consent to be in writing, as a matter of good practice and self-protection it should be. It could be a part of your written fee agreement, or in a memorandum attached to it, or in a letter to your client confirming and describing your mutual decision to limit the scope of your representation. If your client disputes the limitation, the written consent would be merely one part of the relevant evidence, which might also include other documentation, your billing statements, or your course of conduct. For example, if you agree to represent your client in negotiations, but not in litigation, and then after negotiations fail you begin preparing for trial, the client may reasonably believe you have agreed to broaden the representation and be responsible for the trial. If a default judgment was then taken against the client, the client might well argue he or she reasonably expected you were going to handle the litigation despite the written limitation agreement.

If your client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, RPC 1.13 requires you to maintain, as far as reasonably possible, a normal client-lawyer relationship with the client. If you believe your client cannot adequately act in his or her own interest, you may seek appointment of a guardian or take other protective action with respect to the client. Given the central importance of consultation and informed consent in limiting the scope of your representation, however, you should be very careful in ever limiting the scope of your representation for such an impaired client. As a practical matter, unless a guardian has been appointed, you should probably take extra steps to represent the client since the client is unlikely to be able to look after himself or herself as well as a nonimpaired client would, and any limitation on the scope of your representation is likely to be very carefully scrutinized with the clarity of hindsight. Thus, for example, if your client is a young child, you are unlikely to have much true communication — and hence not likely to meet the consultation or informed consent requirements — in discussing a scope of representation issue with the child since the issues are complex and likely beyond the comprehension of most young children. Similarly, if you only speak English and your client does not understand English well, you may need a translator to assist you in communicating with your client. If you do not have a translator, you may not have satisfied the consultation requirement and thus invalidate any purported limitation by you on your representation.

When You Must Limit Your Representation

The RPCs explicitly require you to limit the scope of your representation in only a few situations. RPC 1.2(d) prohibits you from counseling or assisting a client to engage in conduct that you know is criminal or fraudulent, and RPC 1.2(e) requires you to consult with the client in such a case regarding the RPC's limitations. If your client asks you to assist in a transaction that you know is tax or insurance fraud, for example, you may not do so. RPC 1.2(a) requires you to abide by your client's decision of whether to accept a settlement offer, and you may not accept such an offer on behalf of your client without your client's consent.

Other Reasons to Limit Representation

Ethical considerations under the RPCs and practical considerations may also make it advisable (or even require you) to limit the extent of your representation of your client. For example, RPC 1.3 requires you to represent your client with "reasonable diligence and promptness." If your obligations to your existing clients are already very heavy, you may not be able to satisfy this requirement either for your existing clients or your new client unless you agree with your new client to a very limited representation. Similarly, since RPC 1.1 requires you to provide competent representation to your client, you may not be able to do so unless you limit the scope of your representation to the areas of your expertise. If your practice is primarily a personal injury practice, you might not have the competence to handle a family law problem, or, if your practice is primarily a business practice, you might still not have the expertise to handle a proposed public securities offering. Likewise, you may find that the conflict-of-interest provisions of the RPCs may permit you to provide only a very limited representation for a particular client. Under RPC 1.15 you may also need to limit, or even terminate, your representation for various reasons, including when your physical or mental condition materially impairs your ability to represent the client.

Risks of and Reasons Against Limited Representation

Even if you and your client can limit the scope of your representation, you may not want to do so. From a purely economic perspective, the reduced amount of your legal fees may simply not offset the significantly increased risks of liability for you in the transaction. For example, you may be wise to refuse to undertake a limited representation of your client in a securities offering (such as just reviewing an offering document drafted by your client), and insist instead on handling the entire transaction for your client because the liabilities you are incurring in the transaction are far more extensive than, and out of proportion to, the much reduced legal fee. Similarly, you may hesitate to review just one or two clauses in a will or marital separation agreement drafted by your client without insisting on a complete review of the document, since the likelihood of interrelated clauses and legal issues is great.

A dissatisfied client is likely to challenge a purported limitation by refusing to pay your bill or by filing a malpractice suit or a disciplinary bar grievance. The client may contend, for example, that he or she never authorized you to undertake certain aspects of the representation for which you billed the client and that your fees are unreasonable for the limited representation the client contends was authorized. If the client is dissatisfied with a litigation result or a settlement, the client may contend you were not authorized to handle it or to handle it the way you did. Or, if something was not done that should have been done, the client will likely argue that you should have done it and that he or she never agreed that you would not be responsible for doing it. In *Leipham v. Adams*, 77 Wn. App. 827, 894 P.2d 576 (1995), for example, a client contended that a lawyer should have filed a disclaimer for federal tax purposes of a joint tenancy interest. The lawyer prevailed, but only after considerable litigation, proving that he and the client had agreed to a limited representation.

Conclusion

The RPCs generally permit you to limit your representation of a client, and in many instances doing so is beneficial to you and to your client. If you do so, make sure you consult with your client, that your client consents, that you document the consultation and consent, and that you weigh carefully the economic effects of a reduced fee and a possibly increased professional liability.

June

4 **Risk Management for Attorneys**
Seattle
By CNA (312) 822-1548
3.25 CLE ethics credits

4 **The Winning Brief**
Seattle
By LawProse (214) 691-8588
6.5 CLE credits

5 **Risk Management for Attorneys**
Bellevue
By CNA (312) 822-1548
3.25 CLE ethics credits

5 **Starting a Personal Injury Practice**
Seattle
By WSTLA (206) 464-1011
4.5 CLE credits
(incl. 0.5 NX ethics)

6-8 **Real Property, Probate & Trust Section Midyear**
Yakima
By WSBA CLE & RPPT Section (206) 727-8202
11.25 CLE credits (incl. 0.75 ethics)

6 **Bankruptcy Seminar**
Winthrop
By Bankruptcy Bar Association for the Eastern District of Washington (509) 248-4282
8.5 CLE credits (incl. 1 ethics)

6 **Independent Geriatric Care**
Bellevue
By Long-term Care & Retirement Planning (206) 227-8211
2 Nexus CLE credits

6 **Understanding Long-term Care**
Bellevue
By Long-term Care & Retirement Planning (206) 227-8211
2 Nexus CLE credits

12 **The Essentials of Employee Handbooks: Hiring, Firing & Employee Contracts**
Spokane
Also in Seattle 6/19
By WSBA CLE (206) 727-8202
6.25 CLE credits

12-14 **WACDL Annual Conference: Focus on Ethics**
Chelan
By WACDL (206) 623-1302
7.5 CLE credits (incl. 7.0 ethics)

13 **Handling Business Litigation**
Seattle
By WSBA CLE (206) 727-8202
7 CLE credits (incl. 1 ethics)

13 **Winning the Battle of the Experts: Expert Advice on Expert Witnesses**
Seattle
By Lorman (715) 833-3940
4 CLE credits

13 **Washington & Federal Personnel Law Workshop**
Spokane
By Lionvale HR Group (206) 644-8180
CLE credits pending

16 **Interest-based Mediation—The Process: Philosophies, Proficiency & Procedures**
Spokane
By Fulcrum Institute (509) 838-2799
36.5 CLE credits (incl. 1 ethics)

16 **Washington and Federal Personnel Law Workshop**
Bellevue
By Lionvale HR Group (206) 644-8180
CLE credits pending

16 **Immigration Law Basics For Corporate Counsel**
Seattle
By WSBA Corporate Law Department (206) 727-8239
1 CLE credit

16-21 **2nd Annual NW Trial Mastery Demonstration Program, featuring Paul Luvera, Hon. Wm. Dwyer, Gerry Spence & More!**
By UW CLE (206) 543-0059/ (800) CLE-UNIV
7 CLE credits per day pending

17 **TAPS**
Spokane
By Equal Employment Opportunity Commission (206) 220-6896
6 CLE credits

19 **Minor Settlements**
Tacoma
By WSTLA (206) 464-1011
6.25 CLE credits (incl. 0.5 ethics)

19 **Second Annual Washington State Ethics Conference**
SeaTac
By City of Seattle Ethics & Elections Commission (206) 684-8577
7 CLE credits (incl. 3.75 ethics)

20 **Real Estate Drafting & Litigation**
Seattle
Also in Spokane 6/27
By WSBA CLE & RPPT Section (206) 727-8202
7 CLE credits pending

20-21 **1997 Litigation Section Midyear — Trial Techniques: Advocacy from the Inside Out**
Chelan
By WSBA CLE & Litigation Section (206) 727-8202
8 CLE credits (incl. 2 ethics)

20-21 **Access to Justice Conference**
Yakima
By WSBA (206) 727-8262

20-21 **WSBA Board of Governors Meeting**
Yakima
(206) 727-8244

20-21 **WSBA Bar Leaders Conference**
Yakima
(206) 727-8262

21 **WSBA Annual Awards Luncheon**
Yakima
(206) 727-8244

25 **Basic Probate Procedures**
Spokane
By NBI (715) 835-8525

7.25 CLE credits
(incl. 0.5 ethics)

26 **Basic Probate Procedures**
Seattle
By NBI (715) 835-8525
7.25 CLE credits
(incl. 0.5 ethics)

27 **Professional Mediation Skills Training Program**
Seattle
By UW Washington Law School Foundation (206) 543-0059
36 CLE credits (incl. 2 ethics)

27-29 **1997 Family Law Section Annual Meeting & Seminar**
Vancouver
By WSBA CLE & Family Law Section (206) 727-8202
13.75 CLE credits
(incl. 1.75 ethics)

27 **Effective Courtroom Advocacy: Presenting Your Best Case on Behalf of Abused Children**
Seattle
By WA State CASA/GAL (206) 667-9716
3 CLE credits

27 **Washington Law for Military Attorneys**
Seattle
By WSBA Legal Services to the Armed Forces Committee (206) 922-8724
8 CLE credits (incl. 1 ethics)

27 **Naturalization Advocacy Skills Training**
Seattle
By Northwest Justice Project (206) 464-1519 ext. 259
5 CLE credits estimated

July

11 **The Estate Planner's Guide**
Seattle
By WSBA CLE
6 CLE credits

11 **How to Develop & Use Evidence to Your Advantage**
Spokane
By WSBA CLE & WYLD (206) 727-8202
7 CLE credits (Incl. 0.75 ethics)

15 **Keys to Success in a Real Estate Transaction in WA**
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

16 **Finance & Accounting Issues for In-house Counsel & Other Business Lawyers**
Seattle
By WSBA CLE & Corporate Law Section (206) 727-8202
6.25 CLE credits

17 **Zoning and Land Use Issues**
Seattle
By WSBA CLE
7 CLE credits pending

17 **Communication in the Courtroom**
Seattle
By Carl Grant (206) 364-5298
6.5 CLE credits

18 **Washington Workers Compensation for Self-insureds**
Seattle
By Lorman (715) 833-3940
5.75 CLE credits

19-20 **WSBA Board of Governors Meeting**
Port Ludlow
(206) 727-8244

21 **Interest-based Mediation—The Process: Philosophies, Proficiency & Procedures**
Spokane
By Fulcrum Institute (509) 838-2799
36.5 CLE credits (incl. 1 ethics)

22 **Adjusting the Automobile Injury Claim in Washington**
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

24 **NW Women's Law Center Annual Leadership Breakfast**
Seattle
(206) 682-9552

25 **Employment Discrimination**
Seattle
By WSBA CLE (206) 727-8202
6.75 CLE credits
(incl. 1.0 ethics)

29 **The Finance & Accounting Course for Not-for-profit Organizations**
Seattle
By PES (715) 833-5296
7.25 CLE credits

29 **Law of Internet in Washington**
Seattle
By NBI (715) 835-8525
6.5 CLE credits (incl. 1 ethics)

31-8/3 **WSTLA 1997 Annual Meeting & Convention**
Vancouver B.C. Canada
(206) 464-1011
CLE credits pending

August

1 **How to Identify, Meet & Enforce the Rights of Persons with Disabilities**
Seattle
By WSBA CLE (206) 727-8202
7 CLE credits
(incl. 0.5 ethics) pending

5 **Understanding & Analyzing Financial Statements**
Seattle
By National Center for Continuing Education (904) 561-3506
6.5 CLE credits (incl. 2.5 ethics)

7 **How to Handle Estate & Trust Litigation**
Spokane
Also in Seattle 8/15
By WSBA CLE & RPPT Section (206) 727-8202
6 CLE credits estimated

8 **Essentials of Advising Small Businesses**
Spokane
Also in Seattle 8/14
By WSBA CLE & WYLD (206) 727-8202
CLE credits pending

13 **The Estate Planner's Guide**
(video replay of 7/11 Seattle seminar with live moderator)
Olympia
By WSBA CLE (206) 727-8202
7 CLE credits (incl. 0.75 ethics)

22 **ADR from the Advocate's Perspective** (AM) & **ADR Skills Training** (PM)
Seattle
By WSBA CLE (206) 727-8202
CLE credits pending

26 **Deposition Skills Training**
Seattle
By NITA (219) 239-7770
18.25 CLE credits (incl. 2.25 ethics)

September

5-6 **WSBA Board of Governors Meeting**
Seattle
(206) 727-8244

12 **WSBA Annual Meeting**
(206) 727-8244

17 **Drug Prosecution Training Program**
Leavenworth
By WAPA (360) 753-2175
16 CLE credits (incl. 2 ethics)

New in June!

SAVE 5% on Your Malpractice Premium!

Malpractice Insurance Discount Certificates

Holders of malpractice policies under the Bar's sponsored KVI-Reliance program can obtain certificates of attendance at any WSBA CLE Seminar and qualify for a 5% insurance premium discount, up to a 10% discount per year. For details, call WSBA CLE at (206) 727-8202.

FOSTER PEPPER & SHEFELMAN
PROFESSIONAL LIMITED LIABILITY COMPANY

is expanding its

Land Use & Environmental Practice Group

and is pleased to announce

STEPHANIE MARSHALL HICKS

Associate

and

PATRICK J. MULLANEY

of Counsel

Have Joined the Firm
Practicing in our Seattle Office

ANCHORAGE • BELLEVUE • PORTLAND • SEATTLE

GARDNER BOND TRABOLSI
McDONALD & CLEMENT PLLC
ATTORNEYS

DENNY BUILDING, SUITE 600
2200 SIXTH AVENUE
SEATTLE, WA 98121
(206) 256-6309
FAX (206) 256-6318

RONALD C. GARDNER
MICHAEL J. BOND
GARY A. TRABOLSI
LYNN R. McDONALD
AND
W. SCOTT CLEMENT

FORMERLY SHAREHOLDERS WITH
LEE, SMART, COOK, MARTIN & PATTERSON, P.S., INC.

ARE PROUD TO ANNOUNCE THE OPENING
OF THEIR NEW LAW FIRM

DEDICATED TO THE AGGRESSIVE PROSECUTION AND
DEFENSE OF DAMAGE CLAIMS

PROFESSIONALS

CLASSIFIEDS

FOR SALE/WANTED

Washington digital law library. Washington CD of cases, statutes, and administrative code ($49 plus tax). Call (509) 946-9507 or write WDLL, P.O. Box 1830, Richland, WA 99352. Internet: wadllf@3-cities.com.

Law practices for sale — Practice Transition Partners have several practices available, including a long-term practice located in bucolic setting, including 19th-century Victorian office building and separate residence. Please call Jaye Lynn Schneider, J.D. (206) 822-2353; Michael P. Weiss C.P.A. (360) 697-4607; or William E. Pearsall, Intermediary (206) 865-9802.

Save 50% on law books. National Law, America's largest law book dealer. All sets complete, current, excellent quality. Buy/sell/appraise. VISA/MC, AMEX, Discover. (800) 886-1800.

$59.95: 1997 Washington State Child Support Worksheets and Financial Declaration Computer Program. Program calculates wages, FICA, taxes (Schedule A, Head of Household/Day Care Credit/ Earned Income Credit, etc.), imputes income, residential care credit, and Arvey (split custody) allocation. 1997 Update $16.95. Call Law Office of Frederick L. Hetter (206) 759-6853.

Reducing your library? Switching to CD-ROMs? Want a tax break? The Swinomish Tribe seeks donations of F.Supp., F.2d, F.3d, S. Ct. Rptr. (L. Ed. 2d or U.S. Rptr.), and *Federal Practice* (Wright & Miller or Moore's). Contact Alix Foster at (360) 466-3163. Donations tax- deductible.

SPACE AVAILABLE

Downtown Renton — 3000 sq. ft. ground floor, prime location. Reception, conference room, library, four offices. Some furnishings and copy machine included. Call Bob Anderson (360) 289-4206.

Space sharing. First Interstate Center, Seattle. Three offices on 25th floor with small full-service firm and other subtenants. Two conference rooms, library, receptionist, fax and copiers. Negotiable terms. (206) 382-2600.

Historic Pioneer Square — two spacious offices with private reception in the Howard Building. Share floor with busy general practice. All the amenities. Large windows, exposed brick for one or two attorneys. Close to the courthouse, reasonable terms. Kocis & Associates, P.S. (206) 447-1809.

Premium Office Space — central Bellevue business district. Goddard & Wetherall. Large offices, reasonable cost. Receptionist, fax, phone, copier, conference rooms, library, mail processing, kitchen facilities. Call: Hays at (206) 453-9200.

POSITION AVAILABLE

Reply to WSBA* Bar News *Box Numbers at: WSBA* Bar News *Box___,* Bar News *Classifieds, 2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330.

Quality attorneys, law clerks and paralegals sought to fill temporary and permanent positions in law firms and companies throughout Washington. Please contact Legal Ease, L.L.C. at (206) 822-1157.

Active workers' comp/personal injury practice in Tacoma needs seasoned (minimum two years' experience) litigation attorney with experience before both the Board of Industrial Insurance Appeals and Superior Court. Send résumé to Mr. Crossland, P.O. Box 5707, Tacoma, WA 98415. Salary negotiable with benefits.

Would you like an opportunity to *enjoy* the practice of employment law? Sebris Busto, P.S. is an eight-lawyer firm that represents employers in employment/ labor law exclusively. We are seeking an associate with a minimum of two years' experience in this area. This person must have strong research and writing skills, and an interest in developing litigation and client counseling skills. Please send résumé to Cindy Kendall, 1500 Plaza Center, 10900 N.E. 8th Street, Bellevue, WA 98004. All replies are confidential.

Corporate attorney — Spacelabs Medical is a world leader in the development and manufacture of sophisticated clinical information systems, patient monitoring equipment and medical diagnostic products. We are currently seeking an attorney with our fast-paced, high-tech corporate legal department in Redmond. Successful candidate will have superior academic credentials and a state bar membership, as well as two or more years' corporate/transactional experience. Excellent project management, multi-tasking, communication and organizational skills are essential. Must thrive in a fast-paced, deadline-driven environment. Background in corporate governance or securities a plus. Please send/fax your résumé to Spacelabs Medical, Inc., Dept. CORATT, P.O. Box 97013, Redmond, WA 98073-9713. Fax: (206) 702-2377. E-mail: resumes@slmd.com and visit our website at http:// www.spacelabs.com. Principals only. No phone calls, please. EOE.

Attorney jobs. Harvard Law School calls our publication "probably the most comprehensive source of nationwide and international job openings received by our office and should be the starting point of any job search by lawyers looking to change jobs." Each monthly issue contains 500-600 current (public/private sector) jobs. $45 for 3 months. Contact: *Legal Employment Report*, 1010 Vermont

Avenue N.W., Ste. 408-WB, Washington, D.C. 20005. (800) 296-9611. Visa/MC/AMEX.

Business attorney. A 23-attorney firm in Vancouver, Washington, seeks an experienced business/corporate law attorney for an associate position in the firm's fast-growing business practice. Applicants should have a minimum of six months' experience in the areas of general corporate and business matters, with emphasis on business organizations (corporation and partnership), business transactions, and commercial matters. Applicants must be licensed in either Washington or Oregon and possess a superior academic background and excellent writing skills. Please send résumé, law school transcript and a short writing sample to Executive Director, Landerholm, Memovich, Lansverk & Whitesides, P.S., P.O. Box 1086, Vancouver, WA 98666.

Established Clark County firm seeks commercial litigation associate with a minimum of six months' experience. The applicant must have strong verbal, research, and writing skills and an excellent academic record. Motion and/or trial experience desirable, but not necessary. The position will emphasize a fast-paced debtor/creditor, bankruptcy, and collections practice in Oregon and Washington. Applicants should send their résumé, writing sample, and references to: Executive Director, P.O. Box 1086, Vancouver, WA 98666. All responses shall remain confidential.

Contract attorney. Curran, Kleweno & Johnson, a 10-person AV-rated firm in Kent, seeks an experienced real estate attorney with litigation experience. Send résumé to Gert Hamkens, P.O. Box 140, Kent, WA 98035-0140.

Associate — Sexual Harassment. Tacoma firm seeks attorney with at least three years' experience in employment litigation matters. Strong writing skills and computer literacy a must. Salary dependent upon qualifications and experience. Please fax résumé to Sherice Collins at (206) 473-9695.

Minzel & Associates is a temporary placement agency for lawyers and paralegals. We are looking for quality lawyers and paralegals who are willing to work on a contract basis for law firms, corporations, solo practitioners, and government agencies. If you are interested, please call (206) 689-8526 for an interview.

Associate or "of counsel" position. 12-attorney Eugene AV firm with strong business and litigation practice seeks litigator with a minimum of five years' experience. Excellent credentials and substantial experience trying insurance defense cases are required. Transportable practice not required. Please send résumé in confidence to: Administrator, Arnold Gallagher Saydack Percell & Roberts, P.C., P.O. Box 1758, Eugene, OR 97440-1758.

Criminal attorney wanted to take over established Seattle-area criminal practice while sole practitioner takes extended sabbatical in 1998. Unique opportunity. WSBA *Bar News* Box 528.

The Spokane County Public Defender's Office is exploring the possibility of contracting all misdemeanor representation with two to four law firms. RFQ packets are available from the office receptionist on the 3rd floor of the Courthouse Annex for those interested. For further information you may contact Don Westerman at (509) 456-4246. Responses must be submitted by June 12, 1997.

Corporate tax director — medium-sized, progressive NW-based real estate/timber/investments company with holdings in many states, Canada and South America, seeks lawyer/CPA with broad tax experience to manage tax planning and compliance (60-70 income tax returns). Only outstanding candidates need apply. Must have strong knowledge of tax law and at least four years of practical experience including compliance. Areas of strength to include C Corp., S Corp. Partnership, International and real estate. Capability in state and local tax and compensation matters is helpful. Will work closely with outstanding professional management team including lawyers and CPAs. Duties will include management of tax compliance, entity structure, transactional tax planning and other business/investment decision analysis and documentation. Other financial, tax and legal responsibilities depending upon experience and other qualifications. Excellent job growth potential. Downtown Seattle office. Competitive salary and benefits. Send résumé, letter of application and salary history to WSBA *Bar News* Box 530.

Bogle & Gates P.L.L.C. is pleased to announce the following opportunities for associate attorneys in its Seattle office. *Construction and design litigation:* The successful candidate will have a minimum of two years' practice experience handling construction and design claims and real estate development disputes. *Corporate finance and securities:* Applicants should have a minimum of three years' corporate finance experience. *ERISA:* The successful candidate will have a minimum of one year's experience in tax or ERISA. *Immigration:* Applicants should possess the ability to work independently, and have a minimum of five years' experience in immigration law. *Intellectual property:* This growing practice area has a position available for a licensing attorney with a minimum of two years' experience, as well as a patent prosecution specialist with a minimum of six years' experience. Labor and employment: The successful candidate will have a minimum of three years of practice experience handling a range of labor and employment matters, including employment litigation. *Litigation:* This practice requires applicants to have a minimum of three years' experience in sophisticated, commercial and/or product liability litigation. For all available positions, we require outstanding academic credentials, excellent oral and written communication skills, and a dedication to providing the highest quality client service. We offer a competitive compensation and benefits package and a professional work environment. Qualified individuals should submit a cover letter outlining their qualifications with a complete résumé, law school transcript, and legal writing sample to: Attorney Recruiting Manager, Bogle & Gates P.L.L.C., Two Union Square, 601 Union Street, Suite 4700, Seattle, WA 98101-2346. We are an EEO employer and encourage those from diverse backgrounds to apply. (No phone calls, please.)

Administrative law judge — statewide vacancies (Everett, Olympia, Seattle, Spokane, Vancouver, Yakima). Exempt positions in Washington State government. Desired qualifications: attorneys with demonstrated knowledge of administrative law and procedures; ability to conduct hearings, in person or by telephone; knowledge of APA and legal issues relating to public benefits; writing and computer skills; experience in trials or administrative hearings or other comparable experience. Some travel required. Recruitment closes July 31, 1997. Salary $3,455-4,882, DOQ. Submit letter of interest, résumé, completed Washington State employment application and list of three professional references to: Office of Administrative Hearings, P.O. Box 42488, Olympia, WA 98504-2488. EOE.

Public-interest law firm seeks an experienced attorney for its Bellevue office. Litigation issues of the firm include advancing private property rights, eliminating unlawful government agency intrusions into individual and economic freedoms, supporting the free enterprise system, and advocating healthy productive use of natural resources in an environmentally protective manner. The ideal candidate should possess a minimum of four years' experience in trial and appellate court litigation preferably concerning growth management, land use, environmental and constitutional law questions. Candidate should have high academic credentials, superb communications skills, strong initiative and independent work style. Member of WA bar required; additional licensing in OR and AK a plus. Qualified applicant should submit cover letter with résumé and legal writing sample to: Hiring Committee, 10800 N.E. 8th Street, Suite 325, Bellevue, WA 98004. An Equal Opportunity Employer. No phone calls please.

WILL SEARCH

Bertram Richard Frost: Lost will; resident of Tukwila, WA; born 6/10/30 at Napa, CA; died 3/23/97. Contact David Meyer, (206) 455-1002.

SERVICES

Quality attorneys, law clerks, and paralegals — More than 300 pre-screened local contract attorneys, law clerks, and paralegals are immediately available for legal work at any level, from the most basic support tasks to the most complex attorney work. Contact Legal Ease, L.L.C. (206) 822-1157.

Forensic document examiner. Trained by Secret Service/U.S. Postal Crime Lab examiners. Court-qualified. Currently the examiner for the Eugene Police Department. Only civil cases accepted. Jim Green (503) 485-0832.

Forensic engineer. Board-certified forensic examiner specializing in fire reconstructions and accident analysis: autos/fires/P.I./product failure/construction defectv. Ref: Martindale-Hubbell Law Directory, Best's Directory of Recommended Insurance Attorneys and Adjusters. Contact: John Caudron, M.S.S., BCFE (909) 598-8919.

Rigos Bar Review — Washington law written by Washington lawyers exclusively for the Washington Bar Exam. Classes in Seattle, Tacoma, and Portland. Contacts (206) 624-0716, 102735.3047@compuserve.com; www.rigosrev.com.

Oregon accident? Unable to settle the case? Associate an experienced Oregon trial attorney to litigate the case and share the fee. OTLA member; references available. Zach Zabinsky, (503) 223-8517.

Legal research is my forte! Contract attorney performs legal research at UW Law Library for lawyers anywhere in Washington State. Will draft trial briefs, motions, memoranda. Clerked in King County Superior Court, U.S. Bankruptcy Court. Elizabeth Dash Bottman, (206) 526-5777. E-mail: Lizbottman@sprintmail.com.

Minzel & Associates is a temporary placement agency for lawyers and paralegals. We provide highly qualified attorneys and paralegals on a contract basis to law firms, corporations, solo practitioners, and government agencies. Jeff Minzel, who worked at Davis Wright Tremaine for a number of years, carefully screens all attorneys and paralegals. Highlights of the screening process include a personal interview, a detailed review of the applicant's legal and non-legal work experience, a review of the applicant's educational background, an evaluation of the applicant's legal skills, reference checks, a review for bar complaints and malpractice suits, and verification of good-standing status. These lawyers and paralegals can help you enhance profits, control costs, manage growth, increase flexibility, improve client service, and increase career satisfaction. For more information, please call us at (206) 689-8526 or e-mail us at M-and-A@msn.com.

Contract attorney: experienced, accomplished trial and appellate attorney available, 15-plus years' experience. Litigation and writing emphasized. References; reasonable rates. M. Scott Dutton (206) 324-2306, fax (206) 324-0435.

LawDog — legal retrieval by your own personal law librarian. Specializing in internet resources. No charge if you don't get what you want. Documents delivered via e-mail, fax, first-class U.S. mail. For law on the internet, send LawDog. Contact: Stephanie Tripp, J.D., M.L.S. Calif./Wa. dual-licensed. E-mail: lexcodex@ix.netcom.com. Office: (619) 390-5095. Cell: (619) 203-1595.

MISCELLANEOUS

Boyfriend wanted: happy, attractive DWF 43, 5'10", HWP with class, intelligence, $ecurity seeks handsome, sincere, spiritual, kind man with brains! Must be 6 feet plus and like Bainbridge Island. Call me and see! (206) 781-3822.

Cabo San Lucas — deluxe 1-bedroom condo on waterfront. Fantastic view, pool, fully equipped kitchen, A.C., TV/VCR, three private balconies overlooking marina, restaurant & bar on premises, prime location. $125/night. (503) 393-5059.

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.

Cash Paid! We fund appeals, contracts and structured settlements. Full or partial — for information, phone toll-free (800) 426-8367. HMC International, Inc. (Referral fee.)

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.

Roche Harbor. Three waterfront lots remain. Facing west, perfect beach, dock for 50' 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.

Newport, OR — 1-bedroom cottage overlooking Yaquina Bay. Five minutes from Oregon Coast Aquarium, bayfront and beaches; $49/night; $294/week; (541) 265-8553.

Cannon Beach: honeymoon-sized 1-bedroom cottage, fireplace and private beach access; centrally located; zoned hotel/residential; $225,000. Respond to WSBA *Bar News* Box 529.

Announcement

WSBA Presidential Selection

The Board of Governors of the Washington State Bar Association (WSBA) is seeking applicants to serve as President of WSBA for 1998-1999. Pursuant to Article IV(A)(2) of the WSBA, the President for that term shall have his or her primary place of business within King County.

Applications for 1998-99 President of the WSBA will be accepted through July 15, 1997, and should be limited to a current résumé, a concise application letter, and selected references. Endorsement letters received by July 31, 1997 will be considered by the Search Committee and the Board of Governors. Applications and endorsement letters should be sent to the WSBA Executive Director, 2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330.

Interviews will be conducted between August 15 and August 31, 1997, at the offices of the Washington State Bar Association. In addition to the interview in August before the Search Committee, finalists will be invited back to the September Board of Governors meeting for an interview before the full Board of Governors, in open session. Applicants are discouraged from conducting active campaigns for this office.

The Washington State Bar Association member selected to be the WSBA President will have an opportunity to provide a significant contribution to the legal profession.

While prior experience on WSBA's Board of Governors may be helpful, there is no requirement to have been a member of the Board of Governors or to have had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal

Continued on page 60

Stan Morse — Lawyer, Writer, Photographer

The genre entitled "legal artwork" generally consists of a) pillars; b) Lady Justice; and c) scales. The entire collection is, shall we say, less than inspired.

Enter Stan Morse of Chelan, a Washington lawyer who has traveled around the state, camera in hand, capturing images from the legal arena in a manner that is decidedly more compelling. Morse's courthouses — both interior and exterior shots — are nothing less than works of art.

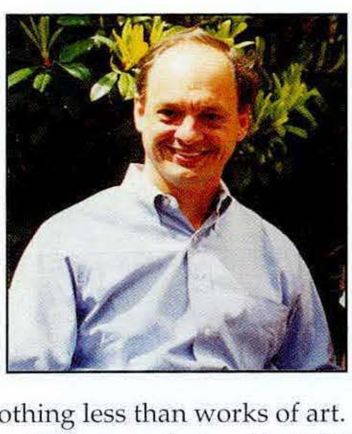
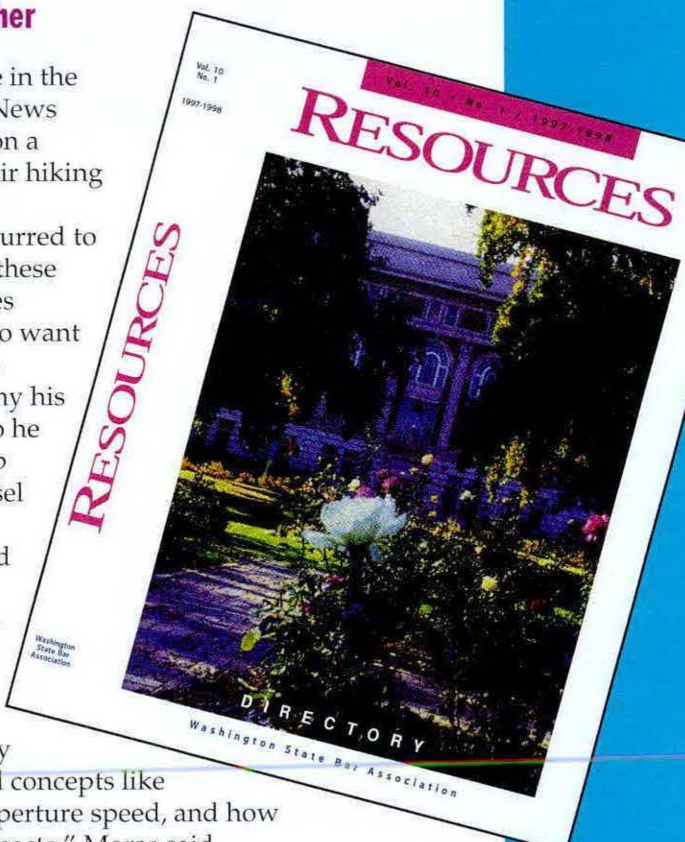


Photo by Jack Young

The cover shot on the WSBA's just-released *Resources* directory was donated by the multi-talented Morse, who has been writing and taking pictures for 15 years.

He first began writing around 1982, publishing stories in *The Good Fruit Grower* in Yakima, *The Seattle Weekly*, and one in *Compass* magazine in the Tacoma News Tribune on a wheelchair hiking trail.

It occurred to him that these magazines might also want photos to accompany his stories, so he picked up three Ansel Adams books and started studying. "They teach you some very elemental concepts like f-stops, aperture speed, and how the film reacts," Morse said.



In this *Resources* cover, the Chelan County Courthouse posed the usual staging problems.

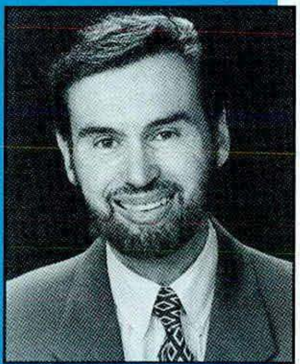
Continued on page 60

Congratulations to the 328 Spring 1997 WSBA Admittees!

Abdullah, Shareefah Ameenah, Vancouver, WA
Acoba, Darren, Burlington, WA
Adams, Laura Lee, Bellevue, WA
Alben, Ellen Brady, Mercer Island, WA
Alexander, Jason W., Portland, OR
Alipuria, Hari L., Fort Lewis, WA
Ames, Richard Ralph, Danville, CA
Anderson, Barbra, Restun, VA
Anderson, Erik Arthur, Camas, WA
Anderson, Susan E., Kent, WA
Aubrey, Eddie J., Tacoma, WA
Bacon, David Richmond, Aptos, CA
Baldi, Kathleen Ann, Seattle, WA
Battenberg, Steve, Tacoma, WA
Becia, Franco Luciano, Seattle, WA
Beck, Joseph N., Garfield, WA
Beitey, Daniel James, Espanola, WA
Benjamin, Brian Birdsall, Lewiston, ID
Bennett, Gail M., Seattle, WA
Bertolino, Michelle Marie, Portland, OR
Bisset, Jennifer B., Hood River, OR
Boddy, Brian K., Seattle, WA
Bolante, Clarissa Hsien-Ying, Mukilteo, WA
Bond, Heather Harrison, Seattle, WA
Boodell, Kelly A., Seattle, WA
Boyd, Ben Harlan, Spokane, WA
Braithwaite, Eric Matthew, Seattle, WA
Brantner, Andrea J., Seattle, WA
Broder, Marcy B., Seattle, WA
Brown, Vern A., Bremerton, WA
Brugger, Jennifer K., Seattle, WA
Burmeister, Nikki Lee, Seattle, WA
Cannon-Unione, Jennifer, Kirkland, WA
Cantor, Jesse, Seattle, WA
Cantu, Catalina Marie, Seattle, WA
Carlson, Garth M., Portland, OR
Carter, Charles Philip, Seattle, WA
Cavanaugh, Todd A., Seattle, WA
Chandler, Cindi L., Portland, OR
Chang, Kenneth M., Seattle, WA
Chen, Samuel Stevens Chuateco, Tacoma, WA
Cheung, Wai Lui Julie, Mercer Island, WA
Chong, Gloria A., Canada
Chun, Alex S., Seattle, WA
Church, Roberta Sue, Elbe, WA
Clark, Cornelia Magaretha, Camano Island, WA
Clark, Karen A., Seattle, WA
Cobos, Armando, Seattle, WA
Cole, Neil Anthony, Portland, OR
Conway, Mara Eleina, Bellevue, WA
Cooper, Carol J., Olympia, WA
Costello, Terrance Michael, Seattle, WA
Coultas, Jennifer A., Huntington Beach, CA
Cox, Bruce E., Spokane, WA
Coyle, Joseph Terrence, III, Bellevue, WA
Cronk, Stacey M., Mercer Island, WA
Daly, Jeffrey W., Las Vegas, NV
Danforth, Timothy Joseph, Mercer Island, WA
Daniel, Juanda Lowder, Kent, WA
Darnall, Darleen Rene, Portland, OR
Daugaard, Lisa, Kirkland, WA
Davidson, Marie, Seattle, WA
Devine, Patrick John, Seattle, WA
Diamond, Kenneth Joel, Rockville, MD
DiDonna, Margaret E., Seattle, WA
Dingler, Crystal L., Seattle, WA
Dixon, William L., Tacoma, WA
Drivdahl, Heidi M., Kent, WA
Drotzmann, Christopher John, Portland, OR
Duffy, Megan R., Seattle, WA
Duringer, David R., Vancouver, WA
Eggert, Christopher John, Gresham, OR
Eller, Travis Scott, Seattle, WA
Ephron, Susan H., Seattle, WA
Erickson, Sonya F., Seattle, WA
Erz, Lance Braden, Hood River, OR
Evans, David Guy, Eugene, OR
Fawley, Catherine L., Bainbridge Island, WA
Fearer, Kathleen E., Seattle, WA
Feeney, David Joseph, Woodinville, WA
Feldcamp, Michael Neal, Houston, TX
Ferrell, William T., Anchorage, AK
Feske, Andrew, Federal Way, WA
Fields, Michael R., Fresno, CA
Fitz-Gerald, Kerry L., Seattle, WA
Fleck, Ann Maria, Carson City, NV
Flennaugh, Robert, II, Seattle, WA
Flower, Aline, Seattle, WA
Fogarty, Paul, Seattle, WA
Fraley, Nelson C., II, Federal Way, WA
Friedman, Julie Ann, Mercer Island, WA
Froud, Melinda A., Tacoma, WA
Ganion, James Michael, Everett, WA
Gash, Eric J., Issaquah, WA
Gautama, Elise Naomi, Seattle, WA
Glen, Susan C., Portland, OR
Glynn, Ann, Spokane, WA
Gross, David W., Boise, ID
Guess, Philip Mosby, Seattle, WA
Guin, John Henry, Spokane, WA
Haake, Douglas H., Olympia, WA
Haas, Jeremy A., San Jose, CA
Hack, Karl Alan, Bellevue, WA
Hall, Erika Michelle, Washington, DC
Hamilton, Donna J., Tempe, AZ
Han, Yong J., Seattle, WA
Hancock, Douglas Damian, Portland, OR
Hancock, Lorie J. Harris, Portland, OR
Hansen, G. Olaf, Seattle, WA
Hearn, Holly Michelle, Seattle, WA
Hedrick, Robert Francis, Golden, CO
Henricksen, Paul Curtis, Tacoma, WA
Herman, Rebecca T., Seattle, WA
Hernandez, Ligia Isela, Pasadena, CA
Hightower, Bradley E., Bellevue, WA
Hoffinger, Julie Ming Hsu, Portland, OR
Hollins, Kimberly S., Pullman, WA
Holman, Heidi L., Seattle, WA
Holohan, Elizabeth R., Seattle, WA
Homsher, Frank Shigaihisa, Cincinnati, OH
Hood, Bridie Monahan, Walla Walla, WA
Hoyer, Leah Colleen, Seattle, WA
Huddleston, Jeannie Marie, Seattle, WA
Hulshoff, Ric D., Federal Way, WA
Igielski, Christopher T., Federal Way, WA
Jackson, Scott M., Renton, WA
Jacobson, Paul D., Redmond, WA
Jenkins, Nicholas G., Manhattan Beach, CA
Johnson, Christopher L., Seattle, WA
Johnson, Karen J., Portland, OR
Johnson, Reginald, Tacoma, WA
Johnson, Tod Lee, Redmond, WA
Jovanovich, Jody A., Des Moines, WA
Julius, Jeffrey, Bainbridge Island, WA
Kabiri, Mitra, Houston, TX
Kanigel, David M., Evergreen, CO
Kartes, Lisa Michele, Auburn, WA
Karwaki, Tanya Elena, Seattle, WA
Kay, Robert Joseph, Seattle, WA
Kil, Pamela Hyon, Seattle, WA
Kim, Christopher Y., Seattle, WA
Kirkwood, Heather, Seattle, WA
Klein, Jason C., Seattle, WA
Klein, Joseph Carl, Bellingham, WA
Klinge, Jill Ann, Kirkland, WA
Knack, Mary Rebecca, Seattle, WA
Kocher, Jennifer Lynn, Seattle, WA
Kocher, Leslie A., Portland, OR
Kosh, John, Jr., Granada Hills, CA
Koubourlis, Koren T.D., Seattle, WA
Kovacs, Judith A., Seattle, WA
Kradel, Jeffrey L., Seattle, WA
Kranitz, Linda S., Redmond, WA
Kratz, Amy, Seattle, WA
Krueger, Allyson Sheri, Portland, OR
Lamb, Jane Elizabeth, Bothell, WA
Lambert, Lee Dominic, Olympia, WA
Lapham, Justus, Seattle, WA
Larson, Tori L., Spokane, WA
Lauricella, J. Travis, Tacoma, WA
Lawrence, Wm. Paul, II, Seattle, WA
Le, Thuc My, Seattle, WA
Leathers, Wade S., Bellevue, WA
Leblanc, Kelly D., Olympia, WA

Lehmann, Michelle Lavaun, Poulsbo, WA
Leong, Stacey Heather, Sacramento, CA
Lerner, Thomas Andrew, Bethesda, MD
Lieberman, Suzanne G., Federal Way, WA
Limb, John J., Seattle, WA
Lloyd, Brent David, Seattle, WA
Logsdon, Eve Loretta, Portland, OR
Love, John Edwin, Spokane, WA
Lowry, Theodore Patrick, Yakima, WA
Luke, Gary D., Murtaugh, ID
Luke, Lucinda Jean, Richland, WA
Lumbreres, Norma Linda Urena, Bellevue, WA
Lutz, Charles David, Fife, WA
Mabrey, G. Paul, Port Orchard, WA
Makler, Mark Joshua, Portland, OR
Mancino, Phillip Anthony, Seattle, WA
Mandt, Heidi L., Beaverton, OR
Mawson, Richard Scott, Bellingham, WA
Maxson, Catherine E., Seattle, WA
McCandlis, Paula L., Spokane, WA
McCarthy, William A., Bainbridge Island, WA
McDougall-Tural, Elizabeth L., Wilkesboro, NC
McFarlane, Sherell N., Seattle, WA
McGill, Beverly Dawn, Seattle, WA
McGonigal, Melissa Ann, Seattle, WA
McGrath, William Leon, Seattle, WA
McMahon, Gerald Kevin, Anaheim, CA
McMullen, Jon J., Vancouver, WA
Meneghello, Richard Renato, Portland, OR
Menser, Daniel John, Kent, WA
Meryhew, Brad Allen, Seattle, WA
Miles, Alan L., Bainbridge Island, WA
Miller, Bradley S., Portland, OR
Miller, Nadia Rachael, Seattle, WA
Mirise, Cecily Ann, Tacoma, WA
Mischel, James V., Jr., Lynnwood, WA
Mitchell, Roland, Federal Way, WA
Montegut, Christian Edward, Seattle, WA
Montstream, Nancy T., Tacoma, WA
Moore, Michael A., Seattle, WA
Morgan, John Paul, Seattle, WA
Morgan, Ronald Joe, Bellingham, WA
Morissette, Marcus A., Seattle, WA
Morris, Douglas D., Portland, OR
Murphy, Tiffany Anita, Bellevue, WA
Myers, Amy, Seattle, WA
Nelson, James E., Bothell, WA
Newman, Derek Alan, Seattle, WA
Newman, Holly Kathleen, Seattle, WA
Nyari, Linda Jean, Issaquah, WA
O'Carroll, Alison Lynn, Seattle, WA
O'Connor, Karen L., Portland, OR
O'Connor, Matthew, Seattle, WA
Oliver, Polly L., Federal Way, WA
Olson, Robert Jeffrey, Puyallup, WA
O'Neill, Michael D., Tacoma, WA
Ortloff, Kimberly K., Port Angeles, WA
Page, Benjamin James, Seattle, WA
Palmer, Jonathan M., Seattle, WA
Pangilinan, Grace S., Hillsboro, OR
Pappin, James R., Seattle, WA
Parker, Pamela K., Seattle, WA
Payton, Gwendolyn Cecilia, Bellingham, WA
Pearlstein, Jonathan M., Vashon, WA
Pearson, Jennifer Ann, Lynnwood, WA
Penton, A. Denise, Moscow, ID
Peternell, Mark Andrew, Issaquah, WA
Pettys, Todd Edward, Seattle, WA
Philips, Wayne, Olympia, WA
Pierce, Tom Bao, Seattle, WA
Pisarski, Genevieve, Olympia, WA
Potter, Jane E.R., Seattle, WA
Powers, Bradford Morgan, Seattle, WA
Prengaman, Luke J., Reno, NV
Protigal, Stanley N., Seattle, WA
Randolph, Mark E., Tacoma, WA
Reibman, Jennifer Greenlick, Bellevue, WA
Reid, Kristen A., Port Townsend, WA
Rein, Randal J., Jamul, CA
Reiserer, Kenneth Harris, Lake Forest Park, WA
Rench, Donald Ray, Jr., Cincinnati, OH
Richmond, Elshon DeWayne, Tumwater, WA
Ridgway, Kirsten E., Tucson, AZ
Roberts, Renee Andrea, Port Orchard, WA
Rochelle, Joseph B., III, Bainbridge Island, WA
Roseman, Allison B., Dallas, TX
Rosen, Benjamin Christopher, Tacoma, WA
Rubin, Laurel J., Richland, WA
Rundquist, Timothy A., Seattle, WA
Russ, Daniel C., Olympia, WA
Russell, Dale Christopher, Spokane, WA
Sampson, Jack Thomas, Mercer Island, WA
Saulsbury, James Thomas, Houston, TX
Savard, Jane M., Shoreline, WA
Schalestock, Peter Kirk, Washington, DC
Schauermann, Scott T., Lake Oswego, OR
Schleicher, Tara J., Wilsonville, OR
Schouten, Jeffrey Thomas, Seattle, WA
Schweppenheiser, Keith, Uniondale, PA
Seu, Carlton W.M., Mukilteo, WA
Shaurette, James Dale, Spokane, WA
Shields, Klara Katherine, Seattle, WA
Short, J. Edward, Coeur D'Alene, ID
Sirok, James Steven, Mountlake Terrace, WA
Skabronski, Jill C., Spokane, WA
Skeels, Timothy Allen, Tacoma, WA
Skelton, John Hamilton, Seattle, WA
Sladek, Laura Rebecca, Shelton, WA
Smith, James Robert, Portland, OR
Smith, Jennifer Lynn, Arlington, VA
Smith, Terry L., Seattle, WA
Snow, Cheryl L., Seattle, WA
Snyder, Brent, Seattle, WA
Spott, Curtis Maynard, Exeter, CA
Spratt, Michael D., Tacoma, WA
Stanton, Holly A., Puyallup, WA
Stark, Robert E., Seattle, WA
Stasch, Sarah, Seattle, WA
Staton, Jeffrey Allan, Seattle, WA
Staub, Michael Kenneth, Coeur D'Alene, ID
Steensgaard, Christina M., Lake Oswego, OR
Stokke, John Powers, Seattle, WA
Strothers, Bruce E.L.M., Olympia, WA
Suagee, Stephen Hayes, Nespelem, WA
Sulham, Priscilla Long, Kirkland, WA
Swanson, Mark Emory, Mukilteo, WA
Sweany-Schumach, Dana C., Yakima, WA
Symons, Maggie J., Seattle, WA
Talcott, Anne Marie, Portland, OR
Taubert, Josephine A.N., San Jose, CA
Tautvydas, Daiva K., Seattle, WA
Terrell, Beth Ellen, Seattle, WA
Thompson, Mervyn Craig, Bainbridge Island, WA
Trapp, Ardis Clayton, III, Eastsound, WA
Traylor, Joe R., Wilsonville, OR
Tregerman, Gwendylan Evangeline, Seattle, WA
Trippe, Melissa Lou, Seattle, WA
Truitt, Deborah Jane, Oak Harbor, WA
Tunheim, Marcia Ann, Tacoma, WA
Turner, R. Cammon, Portland, OR
Unwin, Cynthia, Mukilteo, WA
Van Nocken, Victoria J., Tacoma, WA
Wahl, Cynthia Marie, Longview, WA
Walker, Jennifer A., Vashon Island, WA
Warren, Lashawn Yvette, Tacoma, WA
Watson, Julie Ann, Spokane, WA
Weeks, Laura D., Eugene, OR
Weinstein, Rachel, Seattle, WA
Weintraub, Boaz, San Marino, CA
Weiss, Eric Ethan, Everett, WA
Werner, Matthew Macaulay, Eugene, OR
White, David H., Seattle, WA
White, James J., Tacoma, WA
Whitney, Susan Zimmerman, Portland, OR
Williams, Timothy Elliott, Gig Harbor, WA
Wilson, Janelle Carolyn, St. Louis, MO
Wilson, Timothy Jay, Kingston, WA
Wochos, Lisa E., Lummi Island, WA
Wylie, Roger D., Seattle, WA
Yamamoto, Kevin John, Chehalis, WA
Yeager, Steven R., Eugene, OR
Yip, Tony, Canada
Zaleski, Kathleen Ann, Seattle, WA
Zerzan, Kelly Cole, Lake Oswego, OR

Robert Mussehl Wins Jefferson Award for Community Service



Seattle lawyer Robert Mussehl, who founded the Washington State Lawyers Campaign for Hunger Relief, was honored for his charitable efforts in April with a state-wide American Institute for Public Service Jefferson Award.

Co-sponsored by the *Seattle Post-Intelligencer*, this was Mussehl's second nomination. He was first nominated in 1995.

Mussehl, one of five winners of the state's highest citizenship award, was chosen for his work in founding and directing the organization, which has raised $150,000 to feed mainly children and seniors. The fund donates to the Emergency Feeding Program, the Children's Alliance, Summer Meals Program, and CARE's Mother/Child Health Program.

"It feels so satisfying and gratifying," Mussehl said. "It's so wonderful to feel appreciated and recognized. I was so happy that we were able to get lawyers recognized for doing something good."

Mussehl said he hopes his award will raise the profile of the organization so it can help even more hungry people.

"Our program is a model. We want to take it across the whole United States, so if we get a lot of press out of it that would help," he said. "I read the nomination list of so many people who did the most wonderful, unselfish things. It really is inspirational to be part of that." ◆

President — *Continued from page 57*

profession. The position is unpaid. Some expenses, such as WSBA related travel, are reimbursed.

The commitment begins as President-elect. In September 1998, at the WSBA's annual business meeting, the candidate will assume the position as President of the Association. The candidate will be expected to attend two-day Board meetings every six weeks, as well as attend numerous subcommittee, section, regional, national and local meetings. During his or her service, the candidate will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time will need to be devoted to communicating by letter and telephone in connection with these responsibilities. ◆

Photographer — *Continued from page 57*

He had to cover up an antenna on the roof with a tree branch in the foreground, and make sure that the new courthouse next door didn't show.

"The image was very much like choosing a jury," he explained. "I couldn't choose my courthouse but I could eliminate what I didn't like."

In 1984, Morse moved to Redmond to practice business, family and personal injury law. Missing his Chelan home, he thought it would be neat to have a photo of Central Washington on his office wall. So he went to Waterville in Douglas County and photographed the courthouse from the side, covered with shadows from the trees, and with a simple picnic table in front. It remains his favorite picture, and was a close second for this year's *Resources* cover.

"What more captures the spirit of that early pioneer energy, of what was supposed to be the center of community pride — the county courthouse. In Jefferson county, and in Lincoln, Garfield and Columbia, they really outdid themselves. They were making a statement."

So he expanded his courthouse photos into a celebration of Washington State's Centennial in 1989 with "Centennial Courthouse" — a photography exhibit of state courthouses that was exhibited in six county courthouses as well as the Legislature. He financed the exhibit himself, and would like to eventually give the collection to a historical society.

He has moved back to Chelan and is taking a sabbatical from work to concentrate on writing.

He recently returned from a 3 1/2 month trip to Australia where he did some research for his next project — writing a book about traveling around the world in a wheelchair. He broke his back in a skiing accident in 1971 at the age of 17. The Australia trip helped him learn how to navigate train travel and homestays.

"I wanted to know if I was going to be comfortable before I took off for six months," he said. He plans to leave in September for a six-month adventure.

He's also nearly finished with a 37,000-word short novel, and has begun another novel about a female prosecutor in a fictional central Washington county called "Cascadia." ◆

Vol. 51, No. 6, June 1997