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January 1998

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January 1998

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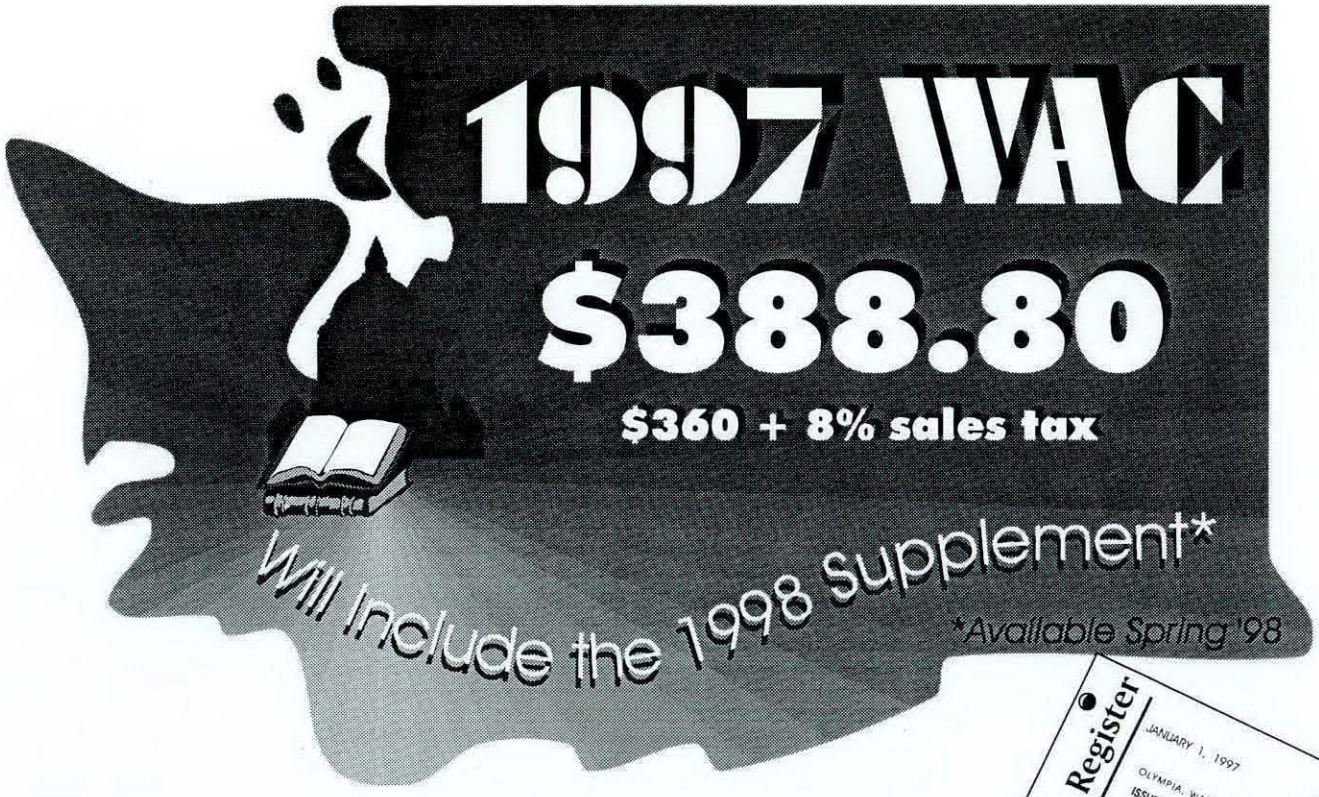

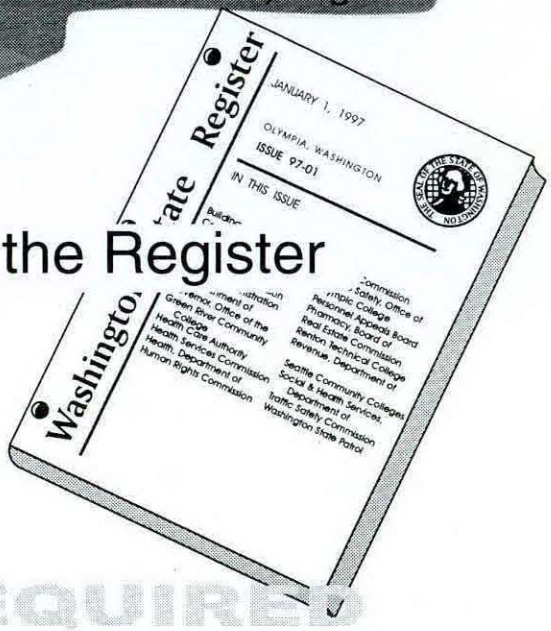

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Letters

Drug-Testing Lawyers Goofy Idea

■ Editor:

John Bundy's letter in the September *Bar News* calls for a more civil tone of discourse between lawyers in the pages of your publication. Although I agree with this plea for civility, I cannot reconcile it with the remainder of his letter which calls for the random drug testing of attorneys by the Bar Association. Surely, Mr. Bundy must have expected such an inflammatory suggestion would lead to the same type of uncivil responses he so correctly condemns.

I have reread his letter several times in the unsuccessful attempt to find a hint of sarcasm in his remarks. Finding none, I can only conclude that he is serious. Although he claims to speak "as neither a Republican nor a Nazi," he suggests an intrusive, expensive, inaccurate (and probably unconstitutional) invasion into the private lives of Washington lawyers. Although this does not make one a "Nazi" or even a "Republican," it sure is a goofy idea unworthy of a member of our profession. I, for one, am unwilling to support such an idea.

KENNETH FRIEDMAN
Seattle

Withdraw at Your Own Risk

■ Editor:

I am writing regarding a disciplinary issue which has been a matter of concern for about 10 years and was most recently highlighted in your November 1997 issue regarding the disciplinary action involving David S. Engle.

During the early 1970s concern grew regarding an attorney's rights and responsibilities when withdrawing from representation—clients being prejudiced, information being disclosed, etc. — and the Washington Supreme Court addressed the problem by adopting CR 71 in 1976 and subsequent amendments in 1985 and 1990. The Supreme Court set out by rule a procedure which was designed to balance the needs of clients and the needs of attorneys and to allow orderly withdrawal and replacement of counsel. So far, so good.

However, effective in 1985, the same Supreme Court adopted the Rules of Professional Conduct, which included RPC 1.15, setting forth in much greater detail than CR 71 a set of value-loaded subjective standards whose purpose is to allow withdrawal *only* "... if withdrawal can be accomplished without material adverse effect on the interests of the client . . ."

The pernicious effects of this conflict between CR 71 and RPC 1.15 are evident in the case of Mr. Engle. Based on the facts indicated in the summary disciplinary notice, Mr. Engle filed a Notice of Intent to Withdraw on December 29, 1994, to be effective January 10, 1995. Since the summary is silent on this point, I infer that he also arranged service of the Notice on the client as required by CR 71, and no one, *including the client,* objected to the withdrawal. I also infer that service on the client was made prior to filing, since CR 71 requires this (CR 71(c)(2)), and no mention is made in the summary.

That part of CR 71 which requires notice first to the client, and requires a minimum of 10 days' notice, and allows objection by the client, reflects a conclusion by the Washington Supreme Court that these steps are adequate to minimize prejudice to the client. Mr. Engle complied with all the requirements of CR 71.

Moreover, since the summary is silent on this point, I infer that the client did not request a continuance of trial to obtain new counsel. Finally, the summary mentions that the court found the client's petition to be without factual support and to be brought in bad faith.

It should also, and very importantly, be noted that Mr. Engle had no role in bringing the petition to modify support, but was stuck with the case when another attorney left his firm.

From the evidence presented in the summary and the principles set forth, none of us would want to be in Mr. Engle's shoes: An attorney leaves the firm. One of his cases, a child support modification, lands on your desk. You review the file and conclude that the petition was frivolous and brought in bad faith. You file a Notice of Intent to Withdraw and comply with all the steps designed to protect the client in CR 71. The client does not object, but proceeds to trial and does not request a continuance. The trial court concludes that the case is frivolous and brought in bad faith.

Weeks, months, or years later (the summary is silent, but the case is three years old), the client files a grievance, and the case is investigated by Bar disciplinary counsel. For anyone who has avoided that particular experience, I commend Kafka's *The Trial* as light reading.

You have, in the eyes of the Bar, committed an ethical violation, and you will be sanctioned.

This is not an isolated case. For example, in an unrelated (and unpublished) case, a client filed a grievance not related to the withdrawal. Bar counsel finds that grievance to be unfounded, but in the course of a two-year investigation noted that the withdrawal had not been properly completed. Finding that the client *theoretically* might have been prejudiced, a letter of admonition was issued with costs.

I sincerely invite anyone to disagree with me. Am I creating paranoid fantasies here? Am I suffering from paranoid fantasies? If the standard to be followed in disciplinary cases is that attorneys are never allowed to withdraw without written permission from the client, let's make that the rule. If the Supreme Court intended to make the standards of RPC 1.15 applicable to CR 71, it would save us all some trouble if they would say so.

CHARLES L. SMITH
Kent

MANDATORY MEDIATION OF HEALTH CARE CLAIMS

■ Editor:

At long last, the Washington Supreme Court, effective March 11, 1997, has

adopted CR 53.4, the rules that govern Mandatory Mediation of Health Care claims. The rules may be utilized in all cases involving claims of negligent health care where the health care was provided after July 1, 1993. Although there appears to be an escape clause, the mandatory mediation procedure may provide plaintiffs with a vehicle to get health care providers to the negotiating table. This may be especially helpful in those cases where the doctor refuses to give his or her consent but the carrier fears exposure and would like to negotiate a settlement. RCW 7.70.100 and .110 may also be helpful because of a rather unusual tolling feature for the statute of limitations.

ANTHONY A. RUSSO
Seattle

Editor's note — See the newest edition of the Court Rules, pages 305-306 for the complete text of CR 53.4.

Book Review
Ironic and Simplistic

■ Editor:

As a rule, it's hard to object to a book review when you haven't read the book that was reviewed. Mr. Cumbow's recent review of Stephen Carter's *The Culture of Disbelief* was so much more than a book review. I would like to respond to the "so much more" part of his review.

It seems ironic to Mr. Cumbow that a "fear of religion in public life is so common today in a nation founded on principles of tolerance . . . partly as a safe harbor" for people fleeing religious persecution. Where is the irony?

The drafters of the First Amendment were all too familiar with the consequences of mixing religion with state. The opening phrase of the First Amendment, "Congress shall make no laws respecting an establishment of religion...." must be read as more than merely "protecting religion from the state," as Mr. Cumbow would have us believe. The First Amendment's larger and more important purpose is to protect the people from a state-sanctioned religion.

It is this purpose, and not Mr. Cumbow's liberal straw man "protecting the state from religion," that makes people fear religious rhetoric from elected officials. One need look no further than the Middle East to see what poor bedmates state and religion make.

What is ironic is Mr. Cumbow's assertion that Stephen Carter's book is simplistic. Mr. Cumbow's blithe treatment of rationality both trivializes the underlying philosophical concepts and totally misses the point. Mr. Cumbow loses himself in the philosophical complexity of the word "irrational." Mr. Carter was obviously using the word to mean "unreasonable"; Mr. Cumbow's excursion into what is knowable and what is the proper subject for science ignores the fact that his is but one opinion in an ongoing 3,000-year-old debate. The philosopher

William James, for example, would not deem rational any philosophy that did not ". . . make a direct appeal to all those powers of nature which we hold in highest esteem. Faith, being one of those powers . . ." *The Will to Believe*. Mr. Cumbow's ingenuous analysis, while giving him a platform to generate much heat for Mr. Carter's book, sheds little light.

Lastly, I would like to know why Mr. Cumbow felt it necessary to mangle the adjective "simplistic" into the non-noun "simplisticism." He had two perfectly good nouns (simplicity and simplism) to choose from.

I am looking forward to more of Mr. Cumbow's articles. Really.

STEVE BURTCHAELL
Seattle

WHY RAISE CHARGES FOR PROFITABLE ACTIVITY?

Editor:

I noted in the Bar's Annual Report (Sept. 1997) that activities defined as "Sections - Operations" generated a net revenue surplus of $143,716. The total net revenue surplus for all of the Bar's activities totaled only $166,224. As a net revenue source, funds from "Sections - Operations" was surpassed only by licensing fees (which generated $3,840,232).

Given the surplus arising from section operations, I am perplexed as to why the Bar raised its fiscal 1998 administrative charges to the sections this past May. I am admittedly not an expert at reading financial statements, but raising in-house charges for a volunteer activity which is already producing a profit for the Bar seems to be inconsistent, especially when the Bar could raise its fees for one (or more) of the other 18 activities that showed a net loss in 1997.

I would appreciate any information the Bar could contribute to my understanding of this matter.

SCOTT M. MISSALL
Seattle

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.

Sherrie Bennett
Editor

Renewing Vows

I have been taking vicarious pleasure in the victorious grins of the Rule 9 interns with whom I worked this past year who have just passed the bar exam and been sworn in. They are a hard-working, energetic bunch and have big dreams and high hopes for making a positive, lasting contribution in the practice of law which they are just entering.

In watching their progress, I have flashed back to the intoxicating experience of taking the lawyer's oath. I remember buying a new suit for the occasion and reveling in the sense of having arrived at a destination to which the travel had been jarring and difficult.

"... the words to the oath I was repeating in front of God and the entire state supreme court confused me."

My elation was short-lived, however, as I realized the words to the oath I was repeating in front of God and the entire state supreme court confused me. What did it mean to "support" the state and federal constitutions? How would I know when my client's claim was "unjust" or not "honestly debatable under the law"? And how could I know if I was "rejecting the cause of the defenseless or oppressed" or "delaying unjustly the cause of any person"? When I swore to "abstain from all offensive personalities," did that mean my *own* or *other* people's? How could that be accomplished? And where would I draw the line in "advancing no fact prejudicial to the honor or reputation of a party or witness unless required by the justice of the cause" with which I had been charged?

Resorting to "thinking like a lawyer," as I had been taught in law school, I scoured the "definitions" in a brand-new, three-ring binder which had been so thoughtfully provided by the bar association at the swearing-in. This served only to raise my apprehension level, as I didn't understand the definitions, either. I would be fine, I theorized, if a situation exactly like the fact patterns described in the bar binder waltzed into my office. Otherwise, I was alone in the decision-making process.

The state supreme court justice who administered the lawyer's oath to my group of green admittees looked so wise in his years and experience, I decided he must surely have understood the words we were uttering in a way that transcended my neophyte capabilities. When I am his age and have as many years of practice under my belt — I remember thinking — I, too, will have a precise vision of exactly what these words mean. I will be able to explain these concepts with clarity and apply them efficiently to the challenges in front of me. My optimism picked up at the thought that there was only the matter of time standing between me and ethical nirvana.

I'm sure the judge swearing me in could have told me better, if only I had asked.

As my clients have come and gone and the years of everyday law practice have rolled by, things have gotten muddier, not clearer. The complexities of balancing competing interests and priorities and stretching shrinking resources make defining such amorphous ideas as "defenseless and oppressed" and "unjust causes" harder than ever. The smorgasbord of alternatives from which I pluck my daily choices for how I conduct myself has gotten grayer over the years, not morphed into black and white. I am reminded of a client who, in making out his will, commented that he only wished that at 80 years of age he knew a quarter of what he *thought* he knew when he was 20.

It is slowly dawning on my boomer psyche that I will never be able to pontificate clearly on what the words of the oath I took so many years ago mean, so I must content myself with occasionally being able to point to actions and events which strike me as displays of these concepts in action.

I have, at times, been discouraged that the words of the oath don't leave any room for slacking because of frustration or cynicism that your actions alone can't possibly make a difference, But burning out or copping out aren't designated as options, either. The values underlying the oath — truth, integrity and a commitment to justice for everyone, regardless of the size of wallet — are clearly meant to be applied individually by every lawyer with every client every day.

As I watch my newly arrived rookie lawyer acquaintances bursting with sincere eagerness and ambition, my first reaction is to want to point out the perils of reality and caution them to conserve their energy for the challenges that lie ahead. Instead, I have decided to make a New Year's resolution for myself: renew my "vows" *despite* the fact that I will never completely understand or be able to perfectly apply the words of the lawyer's oath. I challenge you to begin 1998 in the same way.

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Mary Fairhurst
President

Following in the Footsteps of Martin Luther King Jr.

In January, many reflect on the past and think of the future. We make plans for what to do differently or better in the new year. January is also the month when we celebrate the birth of Martin Luther King Jr. This April will mark the 30th anniversary of his death.

Martin Luther King Jr. was a Steward of Justice. He saw injustice and he acted. Not only did he act, he acted justly. Martin Luther King Jr. was a man for peace, justice and equality. He advocated nonviolence, following the teaching of Mohandas Gandhi. He also was a man of vision. He had a dream that one day this nation would rise up and live out the true meaning of its creed that all are created equal. He had a dream that one day his children would live in a nation where they would not be judged by the color of their skin but by the content of their character.

". . . we must continue taking action until all are treated with honor and dignity."

We still need that vision today. We need to respect that all are created equal. We need to judge people by the content of their character and not their color, gender, sexual orientation, economic status or physical ability. We must continue to work for the full integration and full empowerment of all in our nation and in our profession.

I know of a young woman who some judged because of her color, not because of her individual worth or lack thereof, nor because of her actions or inactions. She was grouped, characterized and labeled. Some considered her not good enough to seriously date or marry their children. Certain jobs and opportunities were unavailable to her. She only had these experiences for a short time in her life because she lived in a place where she was an ethnic minority for only three years, but even three years of being the subject of prejudice gave her lifelong insights and empathy into what it is like to be a minority. I know her well, for I was that woman.

I knew a young, homosexual man who died of AIDS. I had the opportunity to see the world through his eyes and observe how some viewed him through their eyes. He was not always judged on his individual value and worth, but by prejudices and presumptions. I knew him well, for he was my cousin.

If we are aware and observant, every day we can see prejudice; we can hear labeling and generalizations; we can sense hostility. Some is blatant; some is subtle. But my experiences and those of my cousin and others do not make me bitter. They make me determined. I am dedicated to look at each person individually and each situation specifically. I am ever vigilant not to make generalizations, or group, or label. I might not like everyone and everything, but I am dedicated to be critical only of specific behavior or a certain situation. I do not extrapolate from the specifics to generalizations.

All of us bring our own unique experiences to our activities and profession. All of us have a choice about how we will react and judge people and situations. All of us determine what we will allow to occur in our presence. Each of us has a responsibility to act.

We must work hard to make sure that all are treated equally and fairly, that people are not denied basic rights and opportunities because of labels or prejudices. As Martin Luther King Jr. urged, we must continue taking action until all are treated with honor and dignity.

I encourage you to think what action you will resolve to take in the new year to address injustice. Only through our actions as Stewards of Justice can we realize the full potential of equality.

✣ ✣ ✣

The Board of Governors, President-elect and I wish you and yours a very Happy New Year.

Pat Dieken
Interim Executive Director

1998 — A Year of Transition

Your Board of Governors has asked me to serve as Interim Executive Director while the search for a new Executive Director takes place. Having been with the Bar for seven years, I appreciate the opportunity to serve the members and the Board in this capacity.

Dennis Harwick's lasting legacy will be his leadership and commitment to a bar which is financially strong, with a capable staff who have the necessary technology and tools to serve the membership and the public in an efficient, cost-effective way. Those of us who worked with him will miss his strength, his good humor, and his stories! We wish him well in his new endeavors.

"Dennis Harwick's lasting legacy will be his leadership and commitment to a bar which is financially strong, with a capable staff who have the necessary technology and tools to serve the membership and the public . . ."

The Board of Governors has appointed a Search Committee, chaired by Lish Whitson, and engaged an executive-search firm to assist it. While this process takes place, the work of the Bar staff will continue, as usual, under the able leadership of department directors. As Interim Executive Director, I will work with the Board and others, while continuing my duties as chief financial officer and director of the Administration department.

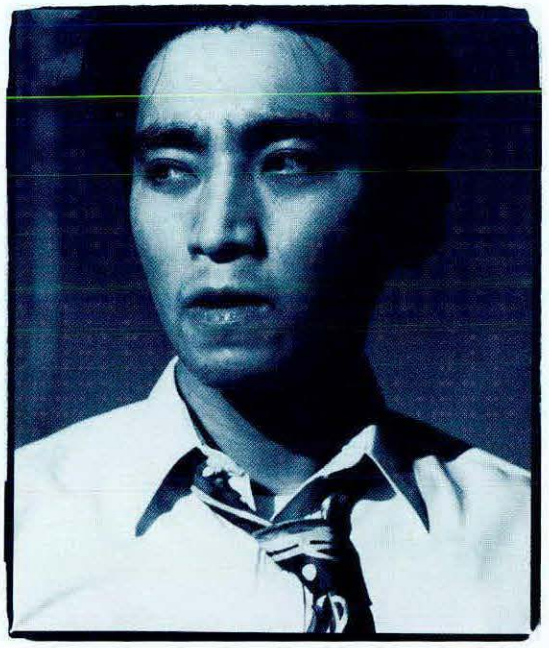
Here is a list of departments and the name and phone number of each department director.

Please call any of us if we can be of help to you.

• Office of the Executive Director	Board support, human resources	Pat Dieken	(206) 727-8244
• Communications	*Bar News*, *Resources*, media	Bonnie Kam	(206) 727-8212
• Continuing Legal Education	WSBA CLE seminars and products	Tom Russell	(206) 727-8220
• Lawyer Assistance	Lawyers' Assistance Program	Barbara Harper	(206) 727-8265
• Legislative	Legislative representative	John Fattorini	(360) 943-9977
• Licensing	Admissions, MCLE, licensing	Bob Welden	(206) 727-8232
• Office of Disciplinary Counsel	Discipline, fee arbitration	Barrie Althoff	(206) 727-8255
• Administration	Young Lawyers, Sections, finance	Pat Dieken	(206) 727-8241

1998 will be a time of transition for the Washington State Bar Association. As your new year begins, all of us on staff extend our sincere wishes for good health and success in the year ahead.

Stress and Time Management Tips for the Overworked Lawyer



Stress

Last month, this column discussed some of the factors leading to stress. Too much stress can seriously affect your physical and mental well-being. A major challenge in this stress-filled legal profession is to make the stress in your life work for you instead of against you.

Stress is unique and personal to each of us. What may be relaxing to one person may be stressful to another. For example, if you like to keep busy all the time, "taking it easy" at the beach on a beautiful day may feel extremely unproductive, frustrating and upsetting. You may be emotionally distressed from "doing nothing." Too much emotional stress can cause physical illness, such as high blood pressure, ulcers, or even heart disease.

To use stress in a positive way and prevent it from becoming *dis*tress, you should become aware of your own reactions to stressful events. The body responds to stress by going through three stages: (1) alarm, (2) resistance and (3) exhaustion. If a car suddenly pulls out in front of a typical rush hour commuter, the initial alarm reaction may include fear of accident, anger at the driver who committed the action and general frustration. The body may respond in the alarm stage by releasing hormones into the bloodstream which cause the face to flush, perspiration to form, the stomach to have a sinking feeling and the arms and legs to tighten. The next stage is resistance, in which the body repairs damage caused by stress. If the stress of driving continues with repeated close calls or traffic jams, however, the body will not have time to make repairs. The driver may become so conditioned to expect potential problems when driving that there is a tightening up at the beginning of each commuting day. Eventually, a physical problem that is related to stress, such as migraine headaches, high blood pressure, backaches or insomnia may develop. While it is impossible to live completely free of stress and distress, it is possible to prevent some distress as well as to minimize its impact when it can't be avoided.

Some suggestions for dealing with stress include:

TRY PHYSICAL ACTIVITY. When you are nervous, angry, or upset, release the pressure through exercise or physical activity. Running, walking, playing tennis, or working in your garden are just some of the activities you might try. Physical exercise will relieve that "uptight" feeling, relax you, and turn the frowns into smiles. Remember, your body and your mind work together.

SHARE YOUR STRESS. It helps to talk to someone about your concerns and worries. Perhaps a friend, family member or counselor can help you see your problem in a different light. If you feel your problem is serious, you might even seek professional help from a psychologist, psychiatrist, social worker or mental-health counselor. Knowing when to ask for help may avoid more serious problems later.

TAKE CARE OF YOURSELF. Get enough rest, and eat well. If you are irritable or tense from lack of sleep, or if you are not eating correctly, you will have less ability to deal with stressful situations. If stress repeatedly keeps you from sleeping, you should ask your doctor for help.

MAKE TIME FOR FUN. Schedule time for both work and recreation. Play can be just as important to your well-being as work; you need a break from your daily routine to just relax and have fun.

BE A PARTICIPANT. One way to keep from getting bored, sad and lonely is to go where it's all happening. Sitting alone can make you feel frustrated. Instead of feeling sorry for yourself, get involved and become a participant. Offer your services in neighborhood or volunteer organizations. Help yourself by helping other people. Get involved in the world and the people around you, and you'll find they will be

attracted to you. You will be on your way to making new friends and enjoying new activities.

IT'S OK TO CRY. Crying can be a good way to bring relief to your anxiety; it might even prevent a headache or other physical consequence. Taking deep breaths can also release tension.

CREATE A QUIET SCENE. You can't always run away, but you can "dream the impossible dream." A quiet country scene painted mentally, or on a canvas, can take you out of the turmoil of a stressful situation. Change the scene by reading a good book or playing beautiful music to create a sense of peace and tranquillity.

AVOID SELF-MEDICATION. Although you can use prescription or over-the-counter medications to relieve stress temporarily, they do not remove the conditions that caused the stress in the first place. Medications, in fact, may be habit-forming and also may reduce your efficiency, thus creating more stress than they take away. They should be taken on the advice of your doctor.

Time Management

Improve your time management skills with these suggestions:

1. Take time to make time. Plan your calendar, block out time for things you need to do to support your major activities/appointments, research, planning, phoning, writing, etc.

2. Block out time every day for yourself, to exercise, meditate or engage in some other relaxing activity.

3. Keep lists. They help you to remember to combine trips and relieve your mind of nagging worry that you have forgotten something. Cross things off, and you have a reward. This also allows you to do constructive things with little blocks of time.

4. When you get bogged down, consider delegating, brainstorming, setting work aside for "incubation" time, etc. Don't waste time stewing over how much work you have to do.

5. Make phone appointments. When you leave a message, suggest a time when you are available, and block out that time, so that phone tag stops. Train secretaries to take real messages. Use voice mail and e-mail.

6. Don't allow others to steal your time. If you need to socialize, block out time, socialize, then get back to work.

7. Eliminate clutter. It causes psychological fatigue, wastes time, and can send messages that you are too busy or just unorganized.

8. Build on success and celebrate your successes; don't waste time on regrets or failures — move on!

9. Clarify instructions, information and basic conversations. Don't waste time trying to guess or interpret.

10. Learn to say "no" and not feel guilty. Don't overcommit yourself to projects which you know you will not be able to do well.

11. Take the time to figure out what actions will be the most productive, and do these things first.

12. Know your limits. If a problem is beyond your control and cannot be changed at the moment, don't waste time fighting the situation.

13. Try negotiating a compromise instead of using time-consuming confrontational litigation strategies.

The Board's Work

THE HOLIDAY SMORGASBORD

The Board of Governors met in Bellevue on December 5-6, 1997, and considered a veritable smorgasbord of issues, tabling some until January and digesting other issues as follows:

SPONSORING OF LEGISLATIVE BILLS

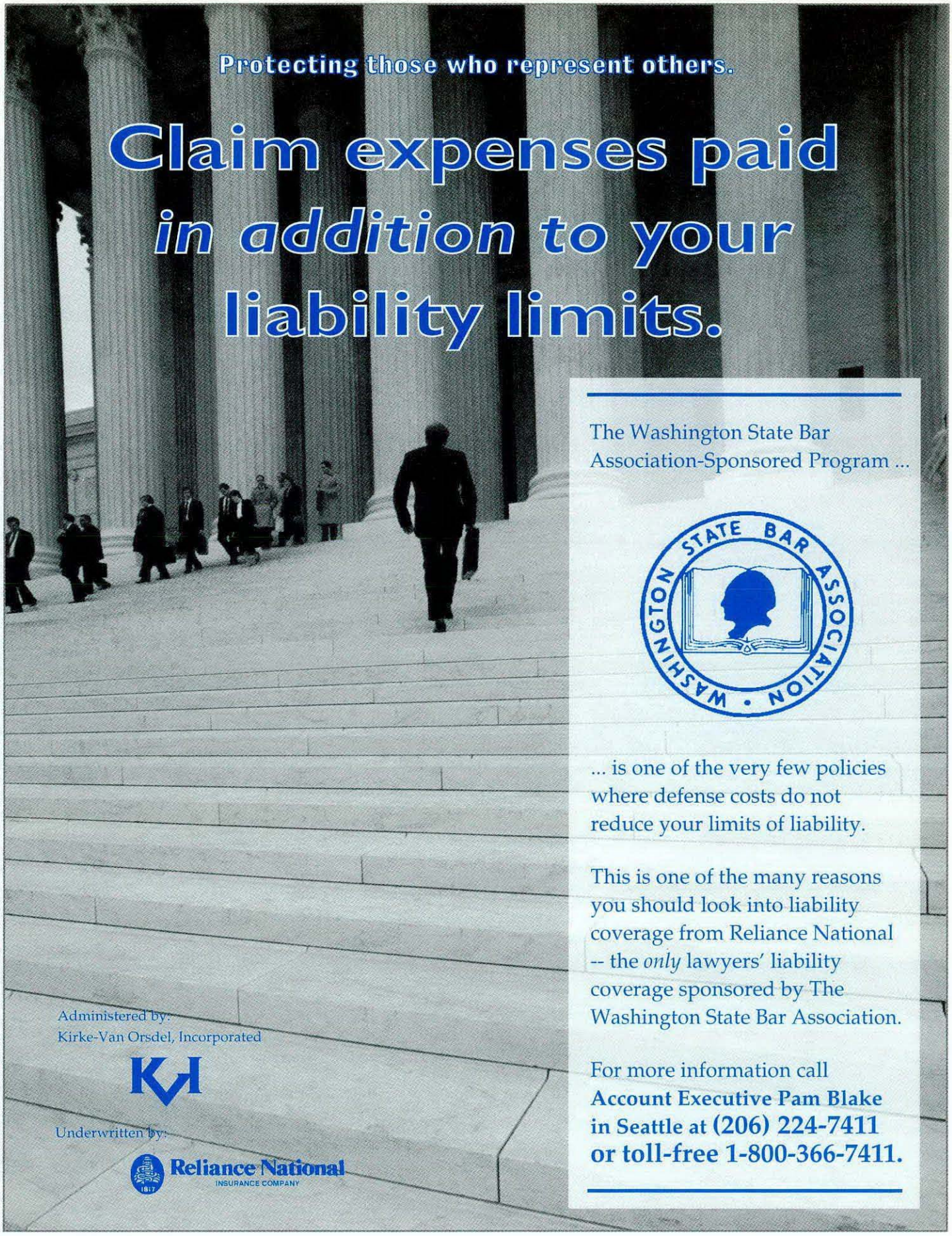
The Board voted to sponsor the following proposed legislation in the upcoming legislative session:

(1) **Revisions to Washington Business Corporation Act.** The proposed amendment would clarify the intent of the existing statute that, in determining whether all shares of a given class of stock have the same rights attached to them, one may look to "facts ascertainable outside" the articles of incorporation or the documents evidencing rights, options or warrants. The Business Law Section of the WSBA recommended this clarifying amendment because decisions in other jurisdictions on similar statutes invalidated "poison pill" plans on the grounds that reference to facts outside of the language of the relevant corporate documents was not permitted.

(2) **Revised Uniform Partnership Act.** This act promulgated by the National Conference of Commissioners on Uniform State Laws was recommended by the Partnership Law Committee of the Business Law Section for the following principal advantages: (1) greater stability in partnerships; (2) clarification of the nature of the relationships between and among partners; (3) clarifications of the nature of partnership, moving more towards an entity (as opposed to an aggregate) theory; and (4) providing for conversions and mergers of partnerships. Some deviations from the national model were described, one of the most significant being the creation of "full shield" protection for partners in a limited liability partnership. Under current law, a partner in an LLP does not have personal liability for the torts of other partners and employees of the partnership. The proposed Act would extend this "shield" to protect a partner in an LLP from personal liability for the partnership's contractual obligations.

(3) **Adoption of Provisions for Testamentary Disposition of Nonprobate Assets.** Proposed by the Real Property, Probate and Trust Section, these provisions would permit disposition under a will of assets that are otherwise outside of a probate, including the testator's interest in a revocable living trust, multi-party bank accounts, and transfer-on-death securities accounts.

(4) **Amendments to the Washington Uniform Transfers to Minors Act.** Proposed by the Real Property, Probate and Trust Section, these amendments arise from the fact that insurance companies may reject a beneficiary designation on a life insurance policy to the "insured's children or to the issue *per stirpes* of a deceased child" even if the designation stipulates that a distribution to a beneficiary under the age of 21 would be made to a custodian under the Washington Uniform Transfers to Minors Act. The insurance companies' objection is that the Act does not provide a mechanism for appointment of a custodian under these circumstances, and also does not allow for the creation of a custodianship for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unidentified minors. The amendments are intended to provide adequate mechanisms under the Act so that insurance companies will be able to properly honor such a beneficiary designation.

(5) **Amendments to the Estate and Transfer Tax Act and the Uniform Estate Tax Apportionment Act.** This amendment, proposed by the Real Property, Probate and Trust Section, is intended to update the references to the Internal Revenue Code in these two tax-related RCW chapters. This is necessary because the Washington State Constitution does not permit incorporation by reference of laws as they may be amended in the future.

(6) **Amendments to the Deed of Trust Act.** This comprehensive set of amendments was recommended by a task force created by the Real Property, Probate and Trust Section. The bill is designed to clean up inconsistencies and ambiguities in the existing act, to solve procedural problems for the practitioner and to address several important issues that have been unresolved since the passage of the act more than 30 years ago. The bill would make a guarantor of a commercial loan liable if the guarantor is given advance notice of the sale, but would provide a "fair value" safety net to assure that the debt was credited with the true value of the property sold at foreclosure. Another section of the bill would clarify that the transfer of the property to the purchaser at the foreclosure sale is final at the time of the sale, so long as the trustee's deed is recorded within 15 days thereafter. This would provide to the Bankruptcy Court a clear answer to the question of when the sale is final under state law. The most controversial part of this legislative bill would give to banks that are regulated as lenders the right to unilaterally reconvey the deed of trust without going through the trustee. Title companies naturally oppose this part of the bill, as existing law requires a reconveyance signed by the trustee (typically a title insurance company).

(7) **Amendments to the Professional Service Corporation Act.** This bill, proposed by the Business Law Section, is intended to address the problem of Washington professional services corporations that wish to have members who are licensed in a state other than Washington. The amendment would not permit professionals licensed in other states to practice their professions here; it would merely permit them to be shareholders of the corporation.

Also on the legislative agenda, but referred back to the Real Property, Probate and Trust Section for further discussion and for dissemination to and input from interested groups, was the adoption of the Trust and Estate Dispute Resolution Act. This proposed bill is intended to update existing procedures of nonjudicial resolution of trust and estate issues. It also adds mediation and arbitration to the dispute resolution process, clarifies venue rules and provides limited statutory immunity to persons serving as special representatives (persons appointed by a court to represent minors, unborn and incapacitated persons in resolving disputes among persons having an interest in a trust or an estate).

EXECUTIVE DIRECTOR SEARCH BEGINS

The Board hired headhunter Terri

Campbell to search for a new Executive Director (after Dennis Harwick's resignation effective at the end of December). She outlined her plan for the search, which is expected to cost up to $30,000, and which will begin with input from the Board, liaisons, and interested Bar members as to the qualifications necessary for the job. She will focus on a "needs assessment" approach, attempting to determine "where the Bar association wants to be 10 years from now and what characteristics are needed for a leader who will move in that direction." Terri met with Board liaisons and other interested members after outlining her plan.

An outline of the qualifications and requirements for executive director appears on page 22.

MCLE Task Force Report

The Board heard from members of the MCLE Task Force, who recommended the following changes:

(1) Course providers would be allowed to teach legal ethics, professionalism and professional responsibility in a broader, more meaningful way while still meeting the ethics and professionalism component;

(2) the MCLE Board would be given the power to set fees and fines for failure to comply with the rules;

(3) The MCLE Board and WSBA would enter into an operating agreement to formalize the staffing and budgeting authority of the MCLE Board;

(4) CLE providers would report attendance to the Bar Association, which would be responsible for recording and keeping track of members' attendance and providing each member with reports on a semi-annual basis;

(5) The Board of Governors would be removed from the appeals process for MCLE delinquencies;

(6) Records and information contained in attorney compliance reports would not be available to any providers, including the CLE department of the WSBA;

(7) CLE courses would be accredited primarily on the basis of content as legal education rather than on the basis of those attending;

(8) Alternative dispute resolution courses would be specifically listed as areas which may be approved as legal education;

(9) Private law firms and governmental agencies would be allowed to provide continuing legal education, although they could not be accredited providers;

(10) Accredited sponsoring agencies would not need to seek preapproval of their courses;

(11) The MCLE Board would be given clearer authority to adopt policies consistent with regulations;

(12) The WSBA should adopt the Boise Protocol for CLE comity;

(13) The present structure of the MCLE Board as a semi-independent entity should be retained;

(14) CLE credit should not be given for "meritorious work," unless it otherwise meets the accreditation standards;

(15) The MCLE Board should formally adopt its current practice of having a Board member approve applications by the CLE Department of the Bar Association, rather than having Bar-appointed staff review them;

(16) The MCLE Board should retain its present policy of not granting appeals for denials of course credit; and

(17) The Board of Governors examine the exemption for state and federal legislators.

These topics are expected to be discussed in greater length at the Board's January meeting in Olympia.

Law Clerk Program Report

The Board adopted the following recommendations of the Law Clerk Committee:

(1) The program rules will be changed to reflect the new status of the standing committee and to change courses of study to be measured in months instead of weeks to provide internal consistency in course work scheduling;

(2) The $500 per year payment by the clerks will be increased to $1,500 per year to fully cover all costs of administration, which in the past were not fully covered. The Board will decide the timing on increasing this payment in January;

(3) The number of committee members will be increased from five to seven, with each member committing to a six-year term. Any unplanned vacancies will be filled as soon as possible, with the new appointee to fill out the unexpired term. There should be a new chair and vice chair each year to ensure continuity;

(4) The stipend for members will be increased from $1,250 per year to $2,000 per year;

(5) Three new committee members will be appointed by February 1, 1998, to fill out the seven positions, with two new members to be appointed in September, 1998;

(6) The Board reaffirms support for the program, as its continued existence has been the subject of conversation and speculation over the past several years; and

(7) An appropriate recognition certificate or plaque will be given to the past members of the committee, in recognition of their long service, many of whom served over 10 years.

Discipline Backlog

Barrie Althoff described the efforts of the Office of Disciplinary Counsel to reduce the backlog of pre-1996 cases as well as overall number of cases. Progress is being made, with pre-1996 cases now down to 165 as compared to 640 at the beginning of the year.

Appointments

The Board reappointed president-elect Wayne Blair for another three-year term on the Board for Judicial Administration. Jan Peterson was appointed to the Legal Foundation of Washington Board of Trustees. Scott Collins and Vito de la Cruz were appointed to the Board of Directors of the Northwest Justice Project. The Board also nominated Edward Younglove, David Swartling and Gay Cordell to the Supreme Court Ethics Advisory Committee.

ABA Federal Judicial Vacancy Resolution

The Board passed a resolution that will be forwarded to the ABA House of Delegates recommending that the ABA urge President Clinton to promptly fill vacant federal judicial positions once the backlog for current pending nominations is reduced.

In other developments, the Board tabled discussions until January of a TV Washington proposal to televise Board meetings, the Tele-Lawyer proposal by the Group and Prepaid Legal Services Committee, and a petition for a Senior Lawyers Section.

State Bar Highlights

Position Announcement

Executive Director
Washington State Bar Association

The Board of Governors of the Washington State Bar Association (WSBA), located in Seattle, Washington, is seeking an exceptional leader who will work cooperatively with the Board, senior administrators, staff and other law-related groups, to achieve its mission of promoting justice and serving its members and the public. Governance of the WSBA is vested in an 11-member board representing 22,000 lawyers statewide with membership mandatory in order to practice law in Washington. The WSBA has a budget of $10.6 million and employs seven department directors and 107 staff members.

Duties: The Executive Director shall have charge of the office and the activities of the Bar under the direction of the President and the Board of Governors. The Executive Director will keep the Board fully informed on the conditions of the association, execute all decisions of the Board, direct and coordinate all approved programs and facilitate maximum utilization of Department Directors and other staff.

Qualifications: The successful candidate will be a proven leader with outstanding communication skills. Prior leadership in a service organization and experience working with elected boards is desired. The position requires a minimum of 10+ years of increasingly responsible experience, with at least 5+ years in a management role. A bachelor's degree is required and legal experience is preferred.

Salary Range (targeted): $90,000 to $110,000 plus benefits.

To Apply: Submit cover letter, résumé and current salary to:

WSBA Executive Director Search
T.M. Campbell Co.
1111 Third Avenue, Suite 2500
Seattle, WA 98101
Fax: 206-780-1705
E-mail: TMCampbell@msn.com

Questions: Contact Terri Campbell, Executive Search Consultant, at 206-583-8355.

Résumés must be received by January 23, 1998.

The Washington State Bar Association is an AA-EEO-M-F-D employer.

Save the Date!

Reserve March 6, 1998, as the day to improve your law firm — at the WSBA Law Office Management Institute and Legal Expo Exhibit Hall. Learn how to improve and keep your law firm competitive. Watch for further details in the February issue of FYI.

1998 Notice of
Board of Governors Election

Four positions on the WSBA Board of Governors will be up for election this year, i.e., the Governors representing the Second, Fourth, Seventh, and Ninth Congressional Districts. Those positions are currently held by William H. Nielsen (Second District), Steve Crossland (Fourth District), Lish Whitson (Seventh District), and Dennis J. LaPorte (Ninth District).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of Governor from the Congressional District in which such member *is entitled to vote* by filing a petition signed by at least twenty (20) active members of the WSBA then entitled to vote in that district. All out-of-state active WSBA members are now eligible to vote in the district of the address of their agent within the State of Washington for the purpose of receiving service of process as required by APR 5(e), or, if specifically designated to the Executive Director, within the district of their primary Washington practice.

Nominating petitions are available from the Office of the WSBA Executive Director by contacting Brynn Hancock at WSBA, 2101 Fourth Avenue — Fourth Floor, Seattle, WA 98121-2330; (206) 727-8244. Petitions must be received by the Executive Director of the WSBA by 5 p.m. on March 2, 1998. The Board of Governors determines the official dates of the election. Ballots are usually mailed around the first of June and counted approximately the first of July.

Note: *Bar News* intends to include in its May issue a section carrying biographical statements of 100 words or less from all the nominated candidates. Those statements should accompany the nominating petitions.

New Deskbook Highlights Tax Savings for Estate Planning Clients

WSBA CLE introduces new edition of the "Life Insurance Trust Deskbook" at January 30 seminar

If you do estate planning, you know that the life insurance trust is one of the few remaining techniques for clients to transfer substantial amounts of wealth to family members without incurring estate taxation. Recent favorable tax developments make the life insurance trust an important tool for practitioners. On January 30, 1998, WSBA CLE will present "How to Draft, Establish & Administer an Irrevocable Trust," a half-day seminar introducing the revised 1998 edition of the Washington Life Insurance Deskbook with Model Forms [on diskette] and Annotations. All seminar registrants receive a copy of the Deskbook.

Model Trust project originates useful new deskbook

In the early 1990s the Estate and Gift Tax Committee of the Taxation Section of the Washington State Bar Association developed a Model Trust that would meet all of the requirements of state trust law and federal tax law while avoiding the pitfalls that could cause inclusion of insurance proceeds in the estate of the client establishing the trust. This Model Trust project developed into the Life Insurance Trust Deskbook, first published in 1992, and now completely revised and expanded in 1998.

Life Insurance Trust Deskbook Features Model Trusts on Diskette

The drafting, implementation, and maintenance of a life insurance trust by an estate planning attorney requires a knowledge of Washington trust law and the estate tax, gift tax, generation-skipping transfer tax, and income tax provisions of the Internal Revenue Code, as well as a scrupulous attention to detail. For these reasons, the Life Insurance Trust Deskbook contains:

- *two* Model Trusts *on diskette* - one designed for a married couple and the other for single individuals (or for a married individual dealing with his or her separate property). The Model Trusts specifically take into account Washington community property law and trust law.
- annotations to the Model Trusts including: a comprehensive review of cases and rulings of the Internal Revenue Service applicable to life insurance trusts; discussions of optional planning techniques to modify or expand the Model Trusts
- chapters reviewing Washington trust law and federal tax law
- chapters that take you step by step through the establishment and administration of the trust

For information on how to register for this seminar, call WSBA CLE at (206) 727-8202. If you cannot attend the seminar but want to order the Deskbook ($75 plus tax, shipping & handling), call WSBA CLE Order Fulfillment at (206) 733-5918.

Paul R. Willett

Co-editor-in-chief of Life Insurance Trust Deskbook to Chair Seminar

Chairing the January 30 seminar will be the co-editor-in-chief of the 1998 edition, Paul R. Willett. Mr. Willett is a shareholder with McGavick Graves, P.S., in Tacoma, and heads the firm's Estate Planning Group. He received an MBA from WSU and a J.D. degree and an LL.M degree in taxation from the University of Miami School of Law. In addition to his

Continued on next page

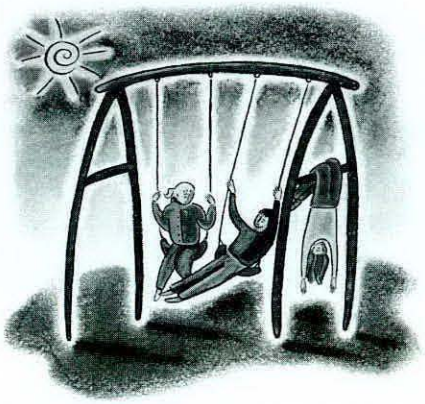
USURY RATE

The average coupon equivalent yield from the first auction of 26-week treasury bills in December 1997 is 5.408%. The maximum allowable interest rate permissible for January is therefore 12%. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates of the past 10 years appear on page 32 of the June 1997 *Bar News*, and in the online edition of the Bar News at http://www.wsba.org/BarNews/usuryrate.html

WASHINGTON DEFENDER ASSOCIATION WINS NATIONAL AWARD FOR TEAMCHILD PROJECT

The Washington Defender Association has been recognized by the National Legal Aid & Defender Association for its role in TEAMCHILD, a program to help youth between the ages of 12 and 17 in the juvenile justice system.

TEAMCHILD is a partnership between WDA, Columbia Legal Services and the Seattle-King County Public Defender Association.



The program targets the entire legal needs of the child by creating a team of civil legal advocates who represent youth who are in trouble. The public defender addresses the criminal law component, while TEAMCHILD advocates address related issues such as education, mental health and social services. The program began in 1995, and a Spokane program began this year.

The Washington Defender Association will receive the Clara Shortridge Foltz Award for leadership and support of the program. The award honors public defender programs or defense delivery systems for outstanding achievements in the provision of criminal defense services.

NOMINATIONS SOUGHT FOR ABA MARGARET BRENT LAWYERS AWARD

The American Bar Association Commission on Women in the Profession is accepting nominations for its annual Margaret Brent Women Lawyers of Achievement Award. The award was established in 1991 to recognize and celebrate the accomplishments of women lawyers and honor outstanding women who have not only achieved professional excellence, but have also actively assisted in advancing opportunities for other women lawyers.

Past recipients of the award include Attorney General Janet Reno and Associate Supreme Court Justice Ruth Bader Ginsburg. Nominations are due by February 4, 1998. The award will be presented at the ABA's annual meeting in August in Toronto.

The award is named for Margaret Brent, the first woman lawyer in the United States. She arrived in the colonies in 1638 and was involved in more than 124 court cases in eight years.

CLE *— Continued from previous page*

legal practice, his experience includes employment as the Manager of the Probate Section and the Tax Section of the Trust Group of a major regional bank.

"Many clients do not realize that the proceeds of their life insurance policies are subject to estate tax upon their death," explains Willett. "Tremendous tax savings can result from transferring unneeded policies during the life of the insured, while the policies have very little value, instead of holding the policies until the death of the insured. Better yet, new policies can be purchased in a way which transfers the insurance proceeds to the children of the insured without incurring any estate or gift tax at all."

Seminar faculty will also include Michael D. Carrico, a principal with Graham & James L.L.P./ Riddell Williams P.S. in Seattle, and Timothy L. Burkart, an owner with the firm of Garvey, Shubert & Barer in Seattle.

Co-editor-in-chief of the Life Insurance Trust Deskbook is Linda K. Nelson, a shareholder with Smith Alling Lane in Tacoma.

RESOURCES

Annual Membership Directory

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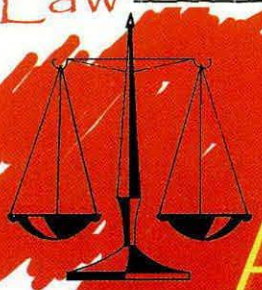


A LAWYER'S DUTY OF TRUTHFULNESS AND CANDOR

BY BARRIE ALTHOFF
WSBA CHIEF DISCIPLINARY COUNSEL

The Rules of Professional Conduct ("RPCs") require you both to be truthful and to maintain the confidences and secrets of your client. Sometimes these duties conflict. The RPCs categorize the duty of truthfulness as a duty to courts (RPC 3.3), a duty to opposing parties and counsel (RPC 3.4), and a duty to other persons (RPC 4.1). This article looks at the last of these, your duty to other persons, and at possible conflicts of this rule with your duty to maintain your client's confidences and secrets. Although RPC 4.1 may also apply in some cases to your statements to a court or to opposing counsel, this article focuses on your duty to other third persons.

REQUIREMENT OF TRUTHFULNESS

RPC 4.1 requires that in representing a client you

> shall not knowingly (a) make a false statement of material fact or law to a third person; or (b) fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless the disclosure is prohibited by rule [RPC] 1.6.

RPC 8.4 also makes it professional misconduct to "engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

The duty of truthfulness applies to acting "knowingly." The RPCs define that as "actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." It likely also includes recklessly negligent lack of knowledge. For example, in *Slotkin v. Citizens Casualty Co.*, 614 F.2d 301 (2d Cir. 1979), *cert. den.* 449 U.S. 981 (1980), a defense lawyer was found liable for fraud in settlement of a medical malpractice suit after stipulating that to the best of his knowledge there was no excess insurance coverage when client files in his possession included letters from excess carriers. In *Wyle v. R.J. Reynolds Indus.*, 709 F.2d 585 (9th Cir. 1983), a client's complaint was dismissed as a sanction for a law firm's knowingly false denial of a client's rebating practice when it had met with the client to discuss rebating and knew the client had been fined for rebating.

A lawyer often retains experts or consultants to assist in litigation. Even though under RPC 1.8(e) it is clear that the client should be ultimately responsible for such expenses, the lawyer may be liable for these expenses vis-à-vis the third persons if the lawyer gives those persons the impression that the lawyer will be responsible for such expenses. *See* WSBA Formal Opinion 140 (1969). In *Copp v. Breskin*, 56 Wn. App. 229 (Div. I, 1989), review denied 114 Wn.2d 1026 (1990), the court found, under RPC 4.1 and 8.4, a law firm liable for an expert's fee where the firm had stated that the expert's bills would be paid within 30 days of his testimony and then declined to pay when the client refused to pay the bill.

Excluding your duties to courts under RPC 3.3 and opposing clients and counsel under RPC 3.4, you generally do not have an obligation affirmatively to inform third persons of information. You may have this duty, however, if you affirm or incorporate a statement made by another person which you know is false, or if you subsequently learn that your own or your client's prior statement or document is now false. Your ability to make a disclosure may be limited, however, by your duty to maintain your client's confidences and secrets, discussed below.

It is unclear to what extent your RPC 4.1 obligation to be truthful applies in the context of negotiations where there is likely a certain amount of bluffing, posturing and poker-playing. RPC 4.1 does not itself exclude such situations. The ABA's comment to Rule 4.1 of its Model Rules of Professional Conduct, on which Washington's RPC 4.1 is based (although Washington did not adopt the ABA comments), observes,

> Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

The *Slotkin* decision, above, suggests limitations to such exclusion, however, as does *Virzi v. Grand Trunk Warehouse & Cold Storage Co.*, 571 F.Supp. 507 (E.D.Mich. 1983), which vacated a final settlement negotiated by plaintiff's lawyer who failed to disclose his client's death to defense counsel, even though he knew defense counsel believed plaintiff would make an excellent trial witness.

The duty to be truthful to others is difficult to apply where your silence or failure to disclose may assist a criminal or fraudulent act by your client. In these cases, you may be subject to discipline if you do not disclose the information. If you know your client is engaged in a

DUTY OF TRUTH TO NON-CLIENTS

fraud or crime, and you know that your silence will assist your client in the criminal or fraudulent conduct, you must disclose the information. Thus, if your client refuses to make the appropriate disclosure, you must make disclosure if, for example, in helping your client prepare a securities disclosure statement, a sale of a business or property, or a listing of assets for a bankruptcy, marriage dissolution or estate proceeding, you find that your client is committing a crime and that your silence will assist that conduct. The same conclusion would appear to apply where the client is prepared to perjure himself or herself and your silence will assist that perjury. The only exception is where that "disclosure is prohibited by Rule [RPC] 1.6," discussed below.

Client Confidences and Secrets

Your duty to maintain your client's confidences and secrets is governed both by the attorney-client privilege and by ethical rules. Both are premised on the assumption that you can best provide legal advice if your client can fully disclose confidences and secrets to you, without fear that you will reveal them, without your client's consent, to any other person. In most cases, the obligation of confidentiality applies to your present clients and your past clients (even if now dead).

Attorney-client Privilege

Washington's attorney-client privilege rule, RCW 5.60.060(2), provides:

> [a]n attorney or counselor shall not, without the consent of his or her client, be examined as to any communication made by the client to him or her, or his or her advice given thereon in the course of professional employment.

As an evidentiary rule, it is directed to courts and restricts what you or your client can be compelled in court to testify about a communication between you for purposes of the client's obtaining legal advice. It applies only to client confidences, that is, matters communicated between your client and yourself in the course of your representation where there is an expectation of confidentiality.

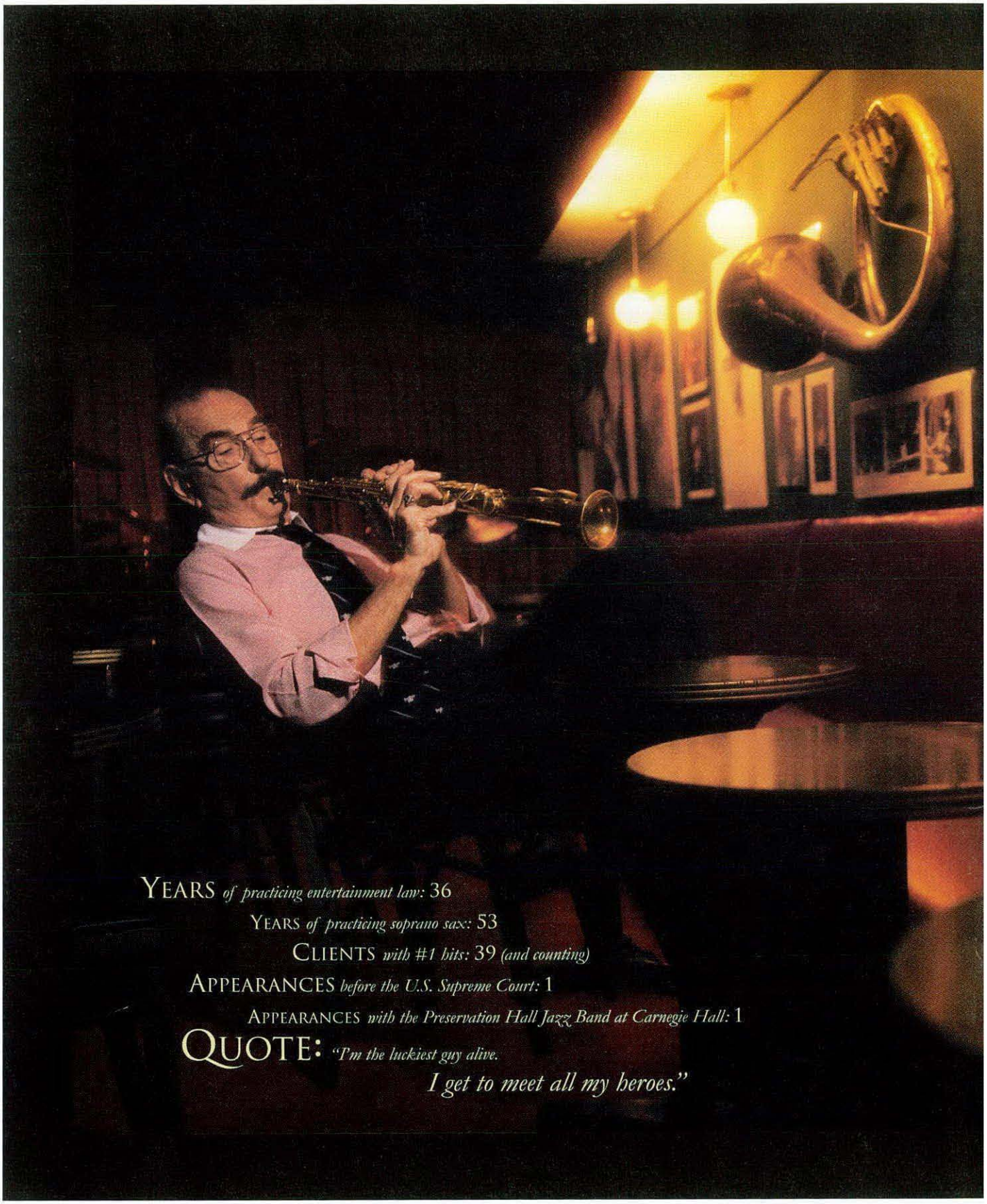
Because the public generally has a right to everyone's evidence, privileges against testimony are to be construed carefully and narrowly. *See United States v. Bryan*, 339 U.S. 323 (1950), cited approvingly in Dietz v. Doe, 131 Wn.2d 835, 843 (1997). The leading federal attorney-client privilege case is *Upjohn Co. v. United States*, 449 U.S. 383 (1981). Dietz, the most recent Washington case to consider the privilege, observes that the attorney-client privilege is imperative to preserve the sanctity of communications between clients and attorneys. 131 Wn.2d 835, 851. In *Dietz*, the widow of an accident victim unsuccessfully sought to compel a lawyer to disclose the identity of his client, the court remanding the case to determine whether, in fact, there was an attorney-client relationship.

Ethical Requirement of Confidentiality

The basic client confidentiality rule is RPC 1.6. Section (a) generally prohibits disclosure of client confidences and secrets, and section (b) permits certain disclosures, while section (c) permits disclosure relating to court-appointed fiduciaries. Since, under RPC 5.3, you must make reasonable efforts to ensure that your employees' conduct is compatible with your professional obligations, your staff must also maintain your client's confidences and secrets under RPC 1.6 and may, under your supervision, disclose such information only where you would be permitted to do so. RPC 1.6 is broader than the attorney-client privilege rule and may prevent you from disclosing information even if that information is not covered by attorney-client privilege. The RPCs define the term "confidence" as "information protected by the attorney-client privilege under applicable law," and "secret" as "other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client."

RPC 1.6(a) prohibits you from revealing confidences or secrets relating to representation of a client "unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in sections (b) and (c)." The rule's authorization to disclose information where the client consents or where the disclosures are "impliedly authorized in order to carry out the representation" covers the great bulk of the disclosures that routinely take place in most representations. The consent must, of course, be "after consultation," which the RPCs define as "communication of information reasonably sufficient to permit the client to appreciate the significance of the matter in question." You should advise the client not only what confidential or secret information you propose to disclose, but should also explain to the client the likely consequences of the disclosure. Where your client has specifically refused to consent to make disclosure, the specific refusal would negate the implied authorization of RPC 1.6(a) and would thus not permit you to disclose the information. In this case, you may have no choice but to withdraw from the representation unless some other exception to the nondisclosure rule applies.

RPC 1.6(b) sets out several situations wherein you may, "to the extent" you reasonably believe is necessary, reveal


YEARS of practicing entertainment law: 36
YEARS of practicing soprano sax: 53
CLIENTS with #1 hits: 39 (and counting)
APPEARANCES before the U.S. Supreme Court: 1
APPEARANCES with the Preservation Hall Jazz Band at Carnegie Hall: 1
QUOTE: "I'm the luckiest guy alive.
I get to meet all my heroes."

client confidences and secrets. This is not a general permission to disclose all client confidences and secrets, but only those reasonably necessary. RPC 1.6(b) allows disclosure

(1) To prevent the client from committing a crime; or (2) To establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, to respond to allegations in any proceeding concerning the lawyer's representation of the client, or pursuant to court order.

The crime exception permits you to disclose information to the extent you believe reasonably necessary to prevent any crime. Although Washington's crime exception is based on the ABA Model RPC, Washington's exception is much broader, since it permits disclosure to prevent any crime, whereas the ABA Model RPC permits disclosure only to prevent "a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm." In Washington, for example, if you came to know that your client's conduct in an ongoing securities offering or commercial transaction was criminally fraudulent, or that your client was intending to embezzle assets, or that your client was intending to commit perjury, or that your marriage dissolution client was intending to harm his or her spouse, you could reveal that information under RPC 1.6. But suppose you were not sure that the intended client conduct was a *crime*? Could you still disclose the information if you believed that the intended acts were fraudulent under civil law, but were unsure whether the intended conduct was fraudulent under criminal law, for example, because of the higher burden of proof in criminal cases? RPC 1.6(b)(1) does not explicitly permit such a disclosure. Arguably, the provisions of RPC 1.2(d), prohibiting you from assisting a client in conduct that you know is "criminal or *fraudulent*," or RPC 4.1(b) discussed below, may permit the disclosure where your silence, in effect, assists or becomes a part of that fraudulent conduct.

The crime exception applies only to the commission by the client of intended or future crimes. It does not permit you to disclose information about past crimes. In the context of a securities offering, and perhaps other mandatory disclosure areas, however, where past criminal activity must generally be disclosed, the failure to disclose past criminal activity could constitute criminal fraud under the securities, wire fraud and mail fraud laws. Your client's intentional refusal to disclose the past crimes would likely be a material omission and an ongoing or continuing fraud on investors, as well as a continuing or future crime. RPC 1.6(b)(1) would perhaps permit, but not require, you to disclose that information; RPC 4.1(b) may require you to disclose such information.

You may also disclose confidential information to defend yourself against claims and charges against you in a controversy between yourself and your client, or to establish a defense to a criminal charge or civil claim against you based upon conduct in which your client was involved. It has been suggested that this defense may be "preemptive," such that you would not have to await an actual charge or claim against you. Where you know your client has engaged in material misrepresentations or omissions and has refused to correct them, you should withdraw from the representation and may, if you reasonably believe a claim or charge is likely to be made against you, disclose the misrepresentation or omission, but only to the extent reasonably necessary to defend yourself. If it is highly improbable that any claim or charge could be made against you, however, you could still withdraw but would not be permitted under the RPC 1.6(b)(2) "defense" provision to make any disclosure.

RPC 1.6(b)(2) also permits you to make disclosure "pursuant to court order." The court in *United States v. Blackman*, 72 F.3d 1418 (9th Cir. 1995) held that an Oregon lawyer was required by law to disclose the client's name and the nature of the transaction on an IRS Form 8300 (cash transactions report), rejecting the lawyer's claim that the information was protected under Oregon law by attorney-client privilege and as confidences and secrets of his client. Since there was also an IRS summons and subsequent enforcement proceeding, the "court order" exception to nondisclosure was also involved. As to disclosure pursuant to IRS Form 8300, *see* WSBA Formal Opinion 194 (1997), which discusses a lawyer's responsibilities under Washington's RPC 1.6.

RPC 1.6(c) permits, but does not require, you to reveal to a tribunal a client's confidences or secrets which disclose a breach of fiduciary responsibility by your client who is a guardian, personal representative, receiver, or other court-appointed fiduciary. If you represent a guardian or personal representative, for example, and become aware he or she is dissipating estate assets, you may disclose that information *to the tribunal*. If you wish to disclose the information more broadly, however, for example, to estate beneficiaries, you may want to seek authority to do so under RPC 1.6(b) by seeking a court order permitting such disclosure.

Consider Withdrawing from Representation

If your client has made material misrepresentations or omissions and refuses to rectify the situation, you should consider withdrawing from the representation. RPC 1.15 governs your ability to do so, only requiring withdrawal in this context where your continued representation will result in a violation of the RPCs or other law. For example, in *State v. Berrysmith*, 87 Wn. App. 268 (Div. I, 1997), the court upheld the right of a criminal-defense counsel to withdraw after raising with the court, in camera, his belief that his client intended to commit perjury (rather than requiring the lawyer to remain and allow the client to testify and see if perjury was committed). The court noted that RPC 1.15 required such withdrawal unless the court ordered otherwise.

The drafter's Comment to ABA Model RPC 1.6 states that when you are withdrawing from representation the RPCs do not prevent you "from giving notice of the fact of withdrawal," and that you "may also withdraw or disaffirm any opinion, document, affirmation, or the like." This in effect permits a "noisy withdrawal." The comment, which has generated considerable controversy, originated in the context of disclosure of a crime or fraud being committed by the client and in the context of the model RPC's narrower crime exception to nondisclosure. Washington, in adopting its version of the ABA's Model RPCs, did not adopt any of the ABA comments. Thus, for purposes of determining the meaning of Washington's version of RPC 1.6, the ABA comment remains merely persuasive evidence of the meaning of the Model Rule, on which Washington's version is loosely based.

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The Discipline Notice section of "Ethics & the Law" continues on page 37.

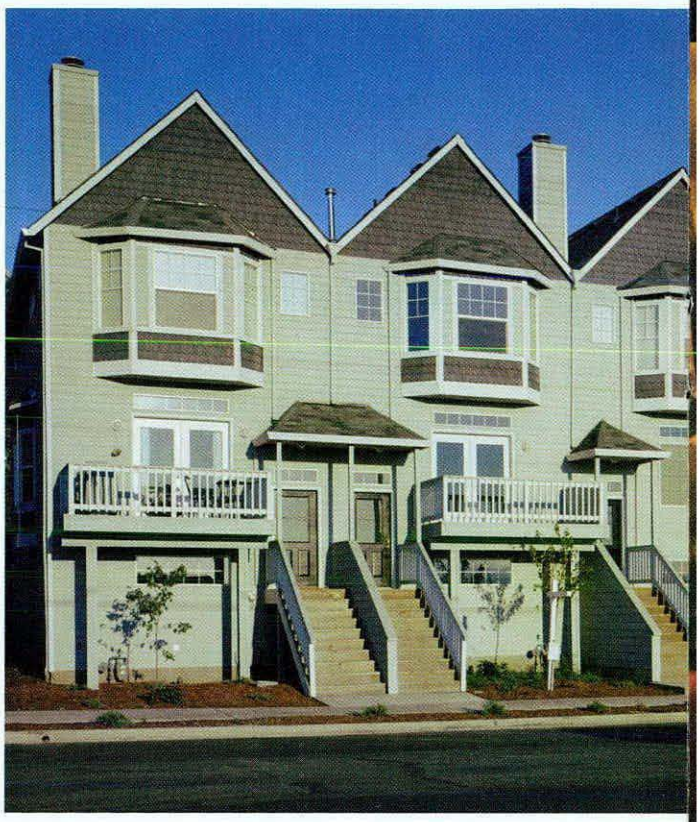
The Commercial Real E

The 1997 Washington State Legislature enacted the Commercial Real Estate Broker Lien Act (the "Act"), which permits a licensed real estate broker to record a lien against an "owner's net proceeds" from the disposition or lease of commercial real estate.[1] The new statute applies to lien claims based on commercial real estate commission agreements which are written, signed by the owner or the owner's agent, and entered July 27, 1997 or thereafter. "Commercial real estate" is defined to include:

1) *any* real property identified as commercial real estate within a written commission agreement;

2) *improved* multifamily residential property with five or more units which are not sold on a unit-by-unit basis; and

3) *unimproved* properties which may be developed into five or more residential units.[2]



Lien Effective by Recording and Delivery

In dispositions of commercial real estate (defined as voluntary transfers or conveyances), the broker's lien becomes effective on the date a notice of claim of lien upon proceeds is recorded,[3] if:

1) the notice of claim of lien is recorded with the county auditor or recorder, in the county in which the commercial real estate is located, at least thirty (30) days before the deed conveying title to the commercial real estate is recorded;[4] and

2) a copy of the notice of claim of lien is delivered to the owner within ten days of recording.[5]

The broker's notice of claim of lien must be delivered by one of the following methods:

1) service of process;

2) registered mail, return receipt requested;

3) certified mail, return receipt requested;

4) personal delivery, with an affidavit of service or with written evidence of receipt by the party receiving notice; or

5) electronic delivery, with an affidavit of service or with electronic evidence of receipt by the party receiving notice.[6]

Priority of the Broker's Lien

If the notice of claim of lien is properly recorded and delivered to the owner, the lien takes priority from the date of recording. All liens, mortgages, deeds of trust, assignments of rents, and other monetary encumbrances recorded prior to the recording of a notice of claim of lien have priority over the broker's lien.[7] Later recorded mechanic's and material-men's liens, which relate back to a commencement date prior to the date of recording of the broker's notice of claim of lien, also take priority over the broker's lien.[8]

Lien Against "Owner's Net Proceeds"

The broker's lien against "owner's net proceeds" is a lien "upon personal property, not upon real property."[9] The Act redefines "owner's net proceeds" as gross sales proceeds *less*:

1) encumbrances with priority over the broker's lien, except encumbrances assumed by the buyer;

2) owner's closing costs; and

3) funds held by another for the owner's use in completing a 1031 exchange.[10]

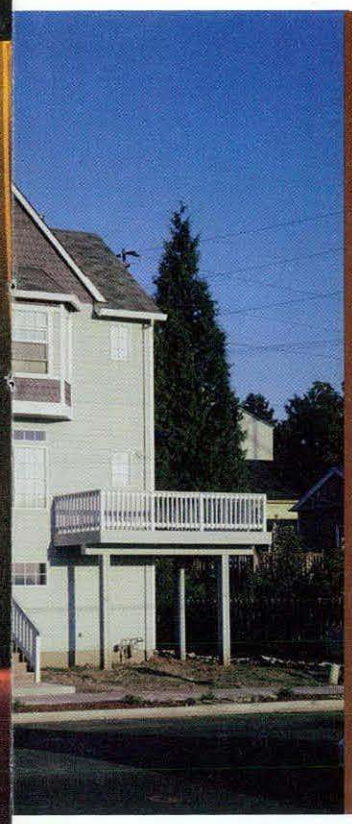
Funds held, but not later used, to complete a 1031 exchange by the owner are then recharacterized as "owner's net proceeds."

Under this definition, an "owner's net proceeds" may include proceeds of sale paid to creditors with liens against the owner's real property which: a) are subordinate to the broker's claim of lien against proceeds; and b) are *not* assumed by the buyer. Thus, the broker's lien against "owner's net proceeds" is also a lien against funds paid to creditors with later recorded, subordinate judgments, liens or encumbrances against the owner's real property.

Broker's Lien May Create Title Problems

During a sale or conveyance of commercial real estate, if the value of the

state Broker Lien Act



Redefining "Owner's Net Proceeds" to Create New Lien Priorities

by Gretchen L. Valentine

commercial real property exceeds the value of *all* liens and encumbrances, including the broker's lien, the relative priority between a broker's lien against "owner's net proceeds" and later recorded liens or encumbrances against the owner's real property is immaterial, because all creditors will be paid at closing. However, if the value of all liens and encumbrances exceeds the price paid for the real property, the priority of the broker's lien against an "owner's net proceeds" may create title problems.

For example, consider the owner who enters a written commission agreement for the sale of commercial real estate, which is valued at $1,000,000 and encumbered with $950,000 in secured debt.[11] The owner agrees to pay the broker a $50,000 commission at closing, and the broker timely records a notice of claim of lien against proceeds. Thereafter (but before closing) a foreign judgment creditor properly files and records a $25,000 judgment against the owner/seller. Under these facts, the broker's lien will take priority over the judgment lien. If the broker's lien against "owner's net proceeds" is paid at closing, leaving no funds to pay the judgment creditor, the judgment lien against the real property will not be satisfied and will survive as an encumbrance against the title to the commercial real estate. The parties may not be satisfied with this outcome.

On the other hand, what if the judgment creditor is paid at closing, leaving a commission shortfall for the broker? Although the buyer will (at least initially) take title free and clear of the judgment lien, the broker will have a lien upon "owner's net proceeds," which includes the $25,000 disbursed to the judgment creditor. If the broker enforces its lien against the funds paid to the judgment creditor and the judgment creditor is forced to disgorge those funds, the judgment lien might be revived, once again encumbering the title to the commercial real estate. The parties may not be satisfied with this outcome, either.

Resolving the Conflict

The apparent conflict in priority (between a broker's lien against an "owner's net proceeds" and a later recorded lien against the owner's real property) might be resolved by modifying the Act by either:

1) making the broker's lien a lien against owner's net proceeds as it is commonly defined, not as it is defined under the new statute; or

2) making the broker's lien a lien against the commercial real property, not the "owner's net proceeds."

Either option would provide title and escrow companies with a clearer rule for preparing preliminary commitments for title insurance and for disbursing funds at closing.

Until modification occurs, transactional real estate attorneys, creditors, and the parties to commercial real estate transactions need to be aware of the potential effect a broker's lien may have upon subordinate creditors and the condition of title after closing. In transactions involving debt-laden or highly leveraged commercial real estate, attorneys representing the buyer, the seller, and the seller's creditors will need to negotiate carefully to protect their clients' interests.

Endnotes:

[1]See Commercial Real Estate Broker Lien Act, ch. 315, 1997 Wash. Legis. Serv. (West) (being codified at RCW 60.42). Although the new statute permits the broker to file a lien against an "owner's net proceeds" where commercial real estate is leased or conveyed, this article is limited to a discussion of the priority of the broker's lien when commercial real estate is conveyed.

[2]*See* RCW 60.42.005(1).

[3]RCW 60.42.010(3).

[4]RCW 60.42.010(4).

[5]RCW 60.42.010(5).

[6]RCW 60.42.070. If commercial real estate is being transferred or conveyed and the broker knows the identity of the closing agent, "the broker shall [also] deliver a copy of the notice of claim of lien against proceeds to the escrow closing agent" before closing. RCW 60.42.010(5).

[7]RCW 60.42.040.

[8]*See* RCW 60.42.040.

[9]RCW 60.42.010(1).

[10]*See* RCW 60.42.005(9)(a).

[11]To simplify this analysis, the example given does not take into consideration other common transactional costs, such as escrow fees, excise taxes, real estate taxes, title insurance premiums and loan fees.

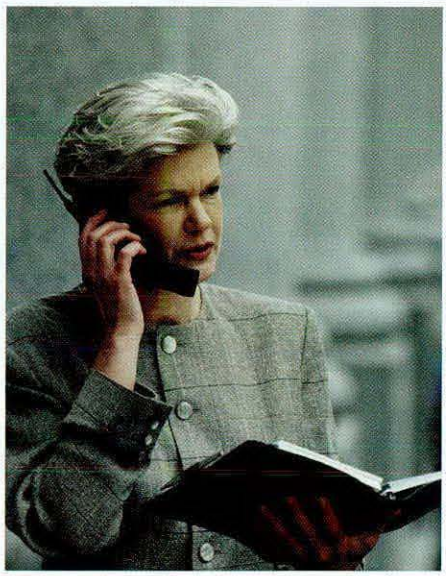
Gretchen L. Valentine *is vice president of and counsel for Transnation Title Insurance Company and Commonwealth Land Title Insurance Company.*

Why Partner Stay . . . or Don't:

Hardly a week goes by without reports about partners or groups of partners abandoning their firm to start a new firm or join another. Some lawyers justify their departures by citing disputes about compensation, lack of direction or vision, management conflicts, clashes regarding values and philosophies, and concerns about firm productivity and profitability. Of course, these may be a lawyer's ostensible reasons for bolting a firm, but the deeper reason, which should concern all lawyers who practice in a law firm, is the growing perception among successful lawyers that their firm provides little or no value to them. The problem can be stated simply: "How does a firm offer value in excess of the sum of its parts?" In other words, can a law firm as an institution acquire a measure of value that is independent of the skills, talents and contributions of its partners?

This question can be answered only by analyzing the advantages that a law firm has over a sole practitioner or a group of lawyers who share only overhead. There are a number of possible answers, including:

- shared skills and expertise
- backup or additional help when needed
- a "safety net" during economic cycles
- shared resources, such as technology, library, forms, research and other work product
- cross-selling and/or referral of work
- expertise and access to others with different disciplines
- the use of highly trained associates, legal assistants and support staff
- a brand name or firm reputation that makes marketing easier
- more sophisticated and skilled management
- opportunities for individual lawyers to become highly specialized
- a system of partner coaching to bring out the best in each partner
- the emotional support, encouragement and personal recognition
- flexibility to allow lawyers to be more involved in pro bono, community and bar activities
- the continuation of existence beyond that of current owners



Few firms provide all of these advantages effectively. Without the advantages that a partner believes are important for a firm, however, it is unlikely that he or she will stay with the firm.

Characteristics of Successful Law Firm

Most successful and dynamic law firms have certain characteristics or hallmarks that distinguish them from their competitors, including:

Competent, Hard-working, Focused Lawyers

A law firm cannot operate as a collection of practices that have no interaction with one another. When individual practices merely exist under the same roof, internal competition, hoarding of work, jealousy and suspicion develop. Successful law firms must have a focus or *raison d'^etre*, and each lawyer should develop specialized expertise consistent with the firm's mission. Focused law firms have significant marketing advantages because they know what they are marketing. They are also able to use technology, personnel and value pricing more effectively and to respond to changing economic and political considerations much better than firms that continue to have a general-practice or full-service mentality.

Commitment to Quality

Successful firms recognize that "quality work" has a dual meaning: technical quality (how good is the work?) and service quality (did the client have a positive experience dealing with the firm?). Unfortunately, quality work in most law firms is like Justice Potter Stewart's informal definition of obscenity: "You know it when you see it." This ad hoc and subjective approach to quality legal work exists because no standards or evaluation procedures exist in most firms. Service quality, which clients are increasingly demanding, can be determined only by regular client and matter performance evaluations. Clients value lawyers and law firms who know how to communicate and are sensitive to their needs and concerns.

Collegiality and *Esprit de Corps*

Successful law firms have a team attitude and spirit, including a willingness to share work and clients. Firms with this attribute are composed of lawyers who care about and respect the people for whom and with whom they work, who trust their employees to be smart and use initiative, and who ask for genuine input regarding changes or challenges.

BY EZRA TOM CLARK, JR.

LOYALTY

Fragmenting firms are plagued by declining allegiance to the firm and its lawyers and the failure to keep confidences and build relationships. Loyalty is strengthened when individuals are respected, trusted and involved in the process of making decisions that impact them, when credit and decision-making are shared, when there is recognition for a job well-done, and when there are honest, fair and consistent relationships. Loyalty evaporates when secrecy, poor communication and pseudo-caste systems exist among staff and lawyers. The typical symptoms of disloyalty and distrust include a lack of interest in the firm, reduced productivity, high turnover, poor attendance at firm meetings or activities, lack of cross-selling and a fear of expressing opinions because of possible retribution.

LEADERSHIP (MORE THAN A TITLE)

Most flagging law firms have poor or weak leadership. Effective leadership involves spending time to articulate firm goals and objectives and motivating partners and employees of the firm to embrace those goals and objectives. In addition, it requires example, consensus-building, fairness, patience and good communication skills. Many firms have leaders, but they lack leadership. Leaders must establish a sense of direction and maintain the firm's focus. They must avoid the temptation to place themselves above others. Conversely, leaders must provide for succession and their own eventual replacement. Most important, effective leaders subordinate their own interests to those of the firm.

ACCOUNTABILITY

Successful law firms encourage and demand responsibility for their members' positive and negative acts. A lack of accountability breeds apathy, sloth and frustration. Accountability is illusory until firm policies and standards have been defined and each partner and employee is willing to voluntarily abide by them. In many firms, lawyers, particularly associates, simply do not understand what is expected. Successful firms have written partnership agreements and fair criteria for partnership with written policies and procedures.

FINANCIAL GENEROSITY OF MOST-PRODUCTIVE LAWYERS

In many firms the most productive lawyers do not always receive all the financial rewards they have earned. The concept of a firm necessitates sharing with others. This attribute is frequently weak or missing in firms with an "eat what you kill" compensation system or one that primarily rewards individual performance and profitability.

SENSE OF FAIRNESS OR "ROUGH JUSTICE"

Successful firms realize that not all decisions can be made objectively. Many decisions must be based on subjective factors — including a rough sense of justice. A law firm cannot ensure that everyone is happy all the time. Disagreements occur in healthy firms. Most important, however, is that everyone feels that he or she is being treated fairly most of the time. Subjective compensation systems are essential components in firms with a "rough justice" philosophy.

WILLINGNESS TO PLACE THE INTERESTS OF THE FIRM AHEAD OF PERSONAL INTERESTS

Selfishness and an unwillingness to compromise weakens and ultimately destroys law firms. Individuals must subor-

dinate individual interests and personal aspirations for the good of the whole. Consensus legitimizes important decisions. Consensus-building, however, can go too far and paralyze a firm. All decisions do not need unanimous consent or agreement. In too many firms, an individual's willingness to place the good of the firm above more parochial interests is declining.

An Understanding of What the Firm is and Where it is Going

Lack of direction is a serious weakness in many firms. There must be common goals and aspirations which lawyers and staff understand. In addition, there must be a sense of vision or direction. Yogi Berra understood this principle when he said, "If you don't know where you are going, you might end up somewhere else."

Progressive Attitude and Spirit

The *status quo* often stymies creativity, new opportunities and new challenges. A proactive approach must be used to resolve problems and react to opportunities. In many firms there is a reactive approach to resolving most problems and disputes, an "if it ain't broke don't fix it" attitude. In a competitive marketplace, firms with an entrepreneurial spirit and a willingness to take reasonable risks will thrive and prosper.

Client-Driven

The well-known business maxim, "the client always comes first," applies to law firms. All decisions and efforts must be focused on what is in the best long-term interests of clients. Client communication, service and needs are paramount concerns in firms with this attribute.

Culture

A firm's culture is a complex but usually cohesive amalgam of the firm's ideas, customs, values, personalities, backgrounds, relationships and skills. It is honed over time, reshaped periodically by internal and external factors, and manifested in its lawyers and how they practice and relate with each other. It reveals itself in how decisions are made, the work ethic, communication styles, how information is shared, the ethics of the firm and individual lawyers, attorney relationships, the significance of meritocracy in advancement, morale, the reward system and how employees are treated and recognized. In many firms, it is difficult to define the culture because of this amorphous mix of components. Not all cultures are perceived positively. Some firms are termed "sweatshops," "clubby" or "white-shoe." The failure of a firm to define its culture is often one of the reasons for high turnover, lack of direction and/or internal conflict and disputes.

Diversity

Firms must have respect for diversity regarding ideas, gender, age, ethnic background, religion and education. Excessive diversity may pose a threat to some

firms, particularly if differences undermine core values or the culture of the firm.

A group of lawyers becomes a firm to the extent there is some sense of common purpose, common approaches and shared values. They must be willing to help each other out in the small ways that are the essence of a legal practice, i.e., assistance, cooperation, support and mutual encouragement. This does not mean that everyone has to be best friends and have similar interests and personal goals. Unless a firm is more than a compensation arrangement, however, it is doomed to have many problems and defections.

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Ezra Tom Clark, Jr. is a former practicing attorney and managing attorney of a major Phoenix, Arizona, firm.

(continued from page 31)

DISBARRED

Lynnwood lawyer John P. World (WSBA No. 6324, admitted 1975) has been ordered disbarred by order of the Supreme Court effective October 29, 1997, entered after a public disciplinary hearing and review by the Disciplinary Board. The discipline is based upon his neglect of matters relating to the possible sale of his clients' business, misrepresentations to the clients about its status, and violation of a prior disciplinary order.

In December 1989, two friends and coworkers of World left their common employer and started their own company. In May 1991, because their new business was not doing well and they faced possible bankruptcy, the two decided to pursue the sale of their company to a company in Boston, Massachusetts, that had expressed significant interest in purchasing it. The two met with executives from the Boston company and realized that they needed help negotiating and documenting the sale.

At a meeting of the new company's Board, at which World was present, the Board considered which of two lawyers to retain to represent them, World or another lawyer. Based on the two co-founders' great confidence in World's ability and integrity because of their long association with him, the Board agreed to retain World. World then entered into a lawyer-client relationship with the two co-founders and the company regarding the transaction.

After that Board meeting, World had only one conversation with the executives of the Boston company. Thereafter, World did nothing to further the sale, and he never spoke to anyone from the Boston company again. However, World had many conversations, on an almost weekly basis, with the company's co-founders regarding the transaction. In these conversations, World consistently misrepresented his efforts, the progress of the transaction and its chances of going forward. He also instructed the two to have no direct contact with the Boston company.

According to the hearing officer's findings, World "engage[d] in a deceptive charade regarding the progress of the deal

which is difficult to exaggerate," leading the two co-founders to believe that the sale of their company was imminent, and principally contingent on the Boston company executives' meeting with the two and seeing their company's books and operations. The hearing officer also found that World "engaged in multiple and elaborate lies as to why executives of the Boston company failed to make meetings with [the two] that he had told them would occur."

In October 1991, the two co-founders became suspicious about the numerous failed meetings. World then engaged in another pattern of deceit to contain his scheme that appeared to be unraveling. After another week, World told the two that they should look for another buyer. A few days after this, the two called the Boston company to find out what had gone wrong and discovered that World had had no contact with them other than the one telephone call in July 1991, and that they were no longer interested in pursuing the purchase of the company. When they confronted World about this, he engaged in yet another deceit about what had happened.

During the course of this deceitful conduct, World was made aware of the precarious financial state of the company and its two co-founders, and he was aware of the harm that would be caused to them all if the transaction failed to occur. World did not admit his deceit to the two up to the date of the hearing.

At the time World entered into this lawyer-client relationship, he was under the terms of a previous disciplinary order that required him to obtain a supervising lawyer before he engaged in the private practice of law outside of the company for which he worked. World did not obtain a supervising lawyer to oversee his work on this matter.

World's conduct in knowingly failing to pursue the sale of the company as instructed by his clients violated RPC 1.2(a) (concerning his obligation to abide by the decisions of his client regarding the objectives of the representation), RPC 1.3 (requiring diligence), and RPC 1.4 (requiring adequate communication with clients), and subjects him to discipline pursuant to RLD 1.1(i) and (p). His knowing pattern of deceit and misrepresentation regarding the progress of the sale violated RPC 8.4(c) (prohibiting conduct that is dishonest, fraudulent, deceitful or involves misrepresentation), and subjects him to discipline pursuant to RLD 1.1(a), (i) and (p). His conduct in knowingly resuming the private practice of law by agreeing to represent these clients without obtaining a supervising attorney, in violation of the terms of his previous disciplinary order, subjects him to discipline pursuant to RLD 1.1(m) and (p).

The hearing officer was Andrew K. Dolan of Seattle. World represented himself. The Bar Association was represented by Disciplinary Counsel Jean Kelley McElroy.

☆

Kent lawyer Edward L. Parks (WSBA No. 18356, admitted 1988) has been ordered disbarred by order of the Supreme Court, effective October 29, 1997, after a default hearing and review by the Disciplinary Board. The discipline is based upon Parks' investment of a client's money in a real estate development project in which others of Parks' clients and Parks himself had an interest, without properly advising the client about the risks of the investment or the conflicts of interest in such a transaction. Despite repeated requests, the client's money was never returned to him.

Parks represented a client in a variety of legal matters in the early 1990s. At all relevant times, Parks was aware that his client suffered from a drug problem which affected his understanding of legal matters and his ability to handle financial matters. During the course of the representation, the client inherited a house and more than $100,000 in cash. The client rapidly dissipated the cash, leaving the house as his only substantial asset. During the summer of 1994, the client asked Parks for help getting off drugs, and as part of his plan, the client decided to sell the house, put the proceeds in an account for his living expenses, and move to Mexico, where he could live more cheaply. The house was sold and over $72,000 in proceeds was placed in Parks' IOLTA trust account. Parks knew that this money represented the client's entire assets, on which he hoped to be able to live for many years.

Parks suggested that the client invest $40,000 in a real estate development project. Parks did not explain to the client that Parks represented the development company and its major shareholder personally, and that Parks himself was a shareholder and officer in the development company, and he did not explain the

conflicts of interest inherent in these positions or obtain an informed written waiver of those conflicts. Parks also misrepresented the likely return from the investment in the project. At the time Parks suggested and made the investment, Parks knew that the project had not been able to secure complete financing, and that the purported owners of the land to be developed had pled guilty to and been sentenced for crimes arising from a land fraud scheme in another state. He also had written many letters to creditors of the development company for work on the project, putting off payment due to lack of financing.

Parks wrote two checks from the client's money in his IOLTA account, payable to the development company's major shareholder personally (not the development company). The first check was for $40,000, and the second, of which the client was not informed until after the fact, was for $15,000. The project was never developed. Despite repeated requests to both Parks and the development company, and assurances from Parks that the money would be returned, the money has not been returned to the client.

Parks' actions violated RPC 1.4(a) and (b) (requiring adequate communication with clients), RPC 1.7(a) and (b), RPC 1.8(a), and RPC 1.9 (dealing with conflicts of interest and business transactions with clients), and RPC 1.13(a) and (b) (regarding representing clients with disabilities), and his actions subject Parks to discipline pursuant to RLD 1.1(a) (for acts involving moral turpitude, dishonesty, and/or corruption), 1.1(c) (for violating his oath of attorney), 1.1(i) (for violating the RPCs), and 1.1(p) (for conduct demonstrating unfitness to practice law).

The hearing officer was Ronald J. Bland of Seattle. Respondent defaulted. The Bar Association was represented by Disciplinary Counsel Jean Kelley McElroy.

REPRIMANDED

Seattle lawyer Wade R. Dann (WSBA NO. 7552, admitted 1973) has been ordered reprimanded by the Disciplinary Board, after a hearing held August 7-9, 1996, for his conduct in recording and allowing a third person to listen in on a telephone conversation with an opposing lawyer without that lawyer's knowledge or consent.

Dann represented a surety and a prime contractor regarding construction at an Air Force base. He later represented the prime's subcontractor. The opposing party was the Army Corps of Engineers.

On July 11, 1991, Dann telephoned the lawyer for the Corps of Engineers. Through a conference call feature on his telephone, Dann had the representative of the subcontractor (who was not yet a client) listening in on the call. Dann also recorded the call. Dann did not tell the opposing lawyer that Dann's client was listening in or that Dann was recording the call. Dann did not have the lawyer's permission for either. During the telephone call, Dann stated to the opposing lawyer, "I've got to call [the subcontractor's representative] as soon as we hang up . . . ."

Dann had the tape recording transcribed and gave it to another party in the matter without the recorded lawyer's knowledge or permission. The recorded lawyer found out about the recording from the other party.

By surreptitiously allowing the client to listen in on the telephone conversation with the opposing lawyer, Dann violated RPC 8.4(c), which provides that "[i]t is professional misconduct for a lawyer to . . . engage in conduct involving dishonesty, fraud, deceit or misrepresentation[.]" Also by surreptitiously recording that telephone conversation, Dann violated Rule 8.4(c).

Disciplinary Counsel David Cluxton and Lisa Crawford represented the Association. Kurt Bulmer represented Dann.

ADMONISHED

Vancouver lawyer J. Robert Yoseph (WSBA No. 8627, admitted 1978) received an Admonition, pursuant to a Stipulation approved by the Disciplinary Board, for making offensive comments about and toward an opposing party, in violation of the Lawyer's oath to avoid offensive personalities.

Respondent represented himself. The Bar Association was represented by Disciplinary Counsel Maria S. Regimbal.

SUSPENDED

Spokane lawyer James J. Barlow (WSBA No. 17596, admitted 1988) has

been ordered suspended for two years, pursuant to a stipulation for discipline approved by the Disciplinary Board on September 26, 1997. The discipline is based upon multiple counts of failure to act diligently or communicate with his clients, and ultimately, the abandonment of his practice, in violation of RPC 1.3 (duty to act diligently) and 1.4 (duty to keep client reasonably informed); withdrawal from the representation of a client without reasonable notice, in violation of RPC 1.15 (duties upon withdrawal); conversion of a $200 check for sanctions made out to him and his client, in violation of RPC 1.14 (preserving client property) and 8.4(c) (dishonest conduct); and failure to pay court-ordered sanctions, in violation of RPC 8.4(d) (interference with the administration of justice).

In one matter, Barlow was appointed to represent an indigent defendant in his criminal appeal. The Court of Appeals set a due date for appellant's brief of July 22, 1996. By September 27, 1996, despite three warning letters from the Court of Appeals, Barlow still had not filed the brief. The court imposed terms of $100, and set the matter on the docket to dismiss the appeal as abandoned due to his failure to file an opening brief. The commissioner denied the motion to dismiss, but remanded for appointment of new appellate counsel. Barlow never paid the $100 sanction.

In a second matter, a client hired Barlow in connection with a dispute with her auto insurer, who was refusing to cover damages arising from her daughter's collision with a fence. She paid him $500. He failed to take any action on her case. The matter eventually went to a collection agency, and the client was forced to pay an additional $214.22 in fees and costs. In addition, although Barlow returned the client's fees and her file, the file was missing critical documents.

In a third matter, Barlow had a contract with the Spokane County Public Defender's office to handle dependency cases when that office had a conflict of interest. In December 1996, he was appointed to represent a woman in a dependency matter after her newborn daughter had been removed from her custody. He performed some work on the case initially, but in February 1997 he ceased work on it and broke off communications with the client. A new lawyer was appointed to represent the client and resolved the matter.

In a fourth matter, a client hired Barlow to obtain a dissolution from his wife, who lived in Italy, and to defend an action brought by OSE for post-majority support of the couple's two children, which was based on an Italian decree. The client paid him $2,500, and signed a blank dissolution form on December 11, 1995. Barlow did not provide the client with a copy of the summons and petition to serve on his wife as agreed until April 1996, and did not file the affidavit of service until nearly four months after he received it. In addition, he failed to take any action with respect to a statement of lien from OSE, resulting in the garnishment of a portion of the client's pension beginning October 1996. Barlow withdrew from representing the client shortly thereafter, effective immediately. The client retained new counsel to resolve the matter.

In a fifth matter, Barlow was appointed to represent an indigent defendant in his criminal appeal. He filed his opening brief in July 1995. On August 7, 1996, the Court of Appeals directed him to serve a copy of the transcript of proceedings on the client by August 17, 1996, because the client had filed a notice of intent to file a pro se supplemental brief. By October 8, 1996, despite two warning letters from the Court of Appeals, Barlow still had not

served the transcript. The court imposed terms of $100. The client received the transcript on January 14, 1997. On January 27, 1997, the court granted appellant's motion to strike the brief filed by Barlow, and appointed new counsel to represent him on appeal. Barlow never paid the $100 sanction.

In a sixth matter, a client hired Barlow to defend him in a child support modification action. In March 1996, the ex-wife's lawyer failed to appear for a court hearing, and the court assessed terms of $200 to be paid to the client. The ex-wife's lawyer sent Barlow a check for $200, made payable to Barlow and the client. When the client asked Barlow if he ever had received the check, Barlow replied that he was keeping the check "in [the client's] file" to be applied to outstanding legal fees. But on April 30, 1996, the check was deposited in the Spokane Federal Credit Union, which was not where Barlow maintained his trust account. It appeared to have been endorsed by both Barlow and the client, but the client said he never saw the check, and the signature on the back of the check purporting to be the client's signature was not the client's signature.

This client also hired Barlow to represent him in a proceeding brought by his ex-wife to recover $11,000. The client gave Barlow a check for $11,000, which was to be exchanged for a reconveyance of title, satisfying a lien. Barlow gave the check to the ex-wife's lawyer, but never obtained the reconveyance of title and failed to return the client's telephone calls inquiring about the matter. The client eventually hired new counsel.

In a seventh matter, on February 26, 1997, the Court of Appeals, Division Three, entered an order entitled "Order to Show Cause Why the Following Due Dates Have Not Been Met, Action Taken to Perfect These Appeals and Why Substitute Counsel Should Not Be Appointed." The order covered three criminal appellate matters and six dependency matters in which due dates had not been met or action taken to perfect the appeals. Barlow did not attend the hearing, and the court appointed new counsel.

In February 1997, Barlow abandoned his practice upon becoming hospitalized.

Marc R. Roecks represented Barlow. Disciplinary Counsel Joanne S. Abelson represented the Bar Association.

☆

Edmonds lawyer John L. Radder (WSBA No. 16416, admitted 1986) has been ordered suspended for 90 days, pursuant to a stipulation to discipline, approved by the Supreme Court October 28, 1997. The discipline is based on altering billing statements by switching initials, dates, or amounts of time worked on a client's matter and on failing to take prompt corrective action when he learned of initial switching by his partner, lawyer Wade Dann.

In September 1989, a construction company hired Radder's then-partner, Wade Dann, to present a claim regarding a highway construction project. Various firm personnel worked on the client's matter, including Radder and a nonlawyer construction claims analyst. In February 1992, the client told the firm it no longer wanted the particular construction claims analyst working on its matter. During the following five months, the firm nevertheless had that claims analyst working on the client's matter. Radder and Dann altered the firm's billing records by substituting Radder's initials for those of the claims

analyst to conceal the fact that the claims analyst was still working on the matter.

At that time, the firm billed Radder's time at $140 per hour and the claims analyst's at $93 per hour. Substitution of Radder's initials for the claims analyst's in the billings resulted in the client's being overbilled approximately $2,500. But the firm wrote off more than that amount during the same period.

In June 1992, Radder wrote the client a letter in which he stated "[a]lso at your direction, we did not utilize [the claims analyst] to continue and finalize the presentation materials." Radder knew that statement was untrue. The client found out the statement was untrue in about February 1993 when the Association's investigation began. The client continued to employ Radder and the firm after February 1993. Radder became aware of other initial-switching by Dann. In mid-July 1992, Radder conducted an impromptu partnership meeting not attended by Dann at which Radder and the only other partner voted to stop the practice of initial switching on client bills.

By switching or assisting in switching initials on client billings and writing the untruthful letter to the client, Radder violated RPC 8.4(c) and RLD 1.1(a), which prohibit dishonesty. By not taking corrective action regarding Dann's conduct, Radder violated RPC 5.1(c)(2), which requires a partner to take reasonable remedial action when he knows of a partner's misconduct at a time when its consequences can be avoided or mitigated.

David Cluxton, Lisa Crawford, and Joy McLean represented the Bar Association. Radder represented himself.

☆

Tacoma lawyer Gary W. Ross (WSBA No. 15938, admitted 1986) has been ordered suspended for six months, pursuant to a stipulation based upon Ross' conviction of the crime of Manufacturing a Controlled Substance, marijuana. The six-month suspension expired October 28, 1997.

Disciplinary counsel Lisa Crawford and Joy McLean represented the Bar Association. Kurt Bulmer represented Ross.

☆

Seattle lawyer Emmet T. Walsh (WSBA No. 0860, admitted 1963) has been suspended for two years, starting October 10, 1997, pursuant to an order entered by the Supreme Court on that date. The discipline relates to Walsh's work in 1989 as an attorney for an estate, wherein he failed to recognize and address the actual conflicts of interest between estate beneficiaries and the personal representative, whose status as an heir was not clearly defined, and for his collection of excessive attorneys' fees, in violation of RPCs 1.7 and 1.5.

Facts

In February 1989, the adult siblings of a single 70-year-old deceased Seattle woman contacted Walsh about commencing an intestate probate. The value of the estate was approximately $165,000, and it consisted primarily of liquid assets (bank accounts and publicly traded stock). The siblings, who were Canadians, included two sisters; a brother; and a "younger brother," who was actually the nephew of the deceased (i.e., he was the son of a

surviving sister). The "younger brother" had been raised as if he were a sibling. When the family met with Walsh, there was a discussion to the effect that the "younger brother" may have been adopted by the siblings' parents. Walsh opined to the surviving family members that the Washington courts would recognize an "equitable" adoption, and under the intestate statute, the siblings (including the "younger brother") would share the estate equally. A sister and the elder brother expressed concern that there needed to be proof of adoption if the "younger brother" was to be treated as an heir of the estate.

Due to his age and closer proximity to Seattle, the siblings agreed that the "younger brother" would act as the personal representative. In the verified petition for letters of administration, Walsh listed the "younger brother"/petitioner as a brother and heir of the decedent. The elder brother attended the probate hearing. Walsh proceeded to represent the personal representative and the estate, and began to identify and consolidate assets of the estate. Substantial funds were placed in an estate account, which required the signature of either the personal representative or Walsh. On Walsh's petition in late March 1989, the court granted the personal representative non-intervention powers in the intestate probate, and it waived the filing of a bond. Although Walsh and the personal representative researched the adoption issue over the next several months, no written proof of adoption was located.

Between mid-February and late April 1989, Walsh and the personal representative disbursed more than $40,000 to Walsh for professional fees (at a rate of $250 per hour) and costs from the estate account. From time to time, Walsh reviewed his time records with the personal representative. The professional time included traveling to British Columbia for meetings with the personal representative and others, and going to the bank. The personal representative, who had been a first mate on a tug, knew of many, but not of all, disbursals from the estate checking account. By spring 1989, Walsh had also disbursed more than $22,000 to the personal representative for fees, and approximately $5,000 in payment of the creditor's claim, filed by the personal representative's wife, for her care of the decedent in their home prior to her death.

In late April 1989, the younger-sister beneficiary and her adult daughter traveled to Seattle to meet with Walsh. They provided Walsh a written document expressing their concern that Walsh had a conflict of interest in representing the "younger brother" both as personal representative and as a beneficiary, when he was wrongfully listed as a beneficiary in the probate documents. They advised Walsh of their position that the "younger brother" had not been legally adopted. Walsh advised the sister beneficiary that she would have to retain another attorney if she wanted an accounting of the estate.

In early May 1989, the sister beneficiary and her daughter contacted a Seattle lawyer and also filed a grievance with the Association, alleging Walsh's continued representation presented a conflict of interest. Walsh was provided a copy of the grievance in mid-May. The lawyer for the sister beneficiary contacted Walsh by telephone and, on May 12, served him with a request for special notice (RCW 11.28.240) of proceedings in the case, which required Walsh to give notice of any intent to distribute estate assets or pay personal representative or attorneys' fees. Walsh did not discuss his contacts with the sister beneficiary with the personal representative until approximately June 10. On May 1, Walsh and the personal representative made a partial distribution of the estate in the sum of $15,000 to each of the heirs, including the personal representative. Additionally on that date, $11,000 was paid to the personal representative for fees. On June 4, after his receipt of the request for special notice, Walsh caused an additional $4,000 to be distributed to each of the heirs (including the personal representative). A temporary restraining order was entered June 6, 1989, and served on Walsh and the personal representative.

Thereafter, the sister beneficiary and the elder brother brought proceedings for an accounting and removal of the personal representative. Ultimately, the personal representative could not establish his status as an heir of the estate. Walsh acted as attorney for the personal representative in his personal and representative capacities, until the personal representative was removed by court order in October 1989.

Procedural History

The sister beneficiary filed a grievance against Walsh in spring 1989. A hearing was ordered by a Review Committee and a formal complaint was filed in March 1991. Formal disciplinary proceedings were deferred pending the outcome of the civil proceedings. In the civil litigation, judgments were entered against Walsh and the personal representative in the sums of $142,000 and $56,000 (Canadian) respectively, in favor of the estate. The civil claims and Walsh's appeal were resolved, in fall 1995, in favor of the estate. The Bar Association filed an amended formal complaint in July 1996, and a disciplinary hearing was held in August 1996. In December 1996, the hearing officer filed findings of fact, conclusions of law of ethics rule violations relating to conflicts of interest (RPC 1.7) and collection of clearly excessive fees (RPC 1.5), and recommended Walsh's disbarment. In November 1996, the WSBA Lawyers' Fund for Client Protection made a gift of $28,583.65 to the estate. In spring 1997, Walsh entered into a civil compromise of the outstanding judgment with the estate. In June 1997, the Disciplinary Board modified the disciplinary sanction recommendation to a two-year suspension, with the condition that prior to reinstatement, Walsh make full and complete restitution to the Lawyers' Fund for Client Protection. Neither Walsh nor the Association appealed the Board's recommendation. The Supreme Court entered an order of a two-year suspension, with the condition of restitution prior to reinstatement, on October 10, 1997.

Respondent was represented by Thomas P. Keefe and Kevin Keefe. The Bar Association was represented by disciplinary counsel Maria Regimbal and Christopher Sutton.

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.

Reminder:

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CLE CALENDAR

This information is submitted by providers. Please check with them to verify CLE credits approved.

Send seminar announcements by the 15th of the month for the second issue following to *Bar News* Calendar, WSBA, 2101 4th Avenue, 4th Floor, Seattle, WA 98121-2330 Fax (206) 727-8320 e-mail comm@wsba.org

BANKRUPTCY

Fundamentals of Bankruptcy Law and Procedure in WA
Jan. 28-Seattle. 6.5 CLE credits (incl. 1.25 ethics). By NBI (715) 835-8525.

A Changing Practice Under the New W.D.Wn. Chapter 13 Rules
Jan. 30-Seattle; Feb. 13-Vancouver. 4 CLE credits (incl. 1 ethics). By WSBA CLE (206) 727-8202.

BUSINESS LAW

Software Licensing Agreements
Feb. 5-Seattle. 7 CLE credits. By Sequoia Professional Development (202) 955-9373.

Covenants Not To Compete
Feb. 20-Seattle. 4 CLE credits. By Lorman (715) 833-3940.

Representing the Growing or Maturing Closely Held Business
Feb. 6-Seattle. 6.75 CLE credits (incl. .75 ethics). By WSBA CLE (206) 727-8202.

CONSTRUCTION

Construction Contracting for Public Entities
Jan. 29-Kennewick. 6.5 CLE credits. By Lorman (715) 833-3940.

ENVIRONMENTAL & LAND USE

The Endangered Species Act
Jan. 29-30-Seattle. 13.75 CLE credits. By LSI (206) 463-4400.

Land Use and Environmental Law: A Checklist Approach to the Fundamentals
Feb. 11-Seattle. 7 CLE credits. By WSBA CLE (206) 727-8202.

FAMILY LAW

Family Law Litigation
Feb. 10-Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI (715) 835-8525.

GENERAL

Communication in the Courtroom
Jan. 9-Tacoma; Jan. 15-Wenatchee. 7 CLE credits. By Carl Grant (206) 364-5289.

How to Draft, Establish and Administer an Irrevocable Life Insurance Trust (a.m.) **and Understanding and Evaluating Financial Documents** (p.m.)

Jan. 30-Seattle. CLE credits: 3.25 a.m.; 3.75 pm. By WSBA CLE (206) 727-8202.

Cutting-edge Negotiation Strategy for Lawyers
Feb. 13-14-Seattle. 12.5 CLE credits. By Negotiation Strategy Institute (805) 642-7748 ext. 6.

Mastering Governmental Benefits
Jan. 23-Seattle. 7 CLE credits, (incl. .5 ethics.) By WSBA CLE (206) 727-8202.

Cultural Diversity in the Work Place
Apr. 18-Chelan. 4 CLE credits. By WSBA LAP (206) 727-8268.

The Evolution of Deferred Prosecution
Apr. 18-Seattle. 2 CLE credits. By WSBA LAP (206) 727-8268.

New Tax Provisions
Jan. 15-Seattle. CLE credits TBA. By WSBA CLE (206) 727-8202.

HEALTH LAW

Medicaid and Medicaid Planning in WA
Jan. 15-Seattle; Jan. 16-Spokane. 7 CLE credits (incl. 1.25 ethics). By Medical Educational Services (414) 798-5242.

LITIGATION

Winning Ways with Direct and Cross-examination: Guiding Principles for the Civil Litigator in WA
Jan. 20-Seattle. 6.25 CLE credits (incl. 1.25 ethics). By NBI (715) 835-8525.

Bad-faith Litigation in WA
Feb. 17-Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI (715) 835-8525.

REAL PROPERTY PROBATE & TRUST

How to Probate an Estate and Handle Post-Mortem Matters
Jan. 9-Bellevue. 6.75 CLE credits (incl. .5 ethics). By WSBA CLE and Young Lawyers Division (206) 727-8202.

The Essentials of Office and Retail Leases in WA
Mar. 11-Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI (715) 835-8525.

34th Annual NAEPC Conference
Apr. 23-Walla Walla. 1.5 CLE credits. By Walla Walla Valley Estate Planning Council (509) 529-0630.

Real Estate Aspects of Casualty & Disaster
Feb 20-Seattle; Feb. 27-Vancouver. CLE credits TBA. By WSBA CLE (206) 727-8202.

LAW OFFICE MANAGEMENT

How to Work Smarter, Not Harder in Your Law Practice (3 sessions)
1.5 CLE credits each. By WSBA CLE (206) 727-8202

• How to Leverage Your Practice
Jan 16-Seattle.

• Dividing Up the Pie - You Get What You Reward
Jan. 23-Seattle.

• Education-based Marketing: How to Attract New Clients With Dignity & Without Selling
Jan.30-Seattle.

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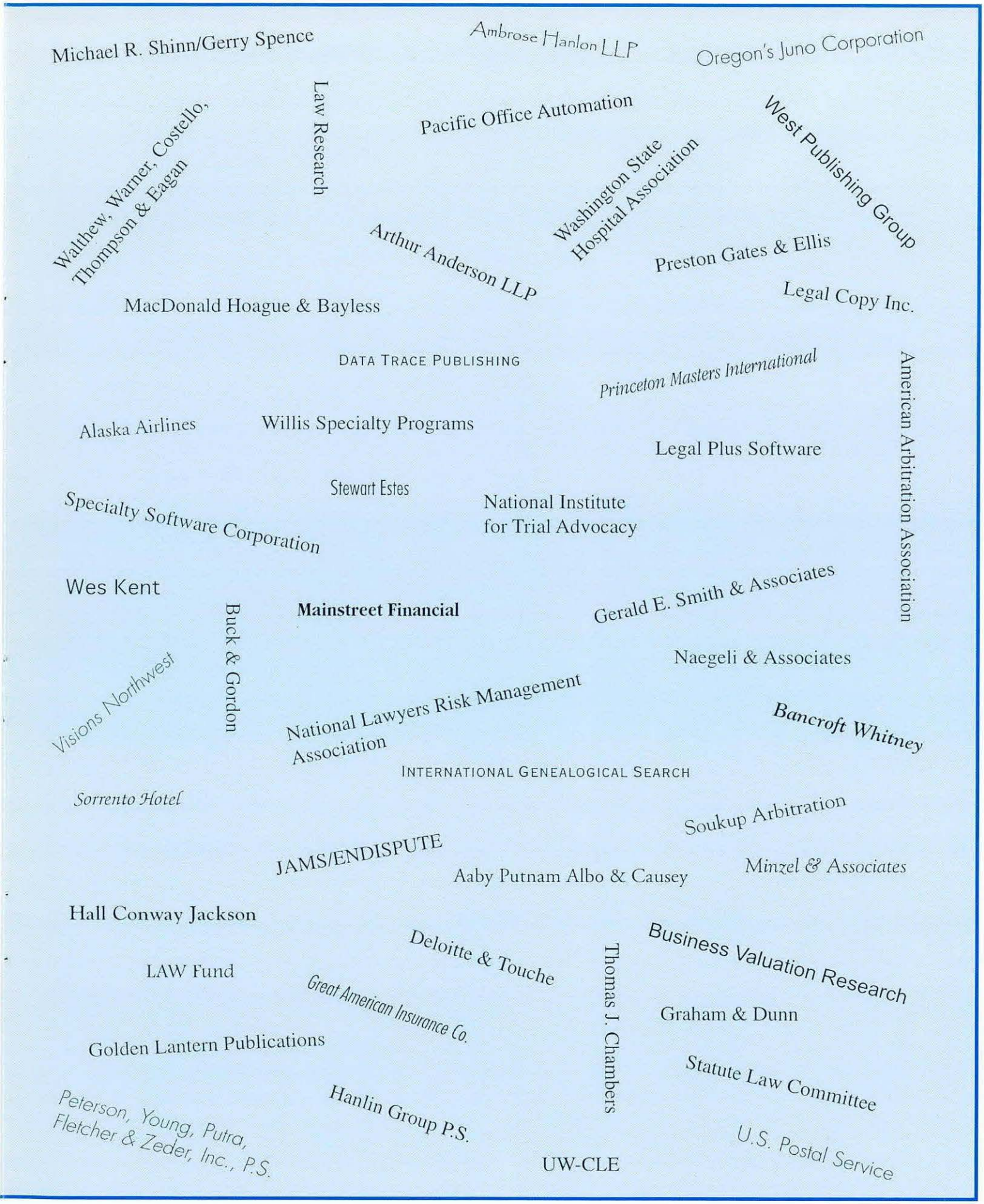
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Announcements

Robert M. Keating
Steven P. Jones
Jeffrey W. Bildstein
Lindsey H. Hughes and
Maryann Yelnosky
Formerly of Hallmark Keating & Abbott P.C.

are pleased to announce the formation of their new law firm.

KEATING JONES BILDSTEIN HUGHES & YELNOSKY, P.C.

ATTORNEYS AT LAW

One S.W. Columbia, Suite 800
Portland, OR 97258-2095
Telephone: (503) 222-9955
Fax: (503) 796-0699

Joining the firm as associates are:

Robert Beatty-Walters
Scott G. O'Donnell
Kristin Hazard

Of Counsel:
Richard E. Talbott
Molly K. Marcum

We will continue to emphasize the defense of professionals, including physicians, hospitals, and other health care providers, health care law, health care antitrust, medical device and drug products liability, and claims against attorneys and employers.

We wish Bill Hallmark exciting adventures and restful pleasures in his retirement and wish our former partners success in their new ventures.

STOEL RIVES LLP

We are pleased to announce that

David P. Hattery
Construction & Design

Laurie A. Smiley
Corporate, Securities & Finance

and

Leslie S. Wallis
Business Transactions & Litigation

have become partners in the firm.

We also are pleased to announce that

Keelin A. Curran
Labor & Employment Law

Jane W. Harvey
Land Use & Water Law

Leta E. Labatte
Commercial Litigation

Patrick J. Schneider
Land Use & Municipal Law

Erin M. Trimingham
Corporate, Securities & Finance

and

Christina E. Wahlig
Corporate, Securities & Finance

joined us in 1997.

600 University Street, Suite 3600
Seattle, WA 98101
Telephone (206) 624-0900
Facsimile (206) 386-7500
Internet www.stoel.com

FOSTER PEPPER & SHEFELMAN PLLC
ATTORNEYS AT LAW

is pleased to announce the expansion of our Seattle office with the addition of:

KEVIN TEAGUE
Land Use & Environmental

JEFFREY MILLER
Litigation

ANCHORAGE BELLEVUE PORTLAND SEATTLE

LANDERHOLM, MEMOVICH, LANSVERK & WHITESIDES, P.S.

is pleased to announce that

JOHN E. BENTLEY

has joined our firm as an Associate

Mr. Bentley's practice will emphasize Bankruptcy Creditor's Rights and Commercial Litigation

Pacific Tower ◦ 915 Broadway, Suite 300
Vancouver, Washington 98660
(360) 696-3312 ◦ (503) 283-3393
fax (360) 696-2122 ◦ e-mail johnb@landerholm.com
website www.landerholm.com

Mundt, MacGregor, Happel, Falconer, Zulauf & Hall L.L.P.
announces the change of the firm's name to

MUNDT MacGREGOR L.L.P.
999 Third Avenue, Suite 4200
Seattle, Washington 98104-4082
Phone: 206-624-5950
Fax: 206-624-5469

The firm continues its practice in the areas of civil litigation, corporate and transactional law, fisheries and maritime law, real estate, intellectual property and immigration.

Jay H. Zulauf
Henry H. Happel, III
Wm. Paul MacGregor
Michael J. Hyde
J. David Stahl
Matthew L. Fick
Joseph M. Sullivan
Lisa Riveland Pagán
John H. Chun
Kathryn Y. Kim
Christopher S. McNulty
Colleen M. Martin
Joe B. Stansell
Christopher R. M. Stanton
Libby A. Williams

- - - -

Janet H. Cheetham
Of Counsel

The firm extends its best wishes for success to departing partners Spencer Hall, John Warner Widell and W. Scott Zanzig as they open their new litigation practice.

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SPENCER HALL
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December 8, 1997

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Shafer, Moen & Bryan, P.S.
Hoge Bldg., Seattle
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John G. Gissberg, Ph.D, J.D.
2515 4th Avenue, Suite 213
Seattle, Washington 98121
(206) 443-3735

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Michael A. Aronoff
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William S. Bailey, 1991 WSTLA Trial Lawyer of the Year, is available for association or referral of fire, explosion and burn injury cases.

Fury Bailey

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1218 Third Avenue
Seattle, WA 98101-3021
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Richard Gemson

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506 Second Ave., Suite 1613
Seattle, WA 98104
(206) 467-7075
fax (206) 467-0101

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Thomas K. Dalglish, J.D., Ph.D.

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The firm's staff includes a nurse-attorney and a nurse-paralegal. Patricia K. Greenstreet and Eugene M. Moen are past chairpersons of WSTLA's Medical Negligence Section. Paul W. Chemnick organized WSTLA's Product Liability Section and served as its first chairperson.

Chemnick, Moen & Greenstreet
450 Market Place Two
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Seattle, WA 98121
(206) 443-8600

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Roger K. Anderson, former legal malpractice insurance defense attorney with Lee, Smart, Cook, Martin and Patterson, P.S., announces his availability for association, consultation or referral of substantial plaintiff's claims of legal malpractice

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Pence & Dawson

Bob Dawson announces his availability for trial of plaintiff's personal-injury lawsuits.

(206) 624-5000

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John J. Greaney announces his availability for referral of

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(425) 451-1202, Bellevue

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Douglass A. North

Maltman, Reed, North, Ahrens & Malnati, P.S.
1415 Norton Building
Seattle, Washington 98104
Telephone (206) 624-6271

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William S. Bailey, 1991 WSTLA Trial Lawyer of the Year, is available for association or referral of construction site injury cases.

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(800) 732-5298

Child Abuse Allegations

David S. Marshall handles cases involving allegations of child abuse.

(206) 382-0000

Appeals

"A discourse on argument on an appeal would come with superior force from the judge who is in his judicial person the target and trier of the argument . . . Supposing fishes had the gift of speech, who would listen to a fisherman's weary discourse on fly-casting . . . if the fish himself could be induced to give his views on the most effective methods of approach?" — John W. Davis

Charles K. Wiggins
Former Judge, Court of Appeals
(206) 780-5033

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AV Martindale Hubbell Attorney Certified as a Civil Trial Advocate by the National Board of Trial Advocacy available for referrals or association of California (San Francisco Bay Area and Northern California) matters or trial in State or Federal Courts.

Michael M. Shea
Shea & Shea
408-292-2434 Phone
408-292-1264 Fax

Colorado/WA Dual-Licensed Personal Injury Brain & Spine Injury

AV Martindale-Hubbell Attorney Certified as a Civil Trial Advocate by the National Board of Trial Advocacy available for referrals or association of Colorado (Denver-Boulder area) matters or trial in State or Federal Courts.

Larry D. Lee
Cook & Lee, P.C.
5390 Manhatten Circle
Boulder, CO 80303
(303) 543-1000 Phone
(303) 543-8582 Fax

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Joseph J. Ganz
is available for consultation, association or referral of substantial claims of professional malpractice.

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Seattle, WA 98121-2317
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Calif/Wa dual-licensed Law Offices of Theodore P. Byrne

A Professional Corporation

Announces his availability for referrals, consultation or association on California Business/Real Estate Litigation matters

Theodore P. Byrne, Esq.
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West Los Angeles, CA 90025
(310) 447-1803 fax (310) 447-1806

Product Liability

James S. Rogers will consult, associate or accept referrals of product liability cases.

The Law Offices of
James S. Rogers
705 Second Avenue, Suite 1601
Seattle, WA 98104
(206) 621-8525

Social Security Law

Bradford D. Myler is available for referral or association in claimants' appeals and hearings for Social Security Disability Benefits.
(800) 652-9626

DSHS Liability

Sexual Abuse Claims

Mick Seidl, counsel for plaintiffs in *Babcock v. State*, 116 Wash. 2d 596 (1991), is available for consultation or referrals in sex abuse cases, including negligence claims against DSHS and foster homes.

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1620 SW Taylor Street
Portland, Oregon 97205
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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 (425) 453-9200.

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Downtown city view for rent: Suite 4111, 1001 4th Ave., Seattle. Two offices facing east: two tall windows for $600, or three tall windows for $1,100, including reception, telephones, conference room, law library, etc. Art (206) 587-0000.

Capitol Hill: law office space sharing in charming house, furnished, extensive support services available. Overflow, contract work available. Terms negotiable. (206) 329-0577.

Sweeping, unobstructed view of Olympics and Elliott Bay (First Interstate Building, 41st floor). Elegant law office near courthouse. Reasonable rates include receptionist, basic messenger service, mail delivery, fax, two conference rooms, law library, fully equipped kitchen. AnnaMarie (206) 624-9400.

Modern, upscale attorney office for rent or sublease in Queen Anne Square, 200 Mercer St., Seattle. Rent is approximately $614/mo., plus telephone expenses. Includes use of library and waiting area. Call J.M. Morgan (360) 754-1976.

Downtown Seattle office-sharing: $150 per month. Also, full-time offices available on 32nd floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-term/long-term lease. Receptionist, legal word-processing, telephone answering, fax, law library, legal messenger and other services. (206) 624-9188.

Office-sharing arrangement with CPA, mortgage broker, insurance professionals in Laurelhurst (NE 45th). Great marketing, network arrangement. Space available February 1. Carol (206) 523-0519.

Greenwood office share: large office in suite with two bathrooms, kitchen, reception, conference. Off-street parking, copier, fax, phones. Office for one attorney, space for staff person. 8011 Greenwood Ave. N., Seattle. Rob Carpenter (206) 783-2300.

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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/three months. Contact: *Legal Employment Report*, 1010 Vermont Ave. NW, Ste. 408-WB, Washington, DC 20005. (800) 296-9611. Visa/MC/AmEx. Website: www.attorneyjobs.com.

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) 328-5100 for an interview.

Edmonds law office seeks experienced attorney (5+ years). Our practice stresses real estate, exchanges, escrow, litigation, estate planning, probate, business. Partnership a possibility. Box 427, Edmonds, WA 98020. Fax (425) 670-0400. E-mail dealjames-robert@msn.com.

Associate wanted. Midsize Seattle product liability defense firm seeks an associate with exceptional academic record and a minimum of three years' experience in product liability. Reply: Recruiting Coordinator, PO Box 21945, Seattle, WA 98111.

REPLY TO WSBA *BAR NEWS* BOX NUMBERS AT: WSBA *BAR NEWS* BOX ___, BAR NEWS CLASSIFIEDS, 2101 FOURTH AVENUE, FOURTH FLOOR, SEATTLE, WA 98121-2330.

The Western Region of Catholic Health Initiatives in Tacoma, WA is recruiting for an Assistant General Counsel. You will be responsible for providing general legal services as a practicing attorney to general acute care hospitals and nursing homes within Western Region facilities located in Idaho, Oregon and Washington. You will provide research, technical support and draft legal opinions; review and revise agreements and contracts; develop systems and procedures to improve efficiency; do transactional work; assist in developing short and long-term goals for Legal Department; and have extensive client contact with day-to-day legal issues. Qualified candidates will have a JD degree from an accredited law school, admission to either the Idaho, Oregon or Washington State Bar; and be eligible to practice law in one or more of those states. Must have a minimum of five years' experience, preferably in a health care environment. In-house experience preferred. Must demonstrate commitment to the Catholic health care ministry. Some travel will be required. CHI is a national Catholic health care system with 70 facilities nationwide, located in 25 states. CHI is a national leader in Catholic health care, embracing a spirit of innovation, a legacy of care. For immediate consideration, please send or fax résumé to: Catholic Health Initiatives, Human Resources, 1717 South J St., PO Box 2197, Tacoma, WA 98401-2197. Job line (253) 591-6623. Fax (253) 491-6941. We are an Equal Opportunity Employer.

Downtown Vancouver plaintiff personal injury law firm seeks an aggressive associate with excellent writing and client relationship skills. Fax résumé to (360) 694-5919.

Plaintiff personal injury firm seeks an attorney with a minimum of three years' civil litigation experience. Excellent oral, research and writing skills. Send or fax a résumé and a detailed description of litigation skills and experience to: Arthur D. Miller, Attorney at Law, 1220 Main St., Ste. 355, Vancouver, WA 98660. Fax (360) 694-5919.

Construction and design attorney: Stoel Rives LLP, one of the largest Pacific Intermountain West law firms, seeks a lawyer with a minimum of two years' experience primarily in litigation for its Portland, OR office. Some experience in construction and design law is preferred but not required. The position available is in the firm's construction and design practice group. Excellent academic record, writing ability and client relationship skills are required. Send résumé in confidence to: Ms. Lee Dayfield, Stoel Rives LLP, 900 SW 5th Ave., Ste. 2300, Portland, OR 97204. Equal Opportunity Employer.

An established business, real estate, and estate planning firm wishes to add one or two attorneys. Arrangement (associate, principal, office sharing) is open. Office is located in Gig Harbor but clients are throughout Pierce and King Counties. All systems for a successful practice are in place and new offices will be completed in February. Looking for attorney(s) with a progressive approach toward the practice of law and a caring attitude toward clients. All responses kept strictly confidential. Apply to Law Offices of Steven J. Brown, P.S., 3419 Harborview Dr., Gig Harbor, WA 98332 or sjbrownlaw@aol.com.

Associate attorney wanted: Robert Taub & Associates, located near the Tacoma Mall, is looking for an attorney to become associated with the firm. Our main area of practice is family law. Compensation will consist of a fixed draw with a substantial additional bonus based on performance. Those interested may contact Sondra (253) 475-3000 for an interview. Applicants should bring a law school transcript and a writing sample with them.

Executive manager for Energy Facility Siting Council: The Washington State Department of Community Trade and Economic Development is searching for a highly qualified executive manager for the Energy Facility Site Evaluation Council, which is responsible for siting and regulating large energy projects. Applicants must have demonstrated leadership and interpersonal skills to facilitate integration of the work of the Council's Chair, standing committees, members, and staff. Supervisory skills that provide support, guidance and vision are required. Applicants should also have some experience with environmental public policy issues and an understanding of legal process, especially administrative law. The manager must understand and work in a positive manner with differing interests while preserving the central public interests for which the Council is responsible. This is an exempt position and salary is dependent upon qualifications. Job announcements are available at the Council's web site http://www.energy.wsu.edu/org/efsec or you may call Joleen Karl (360) 956-2121. Written requests should be sent to the Energy Facility Site Evaluation Council, PO Box 43172, Olympia, WA 98504-3172. E-mail requests should be sent to joleenk@ep.cted.wa.gov. TDD (360) 956-2218. Application deadline is January 23, 1998. The State of Washington is an equal opportunity employer and vigorously pursues diversity in the workplace. Women, racial and ethnic minorities, persons of disability, persons over 40 years of age, and Vietnam era veterans and disabled veterans are encouraged to apply.

Experienced attorney sought to direct a telecommunications regulatory compliance practice and support a telecommunications policy practice. Candidates must be licensed attorneys with a minimum of three years' law firm or business management experience, demonstrate strong writing, organizational, and interpersonal skills, and be proficient in Word/WordPerfect. Preference to candidates demonstrating strong supervisory and general management experience, and telecommunications industry experience. Résumé and writing sample to Harbor Consulting Group, Inc., PO Box 470, Gig Harbor, WA 98335 by January 30, 1998.

Sussman Shank Wapnick Caplan & Stiles LLP solicits applications for an associate position as a commercial lawyer within its creditor's rights practice group. Applicants should have a minimum of four years of meaningful commercial bankruptcy and business litigation experience. Bankruptcy experience should be in representing business creditors and business Chapter 11 debtors. Litigation experience should be in representing business and commercial entities. Admission in Washington is a plus. Competitive compensation and benefits. Please send letter of application and résumé to: Administrator, Sussman Shank Wapnick Caplan & Stiles LLP, 1000 SW Broadway, Ste. 1400, Portland, OR 97205.

Court administrator/clerk: Court of Appeals, Division I, Seattle, WA. Directs case management and general administrative operations for one of three divisions of the Washington State Court of Appeals. Must have a thorough knowledge of the principles of court administration, including budgeting, statistical analysis, computer systems, management, and court security. Maintains custody of all files, pleadings, and proceedings of the court, supervises Clerk's staff and training of court personnel, sets Court calendars, manages Court facilities, assists in budget preparation, develops policies and procedures, and maintains liaison with the Administrator of the Courts, the legislature, the Supreme Court and other divisions of the Court of Appeals, the Bar, and litigants. Must have a bachelor's degree in public or judicial administration of business and six years of progressively responsible experience as an administrator or manager in a court or related organization or agency, to include two years of supervisory experience. A master's degree in court administration may be substituted for one of the six years of experience. Experience beyond six years in a court or related organization may be substituted on a year-for-year basis for the bachelor's degree. Salary range $53,328-$68,280 annually. Applicants should submit the following: (1) a letter of interest addressing each of the qualifications listed above and (2) a résumé that includes names of employers, dates of employment, education, and three references with current telephone numbers. The résumé and letter should be sent to Human Resources, Office of the Administrator for the Courts, 1206 S. Quince, PO Box 41170, Olympia, WA 98504-1170 and be postmarked no later than January 31, 1998. No applications will be accepted by the Court of Appeals. The State of Washington is an Equal Opportunity Employer. Women, racial and ethnic minorities, persons of disability, disabled veterans, Vietnam era veterans, and persons over 40 years of age are encouraged to apply.

Assistant Counsel II, Law Group: KeyCorp is one of the most powerful financial services companies in the industry today. With assets of $67.6 billion and prominence as one of the country's largest bank holding companies, we remain steadfast in our commitment to excellence in both customer service and product delivery. We have an exceptional opportunity for an experienced commercial workout/bankruptcy attorney in Tacoma, WA. The candidate should have appeared in bankruptcy court and should have experience with drafting miscellaneous commercial and workout/bankruptcy documents, including but not limited to cash collateral orders, forbearance agreements, etc. Qualified candidates will have a BS/A, JD, admittance to practice law in the state of Washington and 6 years' experience with a law firm or corporation. Candidates should have the ability to work independently and work well with clients. Strong academic credentials and superior research, writing and oral communication skills are required. For consideration, submit a résumé in scannable format via regular mail addressed to Sharon Byrnes, KeyCorp Employment, 127 Public Square, Cleveland, OH 44114-1306. Please refer-

ence the job title Tacoma Attorney on the mailing envelope. Visit our web site at http://www.keybank.com. Equal Opportunity Employer M/F/D/V.

Small firm of defense trial attorneys seeking attorney with at least one year of litigation experience for immediate assistance in growing health care practice. Excellent academic credentials and writing skills required. Send résumé and writing sample to Patrick C. Sheldon, Fain Sheldon Anderson & VanDerhoef, PLLC, 999 3rd Ave., Ste. 3610, Seattle, WA 98104.

Associate attorney position available with established and growing law firm in Federal Way, WA, with offices of Tacoma and Puyallup. Applicants must have at least three years of family law experience. Criminal law experience would be a plus, but not required. We also offer an opportunity to explore other practice areas. Applicants must demonstrate the ability to manage a heavy case load, desire to be associated with a rapidly growing practice, possess a superior academic background, and have superb written and oral communications skills. We are looking for a dedicated professional, a grounded individual with a good sense of humor, and a person who seeks to build and reward from a thriving practice within the context of our growing firm. Benefits include medical, a professional and collegial working environment, and upon eligibility, profit-sharing and retirement. Salary DOE. Send cover letter, résumé, writing sample, transcripts, and references to: M&I, 1230 S. 336th St., Ste. D, Federal Way, WA 98003.

Associate attorney sought by well-established, medium-size, general practice law firm in Kitsap County. Please send brief description of professional goals, résumé, references and writing sample to: Associate Attorney Recruitment, 600 Kitsap St., Ste. 202, Port Orchard, WA 98366.

Family law/civil attorney: Spokane law firm seeks an associate attorney with experience, dedication and court skills to initially assist principal attorney, and ultimately develop own client base from overflow work. Applicants should possess excellent oral, writing, and research skills. SDOE. Send résumé and writing sample to Mary E. Schultz of Mary E. Schultz & Associates, P.S., 660 Lincoln Bldg., 818 W. Riverside, Spokane, WA 99201.

Small, established Central-Washington firm seeks attorney with minimum of five years' experience with broad range of abilities and existing client base for office share/possible partnership. Preference to business/civil litigation focus. Reply to WSBA *Bar News* Box 546.

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