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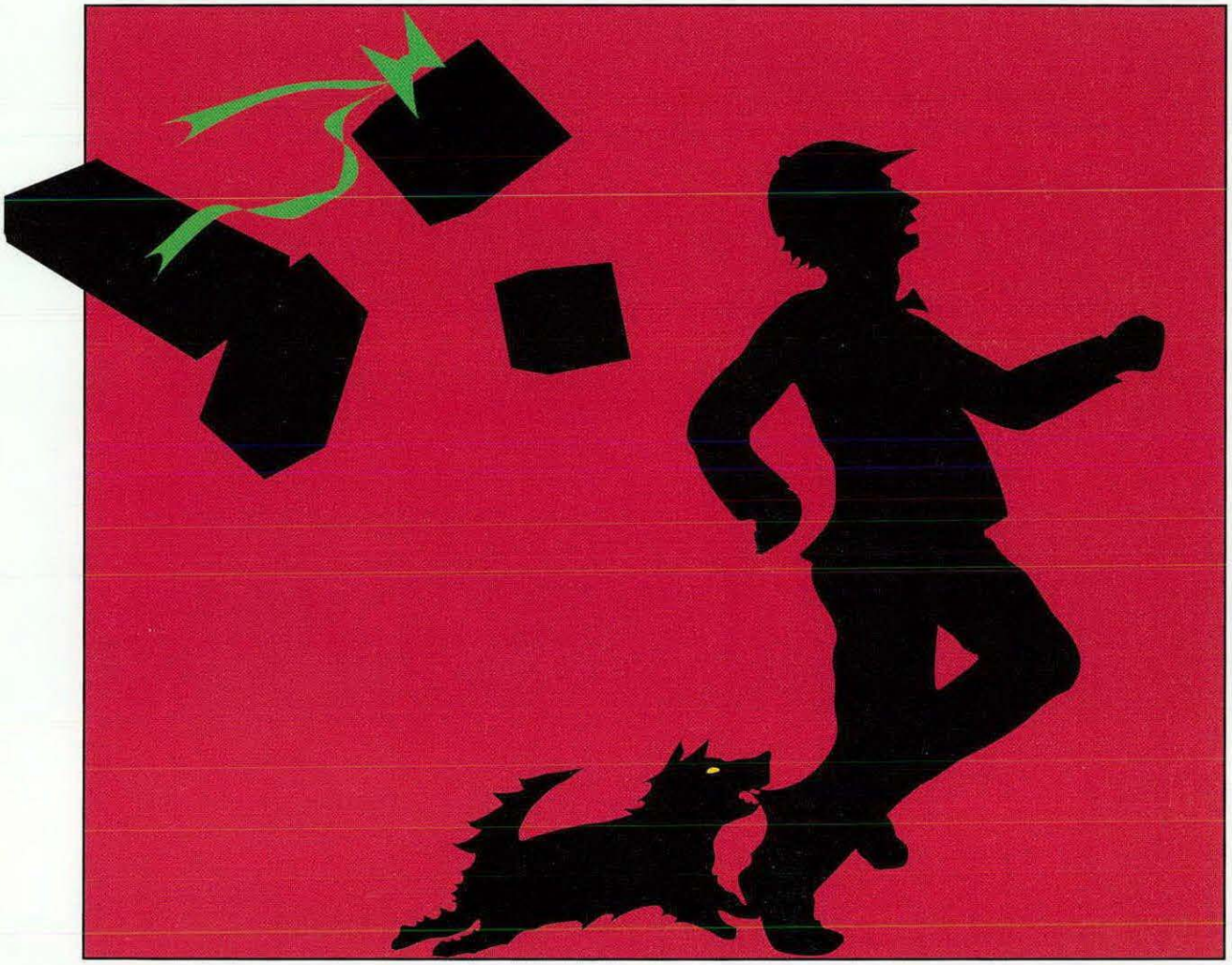

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Washington State
BAR NEWS
December 1998

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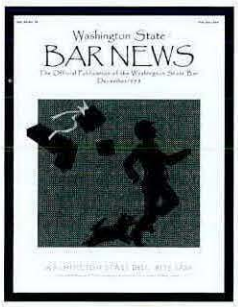

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Initiative 200 Feedback

Editor:

I agree with our new president of the Bar Association, Mr. Blair, when he says "people still listen to what thoughtful lawyers say" (President's Corner, October 1998). Unfortunately, after thinking about what he said concerning Initiative 200, I don't think it was worth "listening" to. The more I thought about it, the more I was convinced that thoughtful lawyers should oppose affirmative action. If the best reasons that Mr. Blair can come up with for supporting affirmative action are "diversity" and the problems black people as a group are currently experiencing with their families and with homicide rates, then there are no good reasons for supporting affirmative action.

I don't think the fact that only 49% of persons polled would vote for the Initiative, when they "were informed that the initiative would effectively end affirmative action for women and minorities," is particularly persuasive as a reason to oppose Initiative 200.

Mr. Blair seems to say that the real reason lawyers should favor affirmative action is for the sake of "diversity." The proof of this, according to Mr. Blair, is that Dean Hjorth said diversity in the legal profession was "important to the rule of law itself." And "the rule of law depends upon respect for the law" and respect for the law will "run deeper" if the legal profession is open to every societal group. To the good Dean's credit he phrased this in terms of opportunity, not mandatory percentages.

A really thoughtful lawyer might ask at least two questions about the reasoning here. The first is whether the Dean's premise is true. Is diversity in the legal profession important to the rule of law? Dean Hjorth's reasoning (which Mr. Blair repeats, apparently without a lot of thought since there is no discussion of it) would appear to be that if there are no black lawyers, blacks will have no respect for the law, and therefore the rule of law will fail (among blacks, or in society in general?). I haven't studied the issues here, and there is no evidence in the president's comments that either of these gentlemen has either, but it would take more than the bare assertion by Dean Hjorth or Mr. Blair for me to be persuaded of the truth of these views. I have more respect for black persons and other minorities.

Assuming for the sake of augument that it is a good thing to have diversity in the legal profession (whatever that really means; e.g., does diversity mean that the legal profession should include representatives from that societal group made up of persons with mental disabilities?), the second question is whether affirmative action is an appropriate means to effect diversity in the legal profession. This question is never addressed by Mr. Blair. He apparently assumes that the end justifies affirmative action. And the end is justified regardless of any adverse consequences that might occur, associated with affirmative action programs. Adverse consequences such as those that might occur to either the particular group claiming favorable treatment or to individuals in that group or to individuals outside that group, or to society as a whole, and regardless of whether there are other, more appropriate means to the desired end. All

of these issues should be addressed or at least acknowledged, before simply stating affirmative action should be supported by lawyers. None of these issues were addressed.

One of the real problems not addressed by Mr. Blair is his assumption that all "groups" must be represented in any organization or association. Whatever happened to the motto "E pluribus unum"? The emphasis used to be on the "unum," not on the "pluribus." Unthinking persons are, in the name of "diversity," trying to change that motto to "Out of one, many." I am opposed to this change, being persuaded (after some thought) that it is better to have a society that can operate on the basis of consensus than one constantly concerned about which societal group might not be adequately represented in any particular organization.

The next rationale put forward by Mr. Blair for supporting affirmative action is based on the statistics from the statement of Julian Bond. Black children are one and one-half times more likely (than white children) to grow up in a family whose head has not finished high school; two times as likely to have a teenage mother; two and one-half times more likely to have a low birth weight; three times more likely to live in a single-parent home; etc. Accepting these statistics as true, the real question is never addressed by Mr. Blair. The real question is what these statistics have to do with affirmative action.

Without some evidence one way or the other, it seems just as likely that affirmative action is the cause of these lamentable statistics as it is that affirmative action can cure them. In fact, since Mr. Blair admits that "effective" affirmative action programs have been in place for 30 years, these statistics should show a marked decrease from statistics on black families prior to the sixties. I believe that the statistics would show that just the opposite is the case. Black families were much more intact prior to the sixties, prior to the institution of these "effective" affirmative action programs. Mr. Blair repeats these statistics apparently without giving any thought to what they show.

Thoughtful people who are not given to conclusive pronouncements might think that individual responsibility is really the key to success in today's society. If a person who is a member of some "victimized" societal group is convinced that society owes him something, because of his membership in that group, it just might be that he will not try as hard as he might otherwise to overcome that victimization, real or perceived. I would, in conclusive fashion, say that he will be worse off for not trying, and society also will be worse off for his failure to try.

Mr. Blair is certainly entitled to his views and is further entitled to use the *Bar News* to persuade other lawyers to share his views. But a thoughtful lawyer should try, at the least, to present some evidence, some reasoning, some basis for his views in order to persuade others. This was not done. I would suggest that Mr. Blair try to be what he urges others to be, namely a "thoughtful lawyer." To be thoughtful one should expose himself to views other than his own. (Diversity of thought appears to be lacking on the

Board of Governors. Nine out of ten of those persons apparently agree that affirmative action is a good thing. One cannot help but think that the governor who has the guts to disagree is the thoughtful one in the group, whether he or she is right or wrong.) Mr. Blair appears to be a victim of "group-think." Without exposure to other views, a person tends to assume that what he believes is the only way to believe. Mr. Blair appears to be well on his way toward closing his mind.

James A. Winterstein
Olympia

Editor:

If affirmative action proponents are so concerned about the inequities of Initiative 200, why not establish a lottery system? Government jobs, contracts and slots in government law schools would be awarded to persons drawn totally at random from the pool of applicants.

But if a luck-of-the-draw lottery system seems too egalitarian, another acceptable criterion would be ability. Under an ability-based system, only the most skilled and able applicants need apply. Whether or not I-200 passes, the debate over affirmative action is here to stay.

The critical point lacking in both Kenneth Himma's and M. Wayne Blair's defense of affirmative action is that the taxpayers, not the private sector, own these jobs and contracts. Therefore, race, sex, color, ethnicity and national origin cannot be used as criteria for awards. Which is precisely the problem with affirmative action. It is a spoils system which promotes the very ills it purports to correct, namely, racism and sexism.

Patricia Michl
Sumner

Stare Decisis Update

Editor:

I found the article on *stare decisis* by Kelly Kunsch [*Bar News*, October 1998] both intriguing and timely in regard to the effect of the different divisions' decisions on trial courts.

I am collaterally involved in a case where an attorney representing the other party had claimed that a trial court in Division I wasn't bound by a decision of Division II of the Court of Appeals.

My research into this issued included contacting and attempting to obtain information from the various divisions of the Court of Appeals. That research produced the same result obtained by Mr. Kunsch: nothing.

The closest that I was able to come was a statement in the Division I case of *Marley v. Labor & Industries*, 72 Wn.App.326, 864 P.2d 960 (1993), where the court stated the following:

> *As a preliminary matter, we recognize that the trial court was bound by the court's decision in Fairley. This court is not bound, however, and we decline to follow the majority holding in Fairley. Instead, we adopt the approach of Judge Roe in his dissenting opinion in Fairley. The Fairley case referred to was a Division III decision. The trial court involved in Marley was a Division I trial court from King County. Thus, Division I indicated that while the trial court was bound by the Division III case, it wasn't.*

The Court of Appeals decision was affirmed on appeal to the Supreme Court

in 125 Wn.2d 533, 886 P.2d 189 (1994), without addressing the dicta in the Court of Appeals decision cited above.

The state of the law, *as it apparently exists in Division I of the Court of Appeals*, is that the trial court is bound by the decision of another division, but on appeal the Court of Appeals is not bound by the decision of another division. In fact, the dicta in *Marley* appears to be buttressed by RAP 13.4(b)(2), which provides for potential review of a case if the decision of the Court of Appeals is in conflict with a decision from another division in the Court of Appeals.

I would hope that if there were any other authority in this area, it would have been cited in *Marley, supra.*

William T. Lawrie
Seattle

Should Appellate Judges Endorse Superior Court Candidates?

Editor:

I am writing this letter for delivery on or after the elections have been concluded in Yakima County on September 15th, because I do not wish to have it published prior to the elections and I did not wish to write it after the elections.

I have noted that four of the five judges of Division III of the Court of Appeals and six of the nine justices of the Washington Supreme Court have endorsed the candidacy of the incumbent running for the office of Yakima County Superior Court judge. Initially, let me say that I find no fault with the incumbent in this situation; I consider him my friend, and, regardless of the outcome of the election, I consider him qualified to sit as Superior Court judge.

I do question the advisability of the Appellate Court judges endorsing any candidate for Superior Court judge. It is the rare case which is appealed and does not claim some error was committed by the trial judge in the Superior Court; one of the claims which is often made is that the trial judge was guilty of an abuse of discretion, whereas other claims often involve error in admissibility or rejection of evidence, error in giving or denying the submission of just instructions, etc. As an example, if a case is appealed from Yakima County Superior Court, the Court of Appeals, Division III, with a panel of three of the judges will be making a determination as to whether or not the trial judge committed some error. There are a total of five Division III judges, four of whom permitted the use of their names in the Superior Court race in Yakima County. Thus, assuming the incumbent prevails in this election, any attorney who appeals a decision rendered by him will be attempting to convince one and possibly three of them of error by the incumbent, including an abuse of discretion.

Similarly, if a case bypasses the Court of Appeals and goes directly to the Supreme Court (which occurs), or if a decision of Division III of the Court of Appeals is deemed erroneous, the issues of what occurred in Yakima County Superior Court will be before the Supreme Court, and the party and attorney seeking to remedy error, including an abuse of discretion by the trial court, will be facing the same problem as outlined above for the Court of Appeals, because of published endorsements in advertising.

Canon 7 of the Code of Judicial Conduct states that judges and justices of the state courts are:

> *prohibited under subparagraph (A)(1) from engaging in certain political activity not relevant to this present issue; are permitted, subparagraph (A)(2), to attend political gatherings and speak on their own behalf or on behalf of another judicial candidate; may contribute, under subparagraph (A)(3), but not solicit funds for another judicial candidate; subparagraph (A)(4) does not relate to the subject which I am addressing; subparagraph (A)(5) states "Judges shall not engage in any other political activity except on behalf of measures to improve the law, the legal system or the administration of justice."*

I see nothing in Canon 7 which states that a judge or justice of an Appellate Court has the right to permit the use of his or her name in an advertisement endorsing a Superior Court judicial candidate.

I also do not see anything in Canon 7 which permits an appellate judge to actively solicit in person or on the telephone votes for a Superior Court judicial candidate. I have evidence that this has occurred in this instance, with the judge specifically identifying the position he holds and specifically requesting a vote for the incumbent. There is also evidence of doorbelling and waving a sign for the incumbent at street intersections.

What prompts this letter is that which is known in the law as the "appearance of fairness doctrine." Justice Utter stated in

State v. Post, 118 Wn.2d 596, 826 P.2d 172, 837 P.2d 599 (1992) at page 618:

> *Our previous decisions involving the appearance of fairness doctrine have focused on the actual and apparent biases of a judge or other quasi-judicial decision-maker. See e.g., Hoquiam v. Public Empl. Relations Comm'n, 97 Wn.2d 481, 488, 646 P.2d 129 (1982) and the cases cited therein. "The law goes farther than requiring an impartial judge; it also requires that the judge appear to be impartial.*

After rejecting the applicability of the doctrine to a non-decisionmaker, the Court said:

> *If the doctrine were to apply here, a debatable proposition, the appearance of fairness doctrine is directed at the evil of a biased or potentially interested judge orquasi-judicial decision-maker.... Without evidence of actual or potential bias, an appearance of fairness claim cannot succeed and is without merit.*

In *State v. Ladenburg*, 67 Wn.App.749, 840 P.2d 228 (1992), then-Judge Alexander wrote, after citing *State v. Post*, at page 754:

> *Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing Se generally,* Washington Med. Disciplinary Bd. v. Johnson, *99 Wn.2d 466, 478, 663 P.2d 457 (1983);* State v. Eastabrook, *58 Wn.App.805, 816, 795 P.2d 151, review denied, 115 Wn.2d 1031 (1990).*

I seriously question the wisdom of the Supreme Court in adopting a rule which seems to allow appellate judges and justices to contribute to and speak at meetings on behalf of Superior Court judicial candidates, whose rulings, judgment, and possible error they will later be reviewing and determining. I further question the wisdom of those who permitted the use of their names in advertising endorsements, which I find difficult to see as permitted under Canon 7. I believe that solicitation of votes either in person, by doorbelling, by sidewalk sign-waving or by telephone is totally outside permitted conduct under Canon 7, just as would be solicitation of contributions.

I have been a trial attorney for more years than the majority of attorneys in Yakima County have been alive. But, I am still trying cases and, on occasion, appearing before the Court of Appeals and the Supreme Court. If the incumbent is elected I would have no problem with submitting any case to him. But, if I was involved in an appeal in which some ruling on his part was an issue of error, such as abuse of discretion, I would find it essential to advise my client that the word "futility" is one with which he or she should become acquainted.

John S. Moore
Yakima

Honesty Is Right Thing As Well As Good Business

Editor:

While the principles set forth in Stephen D. Easton's article "The Power

of Truth" [*Bar News*, October 1998] are virtually beyond dispute, his ultimate message is that honesty is good business and a key to success. All true, but we should not forget that honesty is also the right thing to do. Despite the reputation, most attorneys make the correct moral choices instinctively and both they and their clients stand to the good.

We live in a world of grays and pay lawyers to sort the black from the white. Negative comments about attorneys nearly evaporate when people start talking about *their* lawyer. (Dentists should be so lucky!) Generally, the opposing attorney undertakes the same process, but clients tend to see the proceedings as a struggle between good and evil. Hence the belief that the other guy's attorney wears shoes only to cover the cloven feet.

Lawyers present evidence. Juries decide facts. Truth, unfortunately, often depends on the witnesses' point of view. Believing your client and honestly telling that story does not make it true. It is merely effective lawyering and what we are hired to do.

Reminding us that doing our job with honesty is a sound business practice might suggest to the public at large that personal integrity is not a sufficient reason. The dilemma of telling people who do act with honesty and integrity that it is a good thing to do calls to mind a quotation from George Burns: "The most important thing about acting is *honesty*. If you can fake that you've got it made!"

John C. Andrews
Bremerton

Editor:

In submitting my letter suggesting the need for a new Offer of Judgment Law [*Bar News*, November 1998], I failed to make it clear that I was expressing my own views and not the views of WAMS or any of its panel members. The views expressed are mine alone as someone who has served as a neutral in jurisdictions that have viable offer of judgment laws.

Ted Clelland
Seattle

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Michael R. Rayton
Peter Roberts
Linda L. Robinson
Charles Routh
Jerry W. Spoonemore
Thao Tiedt
Phil Winberry

Mastering Public Benefits

Pamela J. Crone
Patrick H. McIntyre
Peter H. D. McKee
Hon. Carolyn Pinkett
Hon. Mary Radcliffe
Hon. Art Wang
Yvette Hall War Bonnet

14th Annual Consumer Protection, Antitrust and Unfair Business Practices Conference

Daniel L. Appelman
Thomas L. Boeder
Alicia A. Brillon
Daniel J. Dunne, Jr.
Jon P. Ferguson
Sally R. Gustafson
Charles A. Harwood
George W. Sampson
Linda C. Severin
Steven P. Tapia
John A. Tondini

Irrevocable Trusts & Understanding and Evaluating Financial Documents

Timothy C. Burkart
Michael D. Carrico
Thomas G. Hamerlinck
Commissioner Hollis C. Holman
Pamela McClaran
Kathleen A. Miller
Lynn C. Pollock
Paul R. Willett

Strategies For Taxable Estates

Timothy L. Austin
Paul D. Fitzpatrick
Marcia K. Fujimoto
Janet Gray
David Keene
Terry M. Kelly
Kristina C. Udall
Ann T. Wilson
Dominic J. Zamora, J.D.

How to Probate an Estate and Handle Post-Mortem Matters

Linda Brosell
Pamela A. Cairns
Bruce T. Clark
Honorable Stephen M. Gaddis
Patrick M. Moran
Paulette E. Peterson
Eden Rubenstein Toner

Negotiations in the Practice of Law

Alan Alhadeff
Rita L. Bender
David Benoliel
Jenifer Schramm
Richard I. Sindell

Next Level for Mediators

David Strawn

Dollars and Common Cents in Real Estate Transactions

Scott J. Borth
Brian J. Danzig
Michael R. Garner
Jim Greenfield
Michal T. Makar
Gloria Z. Nagler
Betty J. Schall
John D. Sullivan

Fifty Ways to Lose Your Client: Pitfalls for the Business Lawyer

Barrie Althoff
Corinne Games
Richard L. Goldfarb
Eugenie D. Mansfield
Pamela Rossano Myers
Renee C. Ries
Barbara J. Selberg
Ann W. Speckman
Brian J. Todd
Christopher J. Voss
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How to Advise Business Clients About Distribution and Marketing Law

Philip E. Cutler
Gary R. Duvall
Jon P. Ferguson
Michael J. Folise
R. Corbin Houchins
Cassondra E. Joseph
Nadine C. Mandel

The Swiss Army Knife Guide for the Real Estate Practitioner

Douglas P. Becker
Bradley Boswell Jones
Linda Brosell
Kristine A. Chrey
Alicia "Lisa" Lowe
Gloria Z. Nagler
Rick Schell
Jennifer S. Shannon
Wendy White
Charles R. Wolfe

The Lawyer's Tool Box–Bankruptcy

Peter Arkison
W. George Bassett
Douglas Becker
Jeffrey Cohen
Andrea Darvas
Steven Gonzalez
Michael Havers
Michael Iaria
Richard Matthews
Gloria Nagler
Sheila Ridgway
Joyce Schwensen
Mary Anne Vance

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Suing & Defending Professionals in Washington
Stanton Phillip Beck
Arthur C. Claflin
Stephania C. Denton
A. Richard Dykstra
Robert B. Gould
David C. Groff
Ron Leighton
Jerry R. McNaul
David Stiefel
Bruce Winchell

Navigating The Rules of Evidence
Justice Gerry L. Alexander
Craig H. Allen
Barbara Corey-Boulet
Hon. Ronald E. Cox
Crystal L. Dingler
Hon. Judith R. Eiler
Katrina E. Glogowski
Lynn D.W. Hendrickson
Betsy R. Hollingsworth
Nelson E. Hunt
Hon. Susan J. Owens
Christen L. Peters
James C. Powers
Hon. Margaret V. Ross
Hon. Barbara J. Rothstein
Daniel D. Woo

1998 Litigation Section Midyear
Todd S. Winegar

Business Law Section Midyear
Judith Andrews
Hon. Marlin J. Appelwick
Bruce H. Benson
Joel N. Bodansky
Donald D. Bundy
Marc R. Kittner
Walter M. Maas, III
Linda Mackintosh
Thomas G. Melling
Mark D. Northrup
Donald K. (Kit) Querna
Elizabeth Romney
John Saunders
Timothy D. Smith
John A. Strait
Brian J. Todd
Holly K. Towle
James F. Tune
W. Scott Wert

Real Property, Probate and Trust Midyear
Ned M. Barnes
Bruce H. Benson
Timothy C. Burkart
John P. Dahl
Robert C. DeWeese, CPA, J.D.
Elizabeth Richardson Fiattarone
Paul D. Fitzpatrick
James A. Flaggert
Randi Freidig, CFCS
Karen L. Gibbon
John E. Glowney
John Goodwin
Barbara A. Isenhour
Konrad J. Liegel
Jody M. McCormick
Thomas H. Nelson
Scott B. Osborne
Lisa A. Peterson
John M. Riley, III
Mark W. Roberts
David H. Rockwell
Kenneth L. Schubert, Jr.
Tom D. Seck
Barbara C. Sherland
Peter K. Shorett, MAI
Professor John A. Strait
Gordon W. Tanner
Cynthia Thomas
Brian J. Todd
Steven B. Tubbs
Gretchen L. Valentine
Charles H. Van Gorder
George F. Velikanje
Professor John W. Weaver
John E. Woodring

What Attorneys Need to Know About Attorney's Fees
Ronald P. Abernethy
Howard A. Coleman
Stephen P. Connor
Howard M. Goodfriend
Jordan M. Hecker
David A. Leen
Joy B. McLean
Kevin A. Peck
Richard C. Reed
Christopher Sutton

Environmental and Land Use Law Midyear
J. Richard (Rick) Aramburu
Rodney L. Brown, Jr.
Alan D. Copsey
F. J. Dullanty, Jr.
Timothy B. Hamlin
G. Richard Hill
Amy Kelley
Charles A. Kimbrough
Ronald L. Lavigne, Jr.
A.W. (Sandy) Mackie
George E. Maddox, Ph.D., P.E.
David S. Mann
Tom McDonald
Rebecca Nerison
Thomas A. Newlon
Kelly A. Nolen
Rachael Paschal
Gillis E. Reavis
Gregory A. Smith
Alexandra K. Smith
Craig S. Trueblood
Charles R. Wolfe
Corrie Johnson Yackulic

Land Use And Environmental Law: A Checklist Approach To The Fundamentals
Rodney L. Brown, Jr.
Brent Carson
Peter J. Eglick
Janet E. Garrow
Thomas A. Goeltz
Eileen McKain
Patrick Schneider
Prof. Richard L. Settle
Thomas M. Walsh
J. Tayloe Washburn
Richard R. Wilson

5th Annual Employment Law Institute
Diane W. DeWitt
Henry E. Farber
Kelby D. Fletcher
Kay Frank
Alexander J. Higgins
George Johnson
M. Colleen Kinerk
Mary Ruth Mann
David N. Mark
John P. Mele
John C. Montoya
Jeffrey L. Needle
Paul Nordsletten
Daniel J. Riviera
David F. Stobaugh
Professor John A. Strait
Daniel L. Thieme
Suzanne J. Thomas
Sheryl D. Willert
Nancy Williams
Steven H. Winterbauer

Commercial Real Estate Drafting
Stuart M. Ainsley
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Brian C. Balch
Dwight A. Bickel
Bradley L. Brigham
Michael D. Currin
Joseph A. Esposito
Maren K. Gaylor
Steven L. Jones
Ann DeVoe Lawler
David N. Lombard
Timothy R. Osborn
Scott B. Osborne
Teresa Sherman
Richard F. Sperling
Cynthia Thomas
Keith A. Trefry
Gretchen L. Valentine
Peter A. Witherspoon

15th Annual Pacific Rim Computer Law Institute
Robert Bond
Gary Dunn
Kennie Endelman
Les Foltos
Gary W. Glisson
Annette Hamilton
Charles Harwood
Diane M. Istvan
Susan B. Madden
Christopher Millard
Midori Okazaki
Michael D. Scott
Suzanne Smith
Holly K. Towle
David M. Williamson

Elder Law
Susan Buerkens
Don E. Denton
Jennifer J. Gilliam
Kathleen U. Holt
Carol J. Hunter
Kenneth Isserlis
Philip B. Janney
David Nehen
Rodi Hartney O'Loane
Michael L. Olver
Gary Randall
Thomas P. Robinson
Karen L. Sayre
Karen Marie Thompson
Elizabeth Turner Smith
Eric Watness
Michael Wolfe
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Family Law Section Annual Meeting & Seminar
Richard L. Bartholomew
W. Cary Deaton
Melissa M. Denton
Mary E. Fairhurst
Alden M. Garrett
Sans M. Gilmore
W. James Kennedy, III
Nancy Koptur
N. Joseph Lynch
Hon. F. Mark McCauley
Christina A. Meserve
Patricia L. Morgan
Judy Olmstead
William B. Pope
J. Patrick Quinn
Lisa S. Reed
Cheryll D. Russell
Robert C. Scanlon
Kathleen E. Schmidt
John R. Stichman
Joan F. Trivison
Kenneth W. Weber

Overview of Creditor-Debtor Law
Stephen A. Bernheim
Daniel P. Brink
Virginia Burdette
Jack J. Cullen
Charles P. (Chuck) Helm
Kathleen J. Hopkins
Dillon E. Jackson
Robert S. Klein
Richard J. (Dick) Wotipka

Representing The Growing or Maturing Closely Held Business
Professor David Boerner
Robert M. Gruber
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Warren E. Martin
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Sara P. Sandford
Michael A. Sherry
Scott G. Warner

Legal Aspects of Casualty & Disaster
Stanton Phillip Beck
Linda Burton-Ramsey
David L. de Courcy
Linda L. Foreman
James E. Hadley
R. Gerard (Jerry) Lutz
Timothy E. Nielander
Bradley F. Tellam
Larry Wagner

Second Annual Inter-County Guardian Ad Litem Forum
Bonnie Bayes-McDaniel
Nancy Bradburn-Johnson
Hon. Ellen Kalama Clark
Susan Daniel
Alden M. Garrett
Hon. M. Karlynn Haberly
Meredith L. Hardy, MSW, J.D.
Michael J. Longyear
Hon. George T. Mattson
Kathleen H. Moore
Carol Horan Rainey
Karen M. Thompson
Hon. Eric Watness

How to Advise Non Profit Organizations
Judith Andrews
Lance W. Behnke
Sandy Deja
Karen L. Dunn
Christopher Hodgkin
Thomas E. Kelly, Jr.
Thomas H. Nelson
Frances Sant
Barbara Shickich
Christopher Sutton

Representing Your Client in Arbitration and Mediation
Mary C. Barrett
M. Wayne Blair
Hon. Charles S. Burdell, Jr. (ret.)
Philip E. Cutler
Bradley G. Davis
Christopher H. Howard
John W. Kydd
Donald L. Logerwell
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David P. Mason
Bruce F. Meyers
Charles E. Peery
Stella Rabaut
Shelly C. Shapiro
John A. Strait
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Lawrence A. Weiser
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How to Handle Federal State Tax Returns
Cammie Baird, CPA
Roy A. Berg
Karen E. Boxx
Lora L. Brown
Robert J. Chicoine
Daniel J. Connell
Thomas M. Culbertson
Daniel B. DeRuyter
Julie E. Dickens
David A. Duryee, ASA, CFP
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Gair B. Petrie
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Indian Law
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Eric Eberhard
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Mason D. Morisset
Robert L. Otsea, Jr.
Starla Roels
Thomas P. Schlosser
Sarah Colleen Sotomish
Lyndee Wells
Honorable Mary T. Wynne

The New Federal Tax Provisions
Professor Meade Emery
Professor Sheldon S. Frankel
Robert McCallum
John O'Donnell
Leslie R. Pesterfield
Professor John R. Price
Charles H. Purcell
Lee A. Thorson

A Changing Practice Under The New W.D. Wn. Chapter 13 Rules
Hon. Philip H. Brandt
Virginia Burdette
Cathy Campbell
James Dart
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Michael Fitzgerald
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David Howe
Mary Lobdell
Brian D. Lynch
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Diane Tebelius
Don Thacker
Renee Warren

Protecting Debtors
Bruce R. Boyden
Virginia Burdette
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Tools for Appealing Lawyers
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Commissioner Geoffrey Crooks
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C. Kenneth Grosse
Brian Harnetiaux
Heather Houston
Michael B. King
Marc Lampson
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Philip Talmadge
Charles K. Wiggins
Catherine Wright Smith

6th Annual Water Law Seminar
Karen D. Allston
Kathleen Collins
Honorable Richard P. Guy
Terry Husseman
Charles W. Lean
Hon. Barbara A. Madsen
Honorable David Mastin
Keith Phillips
Alan M. Reichman
Charles B. Roe, Jr.
Galen W. Schuler

Essentials of Family Law
Robin H. Balsam
Dr. G. Andrew H. Benjamin
Julie Weigand Carey
Mark M. Demaray
Roberta E. Doyle
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Rebecca A. Fox
Mark L. Gelman
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Michael J. Turner
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Estate Planning for the Small to Medium-Sized Estate
William J. Cruzen
Elaine G. DuCharme
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Barbara A. Isenhour
Philip B. Janney
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Winning Strategies for the Private Practitioner
Susan Daniel
D. Bruce Gardiner
Ann Guinn
David Hedger
Paul L. Stritmatter
Jeff Tolman

1998 Corporate Counsel Institute
Richard T. Beal, Jr.
Dr. William D. Bradford
Mark R. Busto
Jeffrey A. Christianson
Lynn Edelstein Du Bey
Scott L. Gelband
Richard L. Goff
Marvin L. (Monte) Gray, Jr.
Peter Jarvis
Lee E. Johnson
Robert M. Kane, Jr.
Patrick M. Madden
Candy S. Marshall
Bradley M. Marten
Margaret A. Niles
J. Ronald (Ron) Sim

Intellectual Property Institute
Ramsey Al-Salam
Glenn D. Bellamy
G. Gervaise Davis
James P. Donohue
Kevin J. Harrang
Charlene A. Launer
Faye L. Mattson
David T. McDonald
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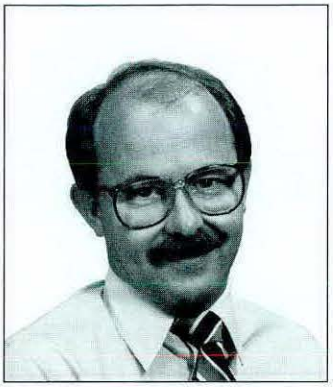
Marshall J. Nelson
Mark J. Nielsen
Warren J. Rheaume
Neil A. Smith
Scott G. Warner
Karen M. Wetherell
Teresa J. Wiant

CLE Masters Series
William S. Bailey
C. William Bailey
Michael D. Carrico
Carol Lee Eng
Scott B. Osborne
Michael Reiss
Cynthia Thomas



It's Christmas. Be Kind

Jeff Tolman
Guest Columnist

It was my last court calendar before Christmas, with some newcomers and a few "regulars."

He was pitiful, standing before me once again, quietly hoping for mercy.

We had spent far too much time together, he as a defendant in my court.

Once again he had disobeyed my court order. He drank too much and had done something criminal again. Now he and his attorney were again at the defense table. Having pled guilty to the newest criminal charge against him, it was time for sentencing. Again.

Many times before I had tried to persuade and cajole and order him to stay sober and quit violating the law. All without success.

Despite the Christmas cheer around, I was unhappy. My motto had always been, "Be kind to those who have learned their lesson — and firm with those who won't."

It was time to be firm.

The prosecutor made an appropriate recommendation of jail time.

The defendant made no excuses for his ongoing errors of judgment. He wanted, and needed, to stay sober, but was willing to take my punishment for his offense, whatever it was.

Over our time together in court I had come to know the defendant's wife and small children. She was a likable person who desperately wanted a sober husband and normal life. I noticed that his spouse was not in court. Even she knew his time for kindnesses was up.

I motioned to the defense lawyer for his comments before I imposed sentence.

He was straightforward. "It's Christmas, Judge. The time of year we say 'thanks' and 'I care.' It's the time to look — even if it takes a bit of a search — for the good in each of us. It's Christmas, Judge. Be kind." And he sat down.

Almost every cell in me wanted to throw the defendant in jail — then throw away the key. He had violated many laws, many times. He had not learned from his prior deeds and sentences. He had hurt his wife and children. He should spend Christmas Day, and many more, in jail.

But the defense lawyer's comments had touched a nerve in me. It was Christmas. It was a time to believe the best in each of us.

"Sir," I said to the defendant, "you should go to jail. You know it and I know it. When your children wake up to see if there are gifts under the Christmas tree — and when they are out of school for spring break, for that matter — you should be in jail. But you won't be. You will be at home. And as a part of my order you are to make this your kids' best possible Christmas. Help them make their mom a wonderful gift. You have made many obstacles for her which she and the children appear to have overcome. She deserves it. Read them *'Twas the Night Before Christmas.* Stay sober. It's Christmas. That is the only reason you are going to be free. It's my Christmas gift to you. I hope you appreciate it."

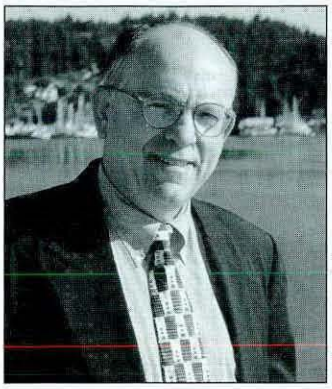
The defendant made no excuses for his ongoing errors of judgment. He wanted, and needed, to stay sober, but was willing to take my punishment for his offense, whatever it was.

I almost forgot about that defendant, assuming he had moved. Two Decembers later I received a box in the mail. It was from the defendant. In the box was a picture of him and his family, looking happy and healthy. Also in the box was his two-year AA Sobriety Medal. On a card he had written:

"It's my Christmas gift to you. I hope you appreciate it."

That medal sits by my desk. I look at it every day. It reminds me that people can change — and how Christmas is a time to see the best in others. It reminds me of the power, and the truth, of the words, "It's Christmas. Be kind."

Happy Holidays! ■



Heroes of the Bar—You Should Know What They Do

M. Wayne Blair
President

Do you know that Frank Slak, Joe Nappi, Marty Crowder, Tom Dreiling and Gene Anderson have over 122 years of combined service to the WSBA? Gene Anderson alone has 31 years of service. What do Dave Akana, Virginia Antipolo, Jan Armstrong, Randy Beighle, Craig Beles, Joe Blumel, Cheryl Carlson, Darlene Chovan-Anderson, Jim Craven, Rick Creatura, Steve Clem, Doug Ende, Steve Farnell, Tom Faubion, Cliff Foster, John Hancock, Bob Hargreaves, John Hayden, Dennis Hession, Jim Horne, Steve Hughes, Cheryl Kingen, Terry Lackie, Bob Lamp, John Lohrmann, Maureen McGuire, Meredith Morton, Donna McNamara, Larry Mundahl, Carl Oreskovich, Sam Pemberton, Gary Riesen, Kermit Rudolf, Sally Savage, Doug Shae, Crad Verser, Monica Wasson, Rick Wilson, Joe Wishcamper and Jim Woodard have in common, other than more than 250 years of combined service to the WSBA and the public? These dedicated lawyers are among those who have provided long-term service to the WSBA as members of the Committee of Law Examiners, and are the professionals responsible for the successful administration of the bar examination year after year.

The results of the July bar exam have been released. In November, the WSBA welcomed 610 new lawyers who successfully took the bar exam, of 897 applicants. I would like to share with those newly admitted lawyers, as well as the rest of the membership, how the bar examination is administered and who administers it.

As a part of its mission to protect the public, the Washington State Bar Association, under the authority of the Washington Supreme Court, regulates the admission of lawyers. The Committee of Law Examiners, consisting of approximately 90 lawyers, is appointed by the Board of Governors to oversee the admission of lawyers.

Since 1991, the committee has operated under the able leadership of Chair Frank Slak, who has served as a member of the committee for 20 years. He is a Court Commissioner with Division III of the Court of Appeals. In 1994, Commissioner Slak received the Award of Merit from the WSBA for his role as chair of the committee.

By reputation, the Washington State Bar Examination is recognized as one of the best essay exams in the nation. That reputation arises from those members of the committee and staff of the WSBA who have worked so long and so hard on our behalf to make the process fair and reliable.

By reputation, the Washington State Bar Examination is recognized as one of the best essays exams in the nation.

The Washington State Bar Examination is the 13th largest bar exam in the U.S. It is the *only* bar exam that still uses, exclusively, practicing members of its bar to write and grade the questions. While the bar examiners are paid a stipend, prorated depending upon their work on the exam, the actual hourly rate received is quite modest.

The Committee of Law Examiners prepares and grades two bar examinations annually; one is usually administered in February and the other one is usually administered in July. The Committee of Law Examiners is organized into four subcommittees: Executive Committee, Screening Committee, Sample Answer Committee and Appeals Committee.

The Executive Committee, which also serves as the Screening Committee, is composed of the chair of the committee, a vice-chair, the chair of each of the subcommittees, and one or more "at large" members. Currently members of the Executive Committee are: Frank Slak, Joe Nappi, Marty Crowder, Tom Dreiling, Gene Anderson, Craig Beles, Steve Hughes and Joe Wishcamper. The Executive Committee is ultimately responsible to the WSBA for writing and grading of the Washington State Bar Examination.

A panel of 24 examiners writes and grades each examination. The first step in preparing an exam is drafting the 24 questions. Because one-third of the committee is newly appointed each year, the examination writing process for new members of the committee begins with a day-long, in-depth seminar on the art and science of examination writing and grading. Retention of experienced examiners is important and provides continuity and expertise from

Heroes of the Bar—
You Should Know What They Do

year to year. Needless to say, the highest degree of confidentiality is essential.

Approximately 90 days before each exam, each of the 24 examiners selected by the Executive Committee for that exam is required to send to the Screening Committee a draft of his or her question, including a question analysis complete with citations and a weighted issues list. The weighted issues list is used by the Screening Committee to evaluate the question and by the Appeals Committee to evaluate challenged answers.

The Screening Committee works closely with each examiner in thoroughly reviewing the examiner's question, the question analysis, and the weighted issues list submitted by that examiner. Substantive, technical and grammatical modifications are usually made to ensure that the question addresses the assigned legal area; that the question is realistic, fair, internally consistent and capable of being answered in the allotted time; that the question analysis is complete and accurate; and that the issues list fairly identifies and assigns appropriate weight to the legal issues raised by the question. Approximately eight weeks before each exam, all examiners meet for a final review of all questions, question analysis and issues lists.

The bar examination lasts two and one-half days, and consists of two separate parts: the substantive portion, which is administered during the first two days, and the professional responsibility portion administered on the third day. To be successful, an applicant must pass both portions. There are six sessions of two hours and 15 minutes each during the first two days with three substantive law questions per session. Applicants have 45 minutes, and 64 lines to answer each substantive law question. On the third day there is one session of two hours and 15 minutes to answer six professional responsibility questions. All 24 questions must be answered.

The subjects that may be covered on the exam, although not all subjects will be tested on each exam, are: administrative law, business law, constitutional law, torts, commercial transactions, real and personal property, criminal law, family law, contracts, wills, probate and trusts, and trial procedure.

Because each exam question is graded by the same examiner who authored the question, each exam is therefore graded by 24 separate examiners. For the winter examination, each examiner grades approximately 500 questions, and for the July exam, each examiner grades approximately 800 questions. The grading of the exams by each examiner is monitored by the Steering Committee to insure statistically reliable grading.

Following the grading of the exam, each examiner is asked to select the ten most appropriate answers for his or her question, and to provide those answers to the Sample Answer Committee, chaired by Tom Dreiling. Applicants who failed the exam are then allowed to purchase copies of these sample answers. This material may be useful in preparing for the next examination, or in determining whether an appeal is appropriate.

The Appeals Committee, chaired by Marty Crowder, consists of at least three members of the committee; its responsibility is to re-read and review the papers of failing applicants who appeal their grades on one or more of the examination questions. The answers of each appellant are reviewed by two members of the Appeals Committee. The Appeals Committee does not know the original score on the exam during this re-grading process.

An examiner does not know the name of any person whose exam he or she is grading. Each applicant is assigned a number, and only that number appears on the exam questions and answers. Only after the entire process has been completed does Bob Welden, General Counsel, working with an audit committee, link the examination number with the name of the applicant.

Special thanks also goes to the WSBA staff that works so closely with the committee; specifically Mary Barnes, Director of Admissions; Kenneth Carter; and Bob Welden, General Counsel.

Because of the outstanding work of the Committee of Law Examiners, the Board of Governors, over the last 20 years, has spent very little time overseeing the examination process. All of us, as members of the Washington State Bar Association, are indebted to Frank Slak and his "gang of 90" for their truly dedicated and remarkable performance on behalf of the WSBA, the legal profession and the public. They are truly heroes of the Bar. ■

Bar Leaders & Bar Leadership Support

Jan Michels
Executive Director

Introducing the Bar Leadership Support Team!

There are many forms of bar leadership, and each represents a critical element in accomplishing the goals of the Bar and the legal profession.

Board of Governors (BOG)

The BOG is the overall governing body of WSBA; its 11 governors, president and president-elect deal with all Bar-wide issues. The Executive Director supports the BOG as it coordinates the Bar's legislative, court rules, and administrative policies and initiatives. BOG news and activities are routinely relayed in *Bar News*. Support to the BOG consists of organizing meetings and agendas, following up on decisions and questions raised, preparing briefings, and funneling information to and from the Board.

The WSBA Bar Leadership Support Team is responsive to the requests and needs of all Bar Leaders.

Young Lawyers Division (YLD)

The Young Lawyers Division exists to assist young lawyers in achieving professional and personal development. To accomplish this goal, the Division organizes practice condition seminars; plans CLE programs for young lawyers; implements public service programs; publishes a bimonthly newspaper; and encourages young lawyers to participate in local, state and national bar associations. All aspects of Sections and Young Lawyers Division functions are coordinated through Sheri Borgford and her assistant, Carey White.

Standing Committees & WSBA Boards

As adjuncts to the BOG and advisory to them in various programmatic areas, WSBA's 28 standing committees and boards are where WSBA policy questions, initiatives and programs take shape and are "steered." Committees' purposes vary from distinct and specific—such as the Disciplinary and MCLE Boards or the Rules of Professional Conduct Committee—to more broad and aspirational, such as the Opportunities for Minorities in the Legal Profession Committee. Brief statements about the purpose of all WSBA standing committees appear on the WSBA website (www.wsba.org). Lori Lee coordinates the committee assignment process, and each committee is assigned a WSBA staff liaison to assist with meeting logistics, briefings and maintaining continuity year to year. In addition to the standing committees, the BOG operates with 16 internal committees ranging from Budget & Audit to Awards.

Sections

Sections are voluntary, self-supporting affiliations, centering on practice areas. The Sections provide many benefits to their members, including newsletters, quarterly meetings, brown-bag lunches, dinners, forums, community projects, and section-sponsored seminars and deskbooks. Considerable savings are realized by centralizing such logistical support as dues notices, collections and accounting, mailing, production of materials and meeting contacts. For these services, sections contribute proportionate to their need and size to WSBA's administrative costs. A benefit of this support is that staff can provide history, other section experience, and continuity through leadership changes. Sheri Borgford and her assistant, Carey White, support the membership, leadership, programs and activities of the 22 sections.

Local Bars

Local bar associations are voluntary and independent of WSBA, but a valuable, direct funnel to the WSBA for member input and comment.

Specialty Bars

Like local bars, specialty bars are voluntary and independent of WSBA, but pivotal in assuring that the pulse of

special-interest groups is addressed. Interests such as diversity, women and minority issues and criminal defense develop their voice and assure that they are heard and considered by the broader Bar.

Sharlene Steele provides support for county, specialty and minority bar associations by providing a Bar Leaders Handbook, which is a comprehensive guide to leadership development, WSBA governance and member services, ABA resources, WSBA publications and CLE, and more.

Sharlene also organizes the Annual Bar Leaders Conference for local bar presidents and presidents-elect. This conference is the only opportunity for bar leaders from across the state to come together to network and share bar leadership and management ideas. The 1999 Bar Leaders Conference will also include WSBA Section and Committee chairs.

Delegates & Appointees

Forty-nine volunteers are appointed to represent WSBA on a wide variety of boards, commissions and committees constituted variously by the Supreme Court Judges Association, law-related organizations or the legislature. Most of the delegates serve a specified term of office. Coordination and feedback about these entities and their work to the BOG is handled through the Executive Director.

American Bar Association (ABA)

WSBA has five ABA delegates in addition to the state delegate (elected). This ABA delegation helps steer ABA positions and legislation. Their service is a pivotal part of national coordination of issues which affect the law and legal profession.

Access To Justice (ATJ)

Effective Bar leadership is a key component of WSBA's Access to Justice Programs. WSBA administers the Supreme Court-created Access to Justice Board and its 10 committees, whose mission is to promote and facilitate equal access to justice in Washington state for low- and moderate-income people. The ATJ Board coordinates with WSBA's Pro Bono and Legal Aid Committee. The board works closely with the Board of Governors and other bar leaders on myriad access-to-justice–related activities, including the annual Access to Justice Conference, funding for civil equal justice, state planning for civil legal services delivery, creative uses of technology, pro bono incentives and policy initiatives. Staff include Joan Fairbanks, ATJ Manager; Sharlene Steele, ATJ Coordinator; and Joyce Raby, ATJ Communications and Technology Specialist.

Good Support Maximizes Leadership's Time & Effort

The WSBA Bar Leadership Support Team is responsive to the requests and needs of all Bar Leaders. This support includes, in all cases, the circulation of information, answers to questions, direct input to the BOG and fast reporting back of relevant BOG news. This support also includes providing manuals and directories, logistical support with meetings and materials, sharing history and experience with incoming leaders, and appreciating and celebrating outgoing leaders. Bar leadership is the nexus of the Bar and deserves the best possible support.

Get to know the Bar Leadership Support Team! ■

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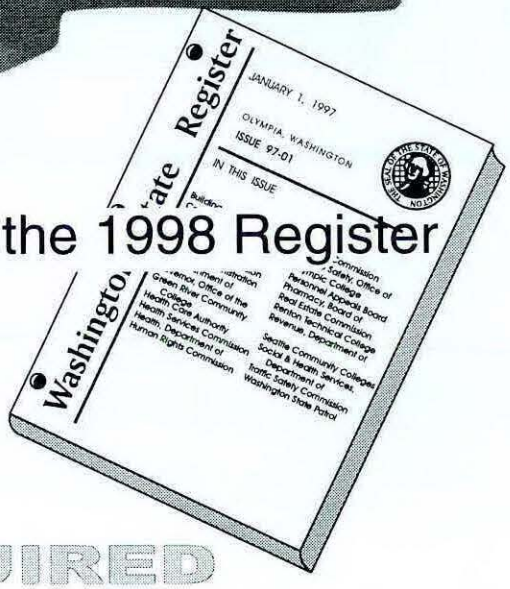

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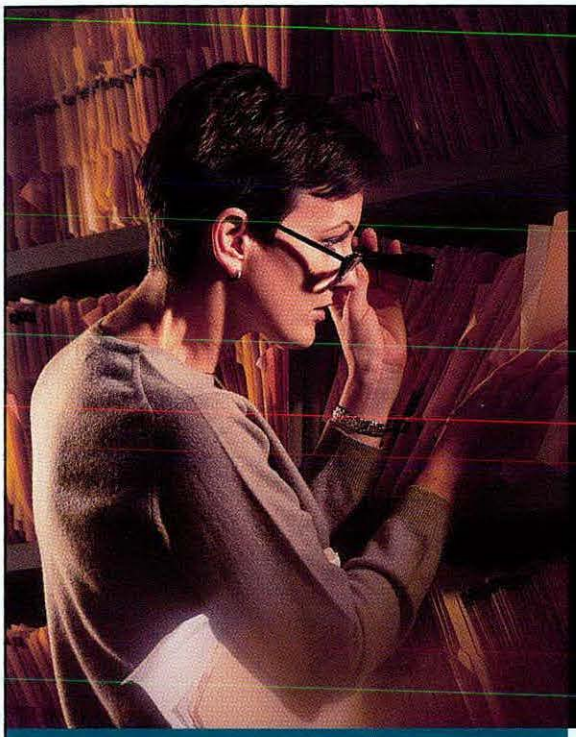

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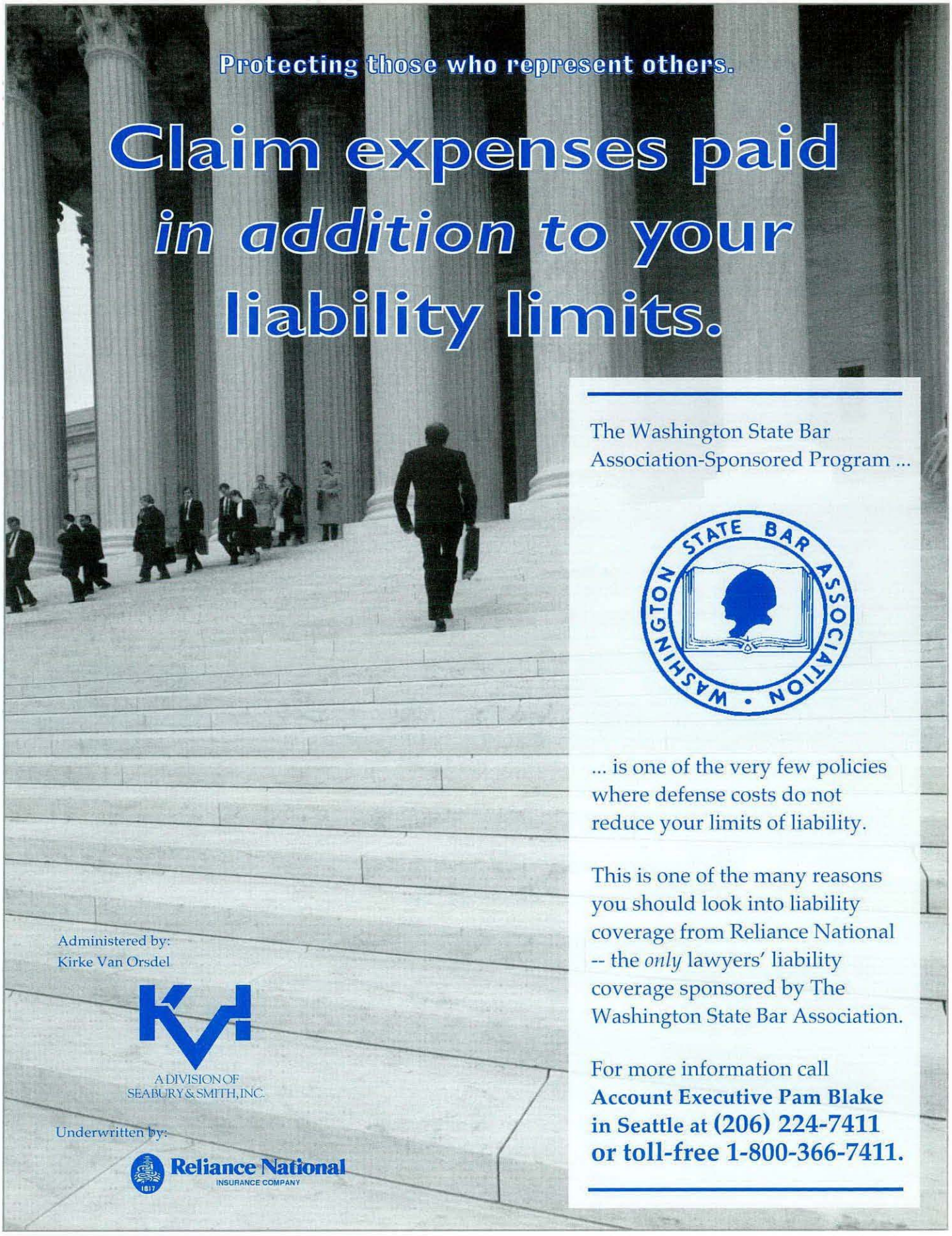
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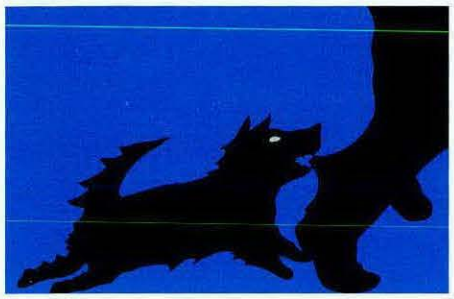


The Biting Edge of Canine Law

By Daniel Warner

Dogs and humans have interacted for tens of thousands[1] of years, and ever since the beginning of the relationship there have been dog bites. The law surrounding this toothy issue is a constant of human society through the ages. Currently, dog bites are common and expensive. Estimates are that 4.7 million Americans were bitten by dogs in 1995; 2.8 million of those bitten were children.[2] In 1996, U.S. insurance companies paid out a record $250 million for dog-bite claims; State Farm Insurance Company alone paid out $80 million in dog-bite claims for 1997.[3]

This brief article traces Washington dog law by examining the statutory and common-law rules applicable in this state.

The Statutory Regime

Prosser observes that "the often-repeated statement that 'every dog is entitled to one bite,'" is not the law."[4] The common-law rule was that there was no owner liability for dog-bite damages unless the owner had knowledge of the dog's dangerous propensities such as would put a reasonable owner on notice that the dog should not have access to strangers. That is not the law in Washington.

RCW 16.08.040 provides as follows:

> *The owner of any dog which shall bite any person while such person is in or on a public place or lawfully in or on a private place including the property of the owner of such dog, shall be liable for such damages as may be suffered by the person bitten, regardless of the former viciousness of such dog or the owner's knowledge of such viciousness.*

This statute has caused some interpretation problems. The provision that the dog owner should be liable for dog-bite damages to any person "in or on a public place" seems clear enough: a person jogging on a street or road, bitten by a dog, can recover from the dog's owner, irrespective of the owner's knowledge of the dog's propensities. The provision that the owner will be liable for dog bites if the victim is "lawfully in or on a private place..," however, has become grist for a number of decisions.

In 1970, the Washington State Court of Appeals held that a delivery man returning cleaned clothes to the defendants' house was not "lawfully" on the property because he was not there—as RCW 16.08.050 then put it—"in the performance of any duty imposed upon him by the laws of the state of Washington or of the United States or the ordinances of any municipality..."[5] There was a duty to return the cleaning, but it was a duty "established by agreement or choice," as opposed to one thrust upon the victim by law. Furthermore, the Supreme Court of Washington held in 1976 that a social guest of the defendant on the defendant's property was not "lawfully on the private property" for the purposes of the statute because, again, he was not there as the result of a duty imposed by law.[6]

The legislature changed the law in 1979. "Lawful presence" now includes on the premises of the owner "with the express or implied consent of the owner: Provided, That said consent shall not be presumed when the property of the owner is fenced or reasonably posted." (RCW 16.08.050). So if the owner's dog bites a delivery person or a social guest, the owner is liable, as such a person is given implied consent to be on the property. In a 1983 case where the plaintiff was bitten while she was walking along a railroad right-of-way (considered by the railroad a permissive entry onto its premises) abutting the defendant's unfenced yard, the court of appeals found that the victim was "lawfully in or on a private place."[7]

Victim's Contributory Negligence

The statutory provision noted above certainly suggests that a person on the owner's premises without express or implied consent—that is, a trespasser—is fair game for being attacked by the resident dog. Such a trespasser would be contributorily negligent. No cases, however, have presented this fact situation. In other cases where dog owners have argued that the victim's contributory negligence should exonerate them from liability, the argument has met with almost no success.

In one notable case, the plaintiff-victim trespassed inadvertently onto the defendant's property which appeared confusingly to be part of the public way. An admittedly vicious dog tethered to a 24-foot chain attacked the plaintiff. The Washington court held that "the ground of liability in an action for injuries caused by a vicious dog is not negligence in the ordinary sense, hence, in its ordinary meaning, contributory negligence is not a defense."[8] The court reasoned:

> *If it is established that a dog is of a vicious nature and that the owner of such*

dog has knowledge, actual or constructive, of that fact, the owner keeps that dog at his peril, and is chargeable for any failure to so keep it that it cannot do any damage to any person who, without essential fault, is injured by it... The mere fact of trespassing on the grounds of another is not, in and of itself, contributory negligence which will defeat an action to recover damages...[9]

More generally, the Washington court has observed—restating its position in the case noted supra—that "we are already aligned with those courts which hold that contributory negligence is not a defense in a common-law action based upon scienter."[10]

As a matter of law, a small child cannot be contributorily negligent[11] (by teasing or tormenting a dog), but his parents might be negligent for allowing him to play with the dog. Parents who allowed their four-year-old son access to a room which contained "two strange, active Doberman pinscher dogs" were alleged to be contributorily negligent.[12] The Washington Court of Appeals, in overturning a summary judgment for the dog owner, observed that contributory negligence of parents in failing to supervise their children could be a defense, but that such conduct "must rise to the level of willful and wanton misconduct" to be actionable[13] (there was no proof, notwithstanding several animal-control officer contacts with the owner, that the dogs were vicious).

In the same case, it was alleged that the City of Everett also contributed to the victim's injuries by failing to enforce its animal control laws when its officers had (several times) responded to complaints about the defendant's dogs running loose by giving the owners warnings about them. The argument was that where a statute (city ordinance in this case) creates a duty upon the city (to protect citizens from injury from animals), breach of the duty is negligence. In overturning the summary judgment in favor of the City, the Court of Appeals observed that the City would be liable only if the breach of duty was, in view of all the circumstances, "unreasonable,"[14] a matter of fact to be determined at trial.

No case found in Washington actually presents the defense of contributory negligence in a dog-bite case, but clear statutory language allows it. RCW 16.08.060 provides as follows:

Proof of provocation of the attack by the injured person shall be a complete defense to an action for damages.

And RCW 16.08.090 provides, in part:

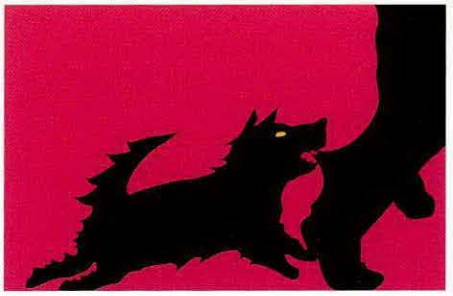
Dogs shall not be declared dangerous if the threat, injury or damage was sustained by a person who, at the time, was committing a willful trespass or other tort upon the premises occupied by the owner of the dog, or was tormenting, abusing, or assaulting the dog or has, in the past, been observed or reported to have tormented, abused, or assaulted the dog or was committing or attempting to commit a crime.

The Owner Relationship

In most cases, the owner of a dog that bites is liable for the injuries. Although there might be some situations in which a non-owner is liable for injuries caused by a dog[15], no such cases currently exist in Washington.

In a 1980 case, the Washington Court of Appeals was asked to find liability where the original tenants left the rented premises and, notwithstanding provisions of the rental agreement prohibiting subleasing and dogs, subleased the duplex apartment to subtenants with three dogs. The landlords lived in another city and learned of the dogs' presence only two or three days before the injury complained of. The court concluded that the landlords neither knew nor "reasonably should have known 'that the dog (had) vicious or dangerous propensities.' "[16] Plaintiffs urged the court to find the landlords liable on the theory that they knowingly maintained "dangerous conditions and activities" on the premises. The court declined to find the landlords liable, holding that in this situation knowledge of the dog's propensities was essential and that even if the landlords did breach a duty of care, such a breach was not the proximate cause of the injuries.[17]

Ten years later, a factually similar case



was back before the Court, except that this time the landlords did know that the injury-causing dog was vicious. The Court of Appeals specifically declined to adopt the plaintiffs' theory of liability,[18] holding that "The common law rule, which is the settled law of Washington, is clear: only the owner, keeper, or harborer of [a dangerous] dog is liable. The landlord of an owner, keeper or harborer is not."[19] The Washington State Supreme Court reiterated this rule in 1994 in a case in which the defendants rented acreage to a tenant who, with the landlords' knowledge, kept a tiger which attacked the plaintiff. The Washington court said the issue was "not a question of fact.... Rather, the issue is a matter of law, and we conclude that landlords have no duty to protect third parties from a tenant's lawfully owned but dangerous animals."[20]

Criminal Liability

RCW 16.08.080 provides for registration of "dangerous dogs." Section 100(2) provides criminal penalties for the owner of a dangerous dog if the owner has a prior dangerous-dog conviction and the dog bites a person or a domestic animal. Under Section 100(3), the owner of any dog that causes severe injury or death to a person is guilty of a class C felony, "whether the dog has previously been declared potentially dangerous or dangerous." This ambiguous language gave rise to a lawsuit, *State v. Bash* (925 P2d 978 Wash., 1996) in which the Washington Supreme Court held that criminal liability arose only if the dog causing serious injury had been previously classified as potentially dangerous or dangerous. The statute does not create a strict-liability offense.

A few other dog-related criminal statutes are scattered throughout the Code.

As a matter of law, a small child cannot be contributorily negligent[11] (by teasing or tormenting a dog), but his parents might be negligent for allowing him to play with the dog.

Among them: it is a crime to harm a police or "accelerant detection" dog (RCW 9A.76.200) or a dog guide or service animal (RCW 49.60.370), to "dognap," to conceal identification tags on a dog, to willfully or recklessly kill or injure any pet, or to sell another person's pet for research purposes (RCW 9.08.070[1] and [2]).

In the last ten years there has been periodic media coverage of attacks by vicious dogs, especially pit bulls. Legislation to outlaw the possession of specific breeds is for local enactment. Washington cases claiming such laws are constitutionally infirm have not met with success.[21]

Modern Washington State dog law is, for the most part, fairly simple: if your dog, unprovoked, bites somebody who isn't a trespasser, you're liable.

Daniel Warner is an associate professor of business law at the College of Business at Western Washington University. He is the author of a college textbook on The Legal Environment of Business, and he is the immediate past Board President of the Whatcom Humane Society.

NOTES

1 The earliest evidence of clearly domesticated dogs is found in camp deposits from Australia that have been carbon-dated to 30,000 year ago. These dogs, called dingos, were brought to Australia by ancestors of aborigines. Dingos supplanted the native dog-like marsupial "wolves" (thylacines), which are now extinct except in a few remote areas of Tasmania. John C. McLoughlin, The *Canine Clan*, 89 (1983). The cave frescos of Spain, dating back about 10,000 years (the Mesolithic Age), show clear images of men hunting with dogs. Fernand Mery, *The Dog*, 16 (1968).

2 United States Postal Service, *Postal News*, "Children Primary Focus of National Dog Bite Prevention Week," June 7,1996. www.usps.gov/news/press/96/96051.

3 *Journal of the American Veterinary Medical Association*, "Dog Bite Prevention Campaign: Nipping a Problem in the Bud," www.avma.onlinews/javma/may98, May 1, 1998.

4 Prosser, *Torts*, 4th edition, s. 76, p. 501 (1971).

5 *Reis v Becker*, 473 P.2d 856, 857 (Wash. Ct. App., 1970), construing former RCW 16.08.050.

6 *Dominick v Christensen*, 548 P.2d 541, 542 (Wash., 1976).

7 *Hansen v Sipe*, 664 P.2d 1295, 1296 (Wash. Ct. App., 1983).

8 *Brewer v. Furtwangler*, 18 P.2d 837, 838 (Wash. 1933).

9 Ibid., at 621.

10 *Johnson v. Ohls*, 457 P.2d 194, 196 (1969). In this context, "scienter" of course refers to the dog-owner's knowledge, actual or constructive, that the animal was vicious and the owner's actions in allowing innocents access to it.

11 In *Arnold v. Laird*, 621 P.2d 138, 139 (Wash., 1980), the court observed that whether or not a four-year-old child might have teased a dog was irrelevant, as a child of such age "was not capable of contributory negligence as a matter of law."

12 *Livingston v. City of Everett*, 751 P.2d 1199, 1201 (Wash. App. 1988).

13 Id. The case was remanded for further exploration of this issue, among others.

14 Id. at 1201.

15 Such a situation is alluded to in dicta in the *Livingston v. City of Everett* case, note 12, supra.

16 *Shafer v. Beyers*, 613 P.2d 554, 556 (Wash. Ct. App., 1980), internal citation omitted.

17 Id., at 557.

18 The rule in California is that the landlord is liable if he knows the dog is dangerous and if he has the right to remove the dog by retaking possession of the premises. *Uccello v. Laudenslayer*, 118 Cal.Rptr. 741, 734 (1975).

19 *Clemmons v. Fidler*, 791 P.2d 257, 259 (1990). In the Livingston case (supra , note 12), plaintiffs argued that the city of Everett should have been a harborer of the animal as part of its animal control duties.

20 *Frobig v. Everett*, 881 P2d 226, 231 (1994).

21 See, for example, *American Dog Owners Assn. v. City of Yakima*, 777 P.2d 1046 (Wash, 1989), wherein the Supreme Court of Washington held that a Yakima ordinance banning "pit bulls" was not unconstitutionally vague.

Employment Law Development: The 1998 Cases

by George M. Ahrend

In a year that saw the dismissal of a sexual harassment lawsuit by a former employee of President Clinton, many other important, albeit less newsworthy, developments have occurred in employment law. Ironically, many of the developments involve sexual harassment claims. Following a dramatic rise in the early 1990s, the number of sexual harassment charges filed with the EEOC and state fair-employment practices agencies has leveled off in recent years. The number of complaints is nonetheless significant and hovers around 15,500 per year. The Supreme Court has recently handed down important decisions regarding an employer's vicarious liability for sexual harassment and same-sex sexual harassment. The EEOC has provided guidance on claims for retaliation against employees who oppose discriminatory practices, including sexual harassment. And the Violence Against Women Act of 1994 has been used against employers in sexual harassment cases, allowing the victims of such discrimination to avoid Title VII's limit on damages and Washington's prohibition against punitive damage awards. Additional developments in employment law this year are chronicled near the end of this article.

Vicarious Liability for Sexual Harassment

In two separate decisions, the U.S. Supreme Court delineated an employer's vicarious liability for sexual harassment under Title VII of the Civil Rights Act of 1964. *Faragher v. Boca Raton*, No. 97-282 (U.S., June 26, 1998); *Burlington Indus., Inc., v. Ellerth*, No. 97-569 (U.S., June 26, 1998). The Court abandoned the distinction between *quid pro quo* and hostile environment claims in analyzing employer liability. The decisions confirm that an employer may be vicariously liable for sexual harassment by supervisory personnel without proof of tangible job detriments, such as adverse hiring, firing, compensation, and work assignment decisions. Of course, even in the absence of tangible job detriments, the harassment must be sufficiently severe and pervasive to alter the conditions of employment.

The decisions in *Faragher* and *Ellerth* do not alter employer liability for sexual harassment under other circumstances. An employer is liable for its own negligence in allowing sexual harassment to occur in the workplace. Negligence generally consists of proof that the employer knew, or should have known, about the harassment, yet failed to take reasonable corrective measures. In addition, an employer is liable for sexual harassment by those employees who hold a sufficiently high position in the company (usually owners or control persons) that they may be properly treated as the company's proxies. Finally, an employer is also liable for sexual harassment by a supervisor that results in a tangible job detriment to the harassed employee. The supervisor is deemed to be acting as the employer when making decisions about hiring, firing, compensation and work assignments.

None of the foregoing bases for employer liability were present, however, in *Faragher* or *Ellerth*. The plaintiffs did not report sexual harassment on anything but an informal basis. The harassment was perpetrated by mid-level supervisors, and the victims did not suffer tangible job detriments.

In *Faragher*, the plaintiff and other female employees were subject to uninvited touching, lewd remarks, and vulgar references to women and sexual matters by two of their immediate supervisors. The plaintiff discussed the harassment with another supervisor, but did not report it to anyone with supervisory authority over the harassers. She subsequently resigned and filed suit, seeking nominal damages.

Similarly, in *Ellerth*, the plaintiff was subject to "repeated boorish and offensive remarks and gestures" by an intermediate supervisor. In addition, her supervisor made several remarks that implied she would suffer tangible job detriments if she did not respond favorably to his advances. For example, he said that she should "loosen up" because he "could make [her] life very hard or very easy at [the company]." None of the oblique threats actually resulted in tangible job detriments, however. The plaintiff did not report the harassment and quit after receiving criticism about her performance.

In both *Faragher* and *Ellerth*, the Court assumed that the harassment was sufficiently severe and pervasive to state a claim under Title VII. The Court held that the employers were vicariously liable for the sexual harassment, subject to an affirmative defense that was described in identical paragraphs in both decisions:

> *An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment action is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of the evidence, see Fed. Rule Civ. Proc. 8(c). The defense comprises two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise. While proof that an employer had promulgated an antiharassment policy with a complaint procedure is not necessary in every instance as a matter of law, the need for a stated policy suitable to the employment circumstances may appropriately be addressed in any case when litigating the first element of the defense. And while proof that an employee failed to fulfill the corresponding obligation of reasonable care to avoid harm is not limited to showing an unreasonable failure to use any complaint procedure provided by the employer, a demonstration of such failure will normally suffice to satisfy the employer's burden under the second element of the defense. No affirmative defense is available, however, when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment.*

The Court emphasized that the affirmative defense is not available when the

harassed employee suffers a tangible job detriment. Presumably, it is also not available in sexual harassment cases premised upon the employer's own negligence or the conduct of high-level employees.

Both elements of the defense, reasonable care by the employer and failure to mitigate by the employee, must be proven to avoid vicarious liability. An employer can establish reasonable care if it has in place an antiharassment policy which is distributed to all employees, clearly informs them of their right to complain about sexual harassment, and instructs them on the procedure for making a complaint. The policy should be designed to avoid channeling complaints through the offending supervisor. The employer can establish the employee's failure to mitigate if he or she failed to comply with the policy. Compliance may be excused, however, if the policy does not provide an effective mechanism for reporting and resolving harassment complaints.

In *Ellerth*, the Court remanded the case to the trial court so that the parties could tailor their evidence to this new conceptual framework for sexual harassment claims. In *Faragher*, however, the Court held as a matter of law that the affirmative defense was unavailable to the defendant-employer. The Court based its holding on evidence in the record that the employer failed to disseminate its antiharassment policy to employees.

It is likely that the rules of employer liability under Title VII derived from *Faragher* and *Ellerth* will influence employer liability under Washington's Law Against Discrimination ("WLAD"). See *Thompson v. Berta Enters., Inc.*, 72 Wn. App. 531, 536-539, 864 P.2d 983, 986-988, rev. denied, 124 Wn. 2d 1028, 883 P.2d 327 (1994) (applying Title VII precedent to determine employer liability under WLAD).

Same-Sex Sexual Harassment

Resolving a split among the circuit courts, the U.S. Supreme Court recently held that same-sex sexual harassment is actionable under Title VII of the Civil Rights Act of 1964. *Oncale v. Sundowner Offshore Servs., Inc.*, No. 96-568 (U.S., Mar. 4, 1998). In *Oncale*, the plaintiff worked on an offshore oil drilling rig. He was repeatedly subjected to sex-related, humiliating actions by his male supervisor and coworkers, including physical assault and threats of rape. He complained to company management without effect and quit "due to sexual harassment and verbal abuse," subsequently filing suit against his former employer. The Court reversed summary judgment in favor of the employer and remanded the case for trial.

While the decision in *Oncale* appears to broaden the coverage of Title VII, one is left with the impression that the Court would resolve the merits of the case against the plaintiff. This impression follows from the Court's strong emphasis on the need to prove a causal relationship between the harassment and the employee's gender. The harassment suffered by the plaintiff in *Oncale* was sexually charged, but the Court stated that conduct with sexual content or connotations is neither necessary nor sufficient to establish causation. The Court stated that motivation by sexual desire is sufficient to establish causation, but in the context of same-sex sexual harassment this requires credible evidence that the harasser is homosexual. If the harasser is not homosexual, the Court stated that the plaintiff would have to prove his claim with evidence of "general hostility" in the workplace toward his gender or differential treatment

of both sexes in a mixed-sex workplace.

Based on the limited facts recited in the *Oncale* decision, it appears that the plaintiff will have difficulty proving causation. There is no indication that any of the harassers were homosexual, making it difficult to prove sexual motivation. Only men worked on the offshore drilling rig, making it impossible to prove differential treatment of both sexes. Not all of the men were subject to harassment, making it difficult to prove general hostility toward the plaintiff's gender. It is unclear how else the plaintiff in *Oncale* can prove the harassment he suffered was causally related to his gender.

Retaliation

Retaliation can turn a meritless charge of discrimination into a valid claim and allow an employee to recover the same damages to which he or she would be entitled if the original discrimination had actually occurred. The EEOC recently issued guidance on retaliation under Title VII, the Age Discrimination in Employment Act, the Equal Pay Act, and the Americans with Disabilities Act. EEOC Directives Transmittal No. 915.003 (May 20, 1998). While the guidelines do not have the force of law, they are likely to be considered persuasive authority by federal and Washington courts.

An employee states a claim for retaliation if he or she engages in "protected activity," suffers "adverse action," and there is a causal link between the two. "Protected activity" refers to opposing dis-crimination or filing a charge with the EEOC or a state fair-employment practices agency such as the Washington State Human Rights Commission. Opposition to discrimination may encompass any sort of resistance to unlawful discrimination. The opposition must be reasonable, meaning that it cannot interfere with the employer's business. In addition, the opposition must be undertaken in good faith. However, it is protected even if the employee is mistaken about the lawfulness of the employer's conduct. Filing a charge with the EEOC or HRC, or participating in an investigation, proceeding, or lawsuit under antidiscrimination laws is per se reasonable opposition.

"Adverse action" refers to any conduct that is reasonably likely to deter protected activity. It does not have to materially affect the terms, conditions, or privileges of employment. In addition, it includes action taken outside of the workplace after the employment relationship has ended. This is derived from last year's decision in *Robinson v. Shell Oil Co.*, 117 S. Ct. 843 (1997), where the Court held that an employee who received a negative job reference from a former employer in retaliation for filing an EEOC charge stated a cause of action for retaliation.

The causal link may be proven directly or circumstantially. The *prima facie* case based on circumstantial evidence merely requires proof that the adverse action was taken shortly after the employee engaged in protected activity, and the employer was aware of the protected activity before taking the adverse action.

Violence Against Women Act of 1994

The Violence Against Women Act of 1994, 42 U.S.C. § 13981, has recently been used against employers in sexual harassment cases, *Mattison v. Click Corp.*, 72 Empl. Prac. Dec. § 45,209 (E.D. Pa. 1998); *Anisimov v. Lake*, 982 F. Supp. 431 (N.D. Ill. 1997); *Newton v. Coca-Cola Bottling Co.*, 958 F. Supp. 248 (W.D.N.C. 1997); *Finley v. Higbee Co.*, 1 F. Supp. 2d 701 (N.D. Ohio 1997); *McCann v. Rosquist*, 998 F. Supp. 1246 (D. Utah 1998); *Braden v. Piggly Wiggly*, 4 F. Supp. 2d 1357 (M.D. Ala. 1998). The act creates a federal civil rights cause of action for victims of crimes of violence motivated by gender. The act does not have the same limitations on damages as Title VII, and allows the recovery of punitive damages which are otherwise unavailable under Washington law.

Although crimes of violence subject to VAWA are defined by reference to state law, they also must satisfy the definition of the phrase contained in 18 U.S.C. § 16, providing some uniformity across different jurisdictions. To fall within the coverage of the act, a crime must be a felony under state law and it must involve the use, attempted use, or threatened use of physical force or involve a substantial risk of physical force. A predicate state-law crime that satisfies these requirements must be alleged.

In Washington, it appears that indecent liberties is the most applicable predicate crime in sexual harassment cases against employers. RCW 9A.44.100. The crime usually requires proof of sexual contact by forcible compulsion, defined as "physical force which overcomes resistance, or a

threat, express or implied, that places a person in fear of death or physical injury to herself or himself or another person, or in fear that she or he or another person will be kidnapped." RCW 9A.44.010(6). It is a class B felony, and it is considered a crime of violence under state law. RCW 9.41.010(11). Other potential predicate crimes include assault and rape. However, not all of the potential predicate crimes in sexual harassment cases are felonies, e.g., RCW 9A.36.040 (fourth-degree assault), and it is unclear whether some of them involve the requisite physical force, e.g., RCW 9A.44.060 (third-degree rape).

No prior criminal complaint, prosecution, or conviction is necessary to support a claim under VAWA. Of course, if the defendant has been convicted following a criminal trial, the conviction will likely be given collateral estoppel effect with respect to liability in a subsequent VAWA civil action.

A crime of violence subject to VAWA must be motivated by gender. The statute lists two elements for proving gender-based motivation. The crime must be committed "because of gender or on the basis of gender," and it must be "due, at least in part, to an animus based on the victim's gender." The purpose of the separate elements is to avoid bestowing a cause of action under VAWA simply because the perpetrator and victim have different gender. As a practical matter, however, proof of both elements will consist of the same evidence that is usually offered to prove discriminatory motive in a sexual harassment case. It includes derogatory gender-based language, differential treatment of men and women in the workplace, previous discriminatory conduct, and the circumstances surrounding commission of the crime.

Other Developments in Federal Employment Law

AIDS is a disability under the Americans with Disabilities Act.

The U.S. Supreme Court held that AIDS is a disability under the Americans with Disabilities Act of 1990. *Bragdon v. Abbott*, No. 97-156 (U.S., June 25, 1998). *Bragdon* involved a lawsuit against a dentist who refused to treat a female patient with asymptomatic AIDS outside of a hospital. The definition of disability, which includes conditions substantially limiting one or more major life activities, includes asymptomatic AIDS because the disease limits a woman's ability to reproduce in two ways. First, it creates a significant risk of infecting the woman's sexual partner; and second, it creates a risk of transmitting the disease to the fetus during gestation. Although it is not an employment case, *Bragdon* will undoubtedly affect an employer's obligation under the ADA to employees with AIDS.

In Washington, it appears that indecent liberties is the most applicable predicate crime in sexual harassment cases against employers.

Strict requirements are imposed on employers for settlement of age discrimination claims.

With enactment of the Older Workers Benefit Protection Act of 1990, Congress imposed stringent requirements for waiver of claims under the Age Discrimination in Employment Act. 29 U.S.C. § 626(f). The EEOC has recently promulgated its final rule for complying with OWBPA. 63 Fed. Reg. 30624-30631 (June 5, 1998). Among other things, settlement and waiver agreements must contain specific wording and a cooling-off period for the employee to change his or her mind. Settlement and waiver agreements that do not comply with the law do not bar a subsequent age-discrimination lawsuit. In addition, the U.S. Supreme Court recently held that the employee does not have to return money received in exchange for the waiver as a prerequisite to filing suit. *Oubre v. Entergy Operations, Inc.*, No. 96-1291 (U.S., Jan. 26, 1998).

Mandatory arbitration of civil rights claims is not enforceable.

Many employers have begun to require arbitration agreements as a condition of employment. The U.S. Supreme Court has upheld these arbitration agreements in the context of ADEA claims. *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 33 (1991). The EEOC has, however, spoken out emphatically against mandatory arbitration of civil rights claims. EEOC Notice 915.002 (July 10, 1997). Several concerns underlie the EEOC opposition to mandatory arbitration. Among other things, the development of civil-rights law is the responsibility of the federal govern-

ment and the courts, not private arbitrators. In addition, mandatory arbitration tends to favor employers because they are "repeat players."

Recognizing the EEOC's concerns, the Ninth Circuit recently held that mandatory arbitration of Title VII claims is unenforceable. *Duffield v. Robertson Stephens & Co.*, No. 97-15698 (9th Cir., May 8, 1998). The court in *Duffield* distinguished the Supreme Court's decision in *Gilmer* based on the language and legislative history of Title VII as amended by the Civil Rights Act of 1991. The court also noted that the Older Workers Benefit Protection Act gives ADEA claimants protection that is not available under Title VII.

After *Duffield*, it also appears that mandatory arbitration of state law civil rights claims cannot be enforced. The plaintiff in *Duffield* filed suit under California's Fair Employment and Housing Act in addition to Title VII. The court held that the FEHA claims are not arbitrable because parallel state antidiscrimination laws are part of Title VII's enforcement scheme. Presumably, mandatory arbitration of claims under Washington's Law Against Discrimination would not be arbitrable, either. *See Steele v. Lundgren*, 85 Wn. App. 845, 860 (1997) (questioning the enforceability of mandatory arbitration of civil rights claims).

Recent Washington Employment Law Legislation

Employers close to receiving greater protection from liability for references.

Despite a lack of cases or verdicts on the subject, many employers are concerned about liability arising from providing references for former employees. This concern prevents them from being completely candid about former employees. As a result, subsequent employers have a difficult time evaluating prospective employees, and they risk hiring incompetent employees or worse. In an effort to allay this fear, the Washington House of Representatives passed the following bill:

> *An employer who discloses information about a former or current employee's job performance, conduct, or other work-related information, to a prospective employer, is presumed to be acting in good faith and is immune from civil liability for such disclosure or its consequences. For the purposes of this section, the presumption of good faith may only be rebutted upon a showing by clear and convincing evidence that the information disclosed by the employer was knowingly false or deliberately misleading.*

S.H.B. No. 1886, 55th Legis., Reg. Sess. (1997). This statute provides almost absolute immunity for employers. Enforcement may be problematic because there is potential conflict with Washington's anti-blacklisting laws. The question may be moot, however, because the 1998 legislative session closed without passage of the bill by the Senate.

In the meantime, employers still enjoy a relatively high degree of protection from liability when providing references. Based on a case decided in 1918, employers have a qualified privilege to disclose information about a former or current employee's job performance or conduct to a prospective employer. *Ecuyer v. New York Life Ins. Co.*, 101 Wash. 247, 172 Pac. 359 (1918). The privilege is lost only upon a showing by clear and convincing proof that the employer disclosed such information with reckless disregard for its truth or falsity, or having actual knowledge that it was false. *See* Madelyn C. Squire, *Making Sense of Employment Defamation Litigation*, 24 Gonz. L. Rev. 1, 17-24 (1988/89).

Employer responsibility for uniforms clarified.

The Washington Legislature recently clarified employer responsibility for paying for uniforms for employees. 1998 Wash. Laws ch. 334. Employers are not required to furnish or compensate employees for apparel worn during working hours unless the apparel satisfies the definition of a "uniform." A uniform includes all of the following:

- Apparel of a distinctive style and quality that, when worn outside of the workplace, clearly identifies the person as an employee of a specific employer; or
- Apparel that is specially marked with an employer's logo; or
- Unique apparel representing an historical time period or an ethnic tradition; or
- Formal apparel.

A uniform does not include apparel of a "common color" that conforms to a general dress code or style (e.g., black slacks

and a white, button-up shirt or blouse). The "common colors" are limited to white, tan, and blue for shirts or blouses and tan, black, blue, or gray for pants or skirts. If the employer changes the color scheme within less than two years, it must compensate its employees.

Safe haven for overtime liability for airline employees.

Based on what it found to be a "long-standing practice and tradition of trading shifts" in the airline industry, the Washington Legislature exempted airlines from overtime pay liability to employees who agree to work additional hours for a co-employee. 1998 Wash. Laws ch. 239. This conforms state wage and hour laws to the Fair Labor Standards Act. It highlights a problem of inadvertent overtime violations that may face non-airline employers whose employees trade shifts.

Recent Washington Employment Law Cases

Employee must read employee handbook in order to enforce promises contained therein; and must file suit within three years.

As recognized in *Thompson v. St. Regis Paper Co.*, 102 Wn. 2d 219, 685 P.2d 1091 (1984), an employer's failure to keep promises of specific treatment in specific situations contained in employee handbooks gives rise to a claim for wrongful discharge. The employee must justifiably rely on the promises before enforcing them, however. In a recent case, the court held that an employee who does not bother to read the handbook has no claim because he or she could not possibly have relied on the promises contained therein. *Klontz v. Puget Sound Power & Light*, 90 Wn. App. 186, 951 P.2d 280 (1998).

A claim for breach of promises of specific treatment in specific situations contained in an employee handbook is subject to the three-year statute of limitations. *DePhillips v. Zolt Constr. Co.*, No. 65017-9 (Wn. Sup. Ct., Aug. 6, 1998). When an employee handbook contains all of the essential elements of a contract, however, the six-year statute of limitations for written contracts applies instead.

Minimum wage tied to inflation.

With passage of Initiative 688, codified at RCW 49.46.020, the minimum wage in Washington is now tied to inflation. The initiative increases the minimum wage, currently $4.90 per hour, in two intermediate steps. On January 1, 1999, it will jump to $5.70 per hour; and on January 1, 2000, it will jump to $6.50 per hour. Thereafter, the minimum wage will increase yearly at the same rate as the consumer price index for urban wage earners and clerical workers. Although it may not have much practical significance, the initiative does not specify what happens if there is deflation rather than inflation.

Financial hardship is no defense to punitive damages for nonpayment of wages.

Financial hardship is not a defense to "willful withholding of wages" under RCW 49.52.070. *Schilling v. Radio Holdings, Inc.*, No. 63730-0 (Wn. Sup. Ct., Sept. 3, 1998). RCW 49.52.070 allows employees to recover double damages and attorney's fees for willful withholding of wages. According to the court, its test for willful failure to pay is not "stringent." It simply requires the employer's refusal to pay to be volitional, i.e., "the person knows what he is doing, intends to do what he is doing, and is a free agent." Lack of willfulness may only be found if the employer erred as a result of carelessness or if there is a bona fide dispute regarding the payment of wages. In *Schilling*, the defendant-employer argued that its failure to pay wages was not

willful because the financial condition of the company prevented it from paying the full extent of wages due. The court rejected this defense because it is not grounded in the text of RCW 49.52.070. The employer's decision to pay other creditors before its employees was sufficiently volitional to subject it to liability under the statue.

No claim exists for prospective breach of at-will employment contract.

A prospective employee cannot recover damages for breach of an at-will employment contract before beginning work. *Bakotich v. Swanson*, No. 21472-5-II (Wn. Ct. App., June 12, 1998). In *Bakotich*, the employer made an offer of at-will employment which led the prospective employee to quit his current job. When he reported for work, however, he was informed that "plans had fallen through." The court dismissed his claims for breach of contract because he suffered no damage. The at-will nature of the relationship gave his employer the right to terminate him at any time without liability. The court also dismissed his claims grounded in promissory estoppel because only a promise of permanent employment subject to dismissal for just cause is sufficiently definite to give rise to estoppel.

The prohibition of marital status discrimination in employment does not prevent discharge of cohabiting employees.

An employer's policy against related, cohabiting, or dating employees supervising one another does not constitute prohibited marital status discrimination. *Waggoner v. Ace Hardware Corp.*, No. 65079-9 (Wn. Sup. Ct., Mar. 26, 1998). In *Waggoner*, two employees in a direct-report relationship lived together. When questioned by their employer they denied any dating relationship, but the employer concluded otherwise and terminated their employment. The employees subsequently married each other and filed suit for wrongful termination. The court characterized their termination as based on "social relationships" rather than marital status. It should be noted that the court applied the pre-1993 defining "marital status" as "(a) what a person's marital status is; (b) who his or her spouse is; or (c) what the spouse does[.]" WAC 162-16-150(2). This regulation has since been superseded by an amendment to WLAD which restricts the definition of "marital status" to "the legal status of being married, single, separated, divorced, or widowed." RCW 49.60.040(7) (as amended by Laws of 1993, ch. 510, § 4).

An employer with fewer than eight employees is not subject to suit under Washington's Law Against Discrimination.

A jury verdict form requiring termination "because of" discrimination warrants reversal even though the jury received instruction on the substantial factor test.

A jury verdict form which asked whether an employee was terminated "because of" her race conflicted with the substantial factor test of causation in employment discrimination cases, warranting reversal of a jury verdict in favor of the employer. *Capers v. The Bon Marche*, No. 39717-6-I (Wn. App., Div. I, May 18, 1998). The Washington Law Against Discrimination prohibits discrimination in employment "because of" race. This language has been interpreted by the Supreme Court as prohibiting adverse employment actions in which race plays a substantial factor. The jury in *Capers* was given an instruction on the substantial factor test, but the substantial factor language was omitted from the verdict form. During closing argument, the employee's attorney argued despite the absence of such language from the verdict form, the jury should still find for his client if race was a substantial factor in her termination. In response, the employer's attorney argued that this was a misleading statement of the law, and that the language of the verdict form mirrored the WLAD. The court found that this was improper and tipped the balance in favor of reversal of the jury's verdict in favor of the employer.

What employers are subject to WLAD?

An employer with fewer than eight employees is not subject to suit under Washington's Law Against Discrimination. Whether an employer has eight or more employees is determined by counting both full- and part-time employees which are on the company payroll on the date of the alleged unfair employment practice, even if the employees are on leave or are otherwise absent from work on that date. *Anaya v. Graham*, 89 Wn. App. 588, 950 P.2d 16 (1998). Employees of employers with fewer than eight employees will still be able to sue for wrongful discharge in violation of public policy if they suffer discrimination. *Griffin v. Eller*, 130 Wn.2d 58, 70-71, 922 P.2d 788 (1996) (implied but not stated; Madsen, J., concurring). They will probably not, however, be able to seek redress for discrimination short of termination. *White v. State*, 131 Wn.2d 1, 18-20, 929 P.2d 396 (1997) (declining to recognize wrongful transfer in violation of public policy).

Employers can unilaterally change terms of employment contract upon reasonable notice.

An employer may unilaterally change

an employment contract which is not for a definite period of time upon giving reasonable notice of the change to its employee. *Grovier v. North Sound Bank*, No. 21809-7-II, (Slip Op., June 26, 1998). In order to establish that notice of the change is reasonable, it should be in writing and the employer should obtain a signature acknowledging receipt of the notice from its employees.

No liability for equal opportunity harasser.

An employee subject to harassment by another employee who harassed everyone in the workplace, both male and female, was unable to prove that the harassment was "because of" her sex as required by state and federal discrimination laws. *Herried v. Pierce County Public Transportation Benefit Auth.*, No. 20843-1-II, (Slip Op., February 27, 1998). The court appeared to be persuaded at least in part by the fact that the harassment did not carry any sexual content. It simply consisted of hostile and intimidating conduct.

Oral five-year employment contract unenforceable.

The Statute of Frauds requires certain contracts to be in writing before they are enforceable. Among the contracts specified in the statute are personal services contracts which cannot be performed within one year. Based on this provision of the statute, the court in *French v. Sabey Corp.*, 134 Wn.2d 547, 941 P.2d 260 (1998), held that an oral, five-year employment contract which could be terminated either by the employee or the employer upon six months' notice was unenforceable. As a result, the executive who claimed wrongful termination after only eleven months on the job was without a remedy in court.

Conclusion

The legal rights of employees have increased greatly over the past 25 years, and this year's developments in employment law do not depart from the trend. It is expected that employee rights will continue to increase as retirement of the baby-boomer generation tightens the labor market. In addition, employees may have more bargaining power and be able to demand more rights from their employers as the U.S. and Washington State economies continue to shift from blue-collar to higher-skilled jobs. Employment law practitioners will have to struggle to stay abreast of developments in the courts, Congress, the state legislature, state and federal administrative agencies, and the economy. Among these developments, U.S. Supreme Court decisions on the following issues are on the immediate horizon:

- Whether loss of at-will employment gives rise to damage claim under 42 USC § 1985(2) for wrongful discharge in retaliation for cooperating with Medicare fraud investigation. *Haddle v. Garrison*, No. 97-1472 (U.S., *oral argument scheduled*, Nov. 10, 1998).
- Whether social security or other disability claims create rebuttable presumption that a person is not a "qualified person with a disability" entitled to bring suit under the Americans with Disabilities Act. *Cleveland v. Policy Mgmt. Sys. Corp.*, No. 97-1008 (U.S., *cert. Granted*, Oct. 5, 1998).
- The standard for imposing punitive damages under Title VII. *Kolstad v. American Dental Ass'n*, No. 98-208 (U.S., *cert. granted*, Nov. 2, 1998). ■

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Déjà Vu Sex Talk

by Sherrie Bennett, Bar News Editor

Flashing back to several years ago, the Board of Governors once again discussed the issue of whether or not there should be a Rule of Professional Conduct prohibiting lawyers from having sexual relations with current clients. This matter was addressed previously and a proposed rule was sent by the WSBA to the state Supreme Court, who did not adopt it. The meandering board discussion included "true confessions" by those present regarding sexual contact with clients and temptations to initiate sexual contact with clients. After considerable discussion, the Board voted 7-3 to send the following proposed RPC Rule 1.8(k) on to the Supreme Court for adoption:

> *A lawyer who is representing a client in this matter:*
> *(k) Shall not*
> *(1) have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them at the time the lawyer/client relationship commenced; or*
> *(2) have sexual relations with a representative of a current client if the sexual relations would, or would likely, damage or prejudice the client in the representation.*
> *(3) For purposes of rule 1.8(k), "lawyer" means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.*

Opponents of the rule included Governor Powell, who described the proposal as an "inappropriate delving into lawyers' private lives, espousing attitudes and theories about sexual mores that are uninformed and outdated, and a perpetuation of our society's erotophobia." Professor John Strait from Seattle University School of Law urged the Board to adopt the bright-law rule, commenting that it is impossible for a lawyer to maintain independent judgment in such a close fiduciary relationship with a client with whom a lawyer is having a sexual relationship. WSBA Disciplinary Counsel Barrie Althoff echoed those sentiments, interpreting a footnote in a recent Supreme Court disciplinary opinion as an invitation by the Supreme Court to the Bar Association to bring a similar rule in front of them once more.

The Board of Governors sends a proposed rule against sexual contact with clients to the State Supreme Court.

Play It Again, RPC 8.4(g)

The Board also voted to relay on to the Supreme Court proposed RPC 8.4(g) and (h), which reads as follows:

> *It is professional misconduct for a lawyer to:*
> *(g) Commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, regardless of the number of persons employed by the lawyer, where the act of discrimination is committed in connection with the lawyer's professional activities. In that context, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with RPC 1.15; or*
> *(h) In representing a client, engage in conduct towards judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments."*

The Board will await feedback from the Supreme Court on this proposed rule.

Insurance Audits of Lawyer Fee Billing Examined

The Board heard a report from the RPC Committee on a draft formal opinion which concerns the use of outside auditing firms by insurers to review a lawyer's billing for legal services rendered on behalf of an insured. The issue was originally considered last year, resulting in the adoption of Informal Opinion (IO) 1758, which states that it is unethical for a lawyer to provide client billing information to third parties, such as outside insurance company auditors, without the client's consent. The proposed draft formal opinion, which was referred back to the RPC Committee for further study, currently reads as follows:

> *"Disclosure of Client Confidences or Secrets in Detailed Billing Statements to Persons Other Than the Client; Consent of the Client to Insurer's Review of Billing Statements by Outside Auditor; Ethical Compliance with "Billing Guidelines" of a Person Other Than the Client*

Issue 1: May an attorney whose professional services are being paid by a person other than the client, disclose to the person paying the bill, or to third parties such as an insurer's outside auditing service, client confidences or secrets in detailed, narrative billing statements which describe the professional services rendered?
Answer 1: An attorney cannot disclose to an insurer confidential information provided by the client without the client's consent, except for disclosures that are impliedly authorized to carry out the representation. The exception for disclosures

that are impliedly authorized is to be narrowly construed, and does not allow disclosure of confidential client information to a third party hired by the insurance company without specific client consent.

Issue 2: May an attorney ethically comply with a requirement or a person other than the client who pays the attorney's billings, to seek or obtain the client's consent to the attorney disclosing client confidences or secrets in billing statements to be submitted to an outside audit service?

Answer 2: No. Such a requirement would put the attorney in an ethical dilemma, precluding the attorney from representing the client under RPC 1.7(b).

Issue 3: May an attorney whose professional services are paid by a person other than the client, ethically comply with detailed, narrative billing guidelines of the person paying the bill?

Answer 3: An attorney whose professional services are paid by a person other than the client can ethically comply with "Billing Guidelines" of the person paying the billing, provided the billing guidelines do not: (1) require disclosure of confidential or secret information of the client, without the client's consent; (2) interfere with the attorney's independent professional judgment or with the attorney-client relationship; or (3) direct or regulate the attorney's independent professional judgment in rendering legal services to the client."

The RPC Committee will report back to the Board in February or March 1999. Any comments or suggestions should be faxed directly to Chris Sutton, Professional Responsibility Counsel in the Bar Association office, at (206) 727-8320.

Civil Immunity for Bar Examiners?

The Board heard from Frank Slak, chairperson of the Committee of Law Examiners, on an APR rule change which would give civil immunity to law examiners and staff. This rule change was prompted by the adoption by the ABA of a similar model rule in February of this year. This issue was referred back to the Law Examiners Committee, for further discussion by the Board at the December meeting.

Budget Audit and Expenditures

Pat Dieken, Director of Finance and Administration, gave a report to the Board on the recent financial audit performed by outside auditors reviewing the WSBA's internal control and information systems. In response to this audit, Dieken is exploring cash management options with various financial institutions, implementing a cash budgeting process, drafting a formal technology plan, converting accounting software to a single suite of software and investigating more efficient ways to track employees' vacation, sick leave and time worked.

The Board approved the allocation of approximately $35,000 of the executive director's contingency fund to support the hiring of an assistant lobbyist to back up the work of John Fattorini in the upcoming legislative session. The Board also approved the expenditure of $20,000 previously earmarked for the Unauthorized Practice of Law Committee to hire a public relations specialist to facilitate the upcoming public meetings on defining the "practice of law."

Governor Powell was appointed as the new Board Treasurer.

Malpractice Insurance Renegotiation

The Board voted to renegotiate the consent to assignment of the WSBA-KVI malpractice insurance contract, with the new consent to assignment to expire February 1, 2001, and reserving the right to renew the consent for an additional two years of the term of the contract, at the discretion of the WSBA. The Board also authorized the Insurance Committee to review the issues of whether or not the WSBA should continue to sponsor a professional liability insurance program, and if so, whether the current program should be continued and what the terms of the policy should be.

Mediation Program Revisions to APR 18

To implement the WSBA's new mediation program for fee disputes, the Board approved a proposed revision to APR 18, which would extend liability protection to staff members working in the mediation program. The program is expected to begin with some of the interprofessional fee disputes that are currently handled by the Interprofessional Committee. ■

Gifts and Loans to or from Clients

by Barrie Althoff, WSBA Chief Disciplinary Counsel

For lawyers struggling to collect billed fees and costs, the thought that a client might not only willingly pay those amounts, but also give the lawyer a gift, may seem inconceivable. From time to time, however, clients do offer their lawyer a gift or a loan. May you accept such a gift or loan from your client? May you prepare instruments effecting the gift or loan? Obversely, may you make a gift or a loan to your client? This article looks at these and some related questions.

Gifts from Your Client

Because of your fiduciary relationship with your clients, transactions between you and them are subject to close scrutiny to assure that you have not exercised undue influence or overreached. Your role is to look after your *client's* interests, not your own. Thus, any transaction benefiting you rather than your client, such as a gift, involves a possible conflict of interest and is suspect as possible self-dealing and undermining your objectivity.

Many of us develop solid friendships with our clients. Giving gifts is a natural expression of friendship and gratitude. One authoritative ethics treatise proclaims a cautionary and useful guiding principle, however: "Beware of clients bearing gifts." *ABA/BNA Lawyers' Manual on Professional Conduct* (§51:601). In view of this, may/should a lawyer graciously and thankfully accept such a gift, or must the lawyer churlishly reject them on the basis of ethical principle?

As a general rule, you may accept nominal gifts from clients, but should be very cautious on accepting gifts which are substantial in amount, especially if the gift is not from a person related to you. In some cases, discussed below, you are prohibited from preparing any gifting instruments if you or related persons are the recipients of the gift. As a practical matter, unless the client has had the benefit of independent counsel, you should view any gift as a voidable gift and be prepared to return it on demand. If the gift is substantial in amount, you should unequivocally advise your client in writing to consult independent counsel and require any documentation needed to effect the gift be prepared by independent counsel.

Opinions expressed herein are the author's and are not official WSBA positions.

One authoritative ethics treatise proclaims a cautionary and useful guiding principle: "Beware of clients bearing gifts."

The general rule stated above is not immediately apparent from either Washington's Rules of Professional Conduct (RPCs), or from the American Bar Association's Model Rules of Professional Conduct on which our rules are based. Neither set of rules directly deals with the receipt of gifts by lawyers from clients. Instead, they prohibit a lawyer from preparing documents that would effect certain gifts, without addressing a direct gift which does not require legal documentation. A noted authority has observed, however, that "it would plainly be incongruous if the Rules were interpreted to prohibit the preparation of any instrument of gift to a lawyer, even a perfectly fair one, but to permit all gifts, regardless of fairness, so long as they were not made by a written instrument." Wolfram, *Modern Legal Ethics* §8.12.2 (West, 1986).

This view is supported in dictum in *In re Gillingham*, 126 Wn.2d 454, 463-4, note 7, 896 P.2d 656 (1995), wherein the Supreme Court noted:

> *The RPC governing gifts does not forbid attorneys from accepting gifts from clients. RPC 1.8(c). Instead, it "establishes a general prohibition against a lawyer's drafting an instrument giving her or him or a close relative a substantial gift from a client. [Citation omitted]. . . . We emphasize that although RPC 1.8(c) does not specifically prohibit cash gifts from clients, neither are such gifts always permissible. For example, accepting cash gifts from clients without adequate documentation that the gift is made in a fully informed and voluntary manner may expose an attorney to a civil action for breach of the heightened duty lawyers owe to clients.*

Thus, the RPC prohibitions against a lawyer documenting certain gifts are a useful starting point for considering whether you may accept a gift from a client, whether or not you prepare any legal instruments effecting that gift.

The commentary to the Model Rules, although not adopted by Washington, provides a useful overview of the basic rule governing gifts from clients:

> *A lawyer may accept a gift from a client, if the transaction meets general standards of fairness. For example, a simple gift such as a present given at a holiday or as a token of appreciation is permitted. If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance, however, the client should have the detached advice that another lawyer can provide. Paragraph (c) [of Rule 1.8] recognizes an exception where the client is a relative of the donee or the gift is not substantial." [Comment 2 to Model RPC 1.8].*

RPC 1.8(c), to which the commentary refers, provides that a lawyer "shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee." This prohibition applies even if your client wants you to prepare the instrument; it is not subject to client waiver. Hazard & Hodes, *The Law of Lawyering* (3d ed.) §1.8.401. Stated positively, under RPC 1.8(c), you may prepare an instrument (for example,

a deed of gift, a conveyance, or a will) effecting a gift to you (or to your parents, children, siblings, or spouse) if (1) the gift is not "substantial," or (2) the gift is from "a client related to the donee." There is little useful authority on what is "substantial," but, given your fiduciary relationship with your client, anything other than a purely token amount is likely to be viewed as being "substantial."

The Washington Supreme Court has stated that RPC 1.8(c) prohibits lawyers from drafting wills in which they receive substantial gifts because "the practice is inherently permeated with the dangers of self-dealing and undue influence" and the failure to have the instrument drafted by uninvolved counsel deprives the client of an independent point of view and exposes the client to "the inherent conflict of interest the rule is designed to eliminate." *In re Gillingham*, 126 Wn.2d 454, 466-467, 896 P.2d 656 (1995).

RPC 1.8(c) twice uses the phrase "related to." The first occurrence refers to the relationship between the lawyer and the recipient of the gift. It prohibits you from preparing gift instruments if the recipient of the gift is you or certain persons "related to" you, namely, your parents, children, siblings or spouse. It does not prohibit you from preparing a gift instrument which gives a gift to, for example, your grandchildren, or your grandparents, or your spouse's parents, or your aunt or uncle or cousin. In such a case, however, the transaction would still be subject to the other provisions of RPC 1.7 and 1.8 relating to conflicts of interest involving the lawyer's own interests.

The second occurrence of the phrase "related to" in RPC 1.8(c) refers to the relationship between the donor and the recipient of the gift. It provides that the prohibition against preparing gift instruments for gifts to you or to specified persons related to you does not apply if the donor of the gift is related to the recipient of the gift. Since this occurrence of the phrase "related to" is not qualified by the categories of "parent, child, sibling, or spouse" used earlier in the rule, you may document a gift, even a very substantial gift, to yourself or to your parent, child, sibling, or spouse, where your donor client is in any way related to the donee, regardless of how remote that relation is. This thus allows you, for example, to draft your parent's will which leaves you a substantial bequest. Theoretically, this would also allow you to draft wills for your fourth cousin twice-removed and your spouse's thirty-second cousin, neither of whom you have ever before met, also leaving you substantial bequests. Given the underlying concern of fairness to the client, such a gift might still be set aside as overreaching unless the client has had the advice of independent counsel. The more remote the relationship, and the more substantial the gift, the more clearly you should see red flags signaling it would be wise to have the potential donor client consult an independent counsel about the potential gift and that you should refrain from preparing any of the documents. Even drafting wills for your own parents, clearly authorized by the rule, is not necessarily a good idea, especially if you have siblings who might contest any disproportionate bequest to you.

If you may and do accept any gift from a client, you would be wise to document it as a gift unless the gift is wholly nominal in amount. The RPC 1.8(c) ban on preparing instruments refers to legal instruments which effect a gift, such as a will, a conveyance, or a deed of gift. It does not ban documents acknowledging receipt of a gift, such as a simple letter thanking the client for the gift. If the gift is substantial in amount, your letter should also make it clear that you advised the client to seek independent legal advice before making the gift to you, or if it came to you unexpectedly, you may want, after receipt of it, to suggest that the client seek independent legal advice and that in the meanwhile you will hold the gift for the client until the client has an opportunity to do so. Even if you fully document such a gift, persons related to the donor may contest the gift, particularly if the gift is a testamentary gift or if the donor is in any way under a disability.

Loans from Clients

The RPCs provide clearer guidelines

for loans from clients than they do for gifts. A loan is merely a form of a business transaction, even if in offering the loan the client is motivated by friendship with, or by being related to, the lawyer. You may accept a loan from a client, but to do so you must be careful to meet the stringent case law and RPC requirements for doing so, and know that the burden will be entirely on you to prove that you met each requirement. As a practical matter, you would be wise to seek any loans from independent persons and not from your clients, and recognize that if no one else will lend you the money, there is a high likelihood that any client loan to you will be suspect as unfair to your client and in violation of your ethical requirement. If your client is your lender of last resort, you will have a great burden proving that any client loan to you is not unfair.

The Washington Supreme Court outlined its strict approach to lawyer-client business relations in *In re McGlothlen*, 99 Wn.2d 515, 524-525, 663 P.2d 1330 (1983):

> *The disclosure which accompanies an attorney-client transaction must be complete. Moreover, the burden upon the attorney defending his or her actions is a great one. "So strict is the rule on this subject that dealings between an attorney and his client are held, as against the attorney, to be prima facie fraudulent, and to sustain a transaction of advantage to himself with his client the attorney has the burden of showing not only that he used no undue influence, but that he gave his client all the information and advice which it would have been his duty to give if he himself had not been interested, and that the transaction was as beneficial to the client as it would have been had the client dealt with a stranger." [citations omitted] . . . Thus, an attorney attempting to justify a transaction with a client has the burden of showing (1) there was no undue influence; (2) he or she gave the client exactly the same information or advice as would have been given by a disinterested attorney; and (3) the client would have received no greater benefit had he or she dealt with a stranger."*

If you may and do accept any gift from a client, you would be wise to document it as a gift unless the gift is wholly nominal in amount.

The Supreme Court in *In re McMullen*, 127 Wn.2d 150, 164, 896 P.2d 1281 (1995), quoting the above, stated that "Although *McGlothlen* was decided under the former Code of Professional Responsibility, this rule applies equally under the RPC." 99 Wn.2d 515, 525.

RPCs 1.7 and 1.8 specify what you must do to carry the burden that the transaction with the client is not fraudulent. RPC 1.7 prohibits you from representing a client if the representation may be materially limited by your own interests unless: (1) you reasonably believe the representation will not be adversely affected, and (2) the client consents in writing after consultation and full disclosure of the material facts.

RPC 1.8(a) prohibits you from entering a business transaction with a client unless: (1) the transaction and terms are fair and reasonable to the client, (2) the transaction and terms are fully disclosed and transmitted in writing to the client, (3) the disclosure and transmission are accomplished in a manner which can be reasonably understood by the client, (4) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction, and (5) the client consents to the transaction and the terms. Commenting on these requirements, the Supreme Court in *In re Gillingham*, 126 Wn.2d 454, 462 note 5, 896 P.2d 56 (1995), noted that while RPC 1.8 does not explicitly require the lawyer's advice to seek independent counsel to be in writing, or that the client's consent to the transaction be in writing, "the prudent attorney will advise the client in writing . . . A prudent attorney will normally obtain the consent of the client in writing as well."

Each of these requirements must be fully satisfied for the loan from a client to you to be permissible under the RPCs. In *McGlothlen* the Supreme Court declared its intent to hold lawyers to a high standard in meeting these requirements wherever the lawyer's status as a lawyer gives him or her disproportionate influence over the persons with whom he or she is dealing. 99 Wn.2d 515, 517. It found in that case that although the lawyer's "conduct as measured against ordinary standards was entirely proper, it did not meet the stringent requirements imposed upon an attorney dealing with his or her client." [99 Wn.2d 515, 525]. The Court concluded, however, that, "Inasmuch as we are announcing a new standard . . . it would be unfair to impose discipline here." In that case, the lawyer had failed to provide full disclosure to the sole beneficiary of an estate from whom he had purchased a house (the sole asset of the estate), including the existence of an appraisal of the house, which he later resold at a profit.

The Court disbarred a lawyer in *In re Stock*, 104 Wn.2d 273, 704 P. 2d 611

(1985), for numerous conflicts of interest, including loaning, without client consent, to one client funds in the lawyer's trust fund belonging to another client. The lawyer advised another client to loan money to a corporation in which the lawyer had an interest without disclosing that interest and without advising the client to seek independent counsel. The lawyer also represented that same corporation when it was sued by another client who had also invested in the corporation at the lawyer's invitation.

The Court suspended a lawyer from practice in *In re Johnson*, 118 Wn.2d 693, 826 P.2d 186 (1992), for twice borrowing money from clients without providing them with full written disclosure of his precarious financial situation. The Court suspended another lawyer in *In re Gillingham*, *supra*, for including himself in his client's will (which was changed before the client's death) and for borrowing money from his client without meeting the RPC requirements, even though it appears the client had originally offered to give the money to the lawyer, but, at the lawyer's request, instead loaned the funds to the lawyer.

The Court also suspended a lawyer from practice in *In re McMullen*, 127 Wn.2d 150, 164, 896 P.2d 1281 (1995), for borrowing money from a financially unsophisticated client on terms unfair and unreasonable to the client and for not fully disclosing material facts to the client, including the fact that the lawyer was not a good credit risk. The interest rate was viewed as unfair because although it was at a rate then current for secured loans, the loan in question was unsecured, thus suggesting the client was entitled to a higher rate of interest. The investment in question was also inappropriate for the client in terms of the client's age and need for current income.

Similarly, in *In re James J. Stefnik* (unreported Supreme Court order, *Washington State Bar News*, May 1997, page 33), the Supreme Court suspended a lawyer from practice, pursuant to the lawyer's stipulation to discipline, for, among other things, borrowing $40,000 from a client on terms unfair to the client (for example, inadequate security and a period of interest-only payments), without full disclosure of material terms (for example, the lawyer being a very poor credit risk who could not secure a loan from conventional sources), and without securing a written waiver of conflict of interest.

Gifts and Loans from Lawyers to Clients

Gifts and loans from lawyers to clients are far more common than gifts and loans from clients to lawyers. Usually lawyer gifts to clients are in the form of pro bono services, where the lawyer willingly gives free or reduced-rate legal services to his or her client. Indeed, the RPCs encourage the gift of such services by providing in RPC 6.1 that "A lawyer should render public interest legal service. A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means . . ." Thus, a lawyer is ethically permitted, even encouraged, to give clients gifts of legal services. The practical limitation is that a lawyer cannot take on so many nonpaying clients as to endanger his or her ability to fully serve all of

the lawyer's clients.

A lawyer may also make a gift or loan of cash to a client, or advance or guarantee financial assistance to a client, except while representing the client in connection with litigation. Thus, if you do not represent a client in pending or contemplated litigation, you may make loans or gifts to your client. If you do represent your client in contemplated or pending litigation, however, you may loan, but not give, advances for directly related litigation expenses. Your client, however, must ultimately be liable for the expenses.

These rules are mostly set out in Washington's RPC 1.8(e):

> *A lawyer who is representing a client in a matter . . . (e) Shall not, while representing a client in connection with contemplated or pending litigation, advance or guarantee financial assistance to his or her client, except that: (1) A lawyer may advance or guarantee the expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses; and (2) In matters maintained as class actions only, repayment of expenses of litigation may be contingent on the outcome of the matter.*

Our RPC 1.8(e) requires that the client be ultimately liable for the advanced costs. Unlike most of our other RPCs, this provision is not based on the American Bar Association Model Rules, but rather is a carry-over from our prior Code of Professional Responsibility. In enacting its RPC 1.8(e), Washington rejected Model RPC 1.8(e), which provides:

> *(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.*

You may give to clients, and receive from them, both gifts and loans, but the RPCs and case law set out some significant restrictions.

The rationale given for the rejection by the WSBA Task Force on the Rules of Professional Conduct is as follows:

> *The Task Force amended paragraph (e) in response to . . . remarks at the Seattle hearing. The WSTLA Board was concerned that this rule, coupled with the advertising rule, would give an unfair advantage to those who could afford to advance costs and expenses. The Task Force members felt the rule might create excise tax liability for lawyers where repayment of the advance was contingent on the result. Therefore, DR 5-103(B) [the predecessor to RPC 1.8(e)] was substituted, in its entirety, for the model rule.*

Thus, it appears that under Washington's RPCs you: (1) may not pay court costs and expenses of litigation on behalf of an indigent client, (2) may advance litigation-related costs which are listed in RPC 1.8(e), but only those costs, and only if the client remains ultimately liable for them, and (3) may not advance living or any other expenses to a client while representing that client in litigation or contemplated litigation (but if not so representing the client, you may give or loan money to the client for any expenses). It is possible that public-policy considerations and the need for indigent clients to have access to justice may have an effect on interpretation of these rules. In any case, however, any transactions with a client remain fully subject to all of the provisions of RPC 1.7(b) and 1.8(a), discussed above, they must be fair and reasonable to the client, full disclosure must be made, and so on. Thus, you have the burden of proving you met each of the requirements, and if you fail to do so, the transaction (especially loans) may be viewed as unfair to your client.

The prohibitions against giving financial aid to a client in connection with pending or contemplated litigation, as well as the RPC 1.8(j) prohibition against acquiring a proprietary interest in a lawsuit other than a reasonable contingent fee or lien, continue similar common-law prohibitions of champerty (investing in a client's cause of action) and maintenance (providing living expenses to the client). The concern was that the lawyer's financial assistance would encourage a client to continue a lawsuit that might otherwise be forsaken, or, more generally, would encourage lawyers to subsidize their clients'

lawsuits, and that a lawyer's objectivity may be sacrificed if he or she has a direct financial interest in the lawsuit. See Hazard & Hodes, *The Law of Lawyering* (2d ed.) §1.8:601, and ABA Center for Professional Responsibility, *Annotated Model Rules of Professional Conduct* (3d ed., 1996), page 130.

Conclusion

In general, any transaction with a client is likely to be viewed as fraudulent to the client unless you can meet your heavy burden of proving it is fair and reasonable to the client, that you fully disclosed all material facts, and that your client consented to the transaction and the conflict of interest. You may give to clients, and receive from them, both gifts and loans, but the RPCs and case law set out some significant restrictions. You may not prepare legal instruments effecting gifts to you or your immediate family unless the donor is related to you or the amount is insubstantial. Even where the gift is insubstantial, or the donor is related to you, however, you would be wise to have independent counsel handle the transaction. In general, beware of gift-giving clients, and remember that while you can give clients your time, you cannot give them your money (other than for certain specified litigation-related expenses) if you are representing them in litigation. ■

Disciplinary Notices

The following notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 11.2(c)(4) of the Supreme Court's Rules for Lawyer Discipline, and pursuant to the February 18, 1995 policy statement of the WSBA Board of Governors.

Disbarred

Bonnie Lindstrom (WSBA No. 21376, admitted 1992), of Federal Way, has been disbarred effective September 29, 1998, by order of the Supreme Court following review of a Stipulation to Discipline. The discipline is based upon her taking $5,465 from the South King County Bar Association while serving as its treasurer.

Lindstrom took sums ranging from $200 to $700 on 15 separate occasions from January 1996 to August 1997. She repaid some of the money in January 1997 and June 1997 and repaid the balance in August 1997. The money she took was deposited into her personal checking account and used to pay her own expenses.

Lindstrom's conduct violated RPC 8.4(c), which prohibits a lawyer from engaging in acts involving dishonesty, fraud, deceit or misrepresentation, and constituted conduct demonstrating unfitness to practice law in violation of RLD 1.1(p).

Leland G. Ripley of Seattle represented Lindstrom. Disciplinary Counsel Linda B. Eide represented the Bar Association.

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Vernon Guinn (WSBA No. 3314, admitted 1966), of Longview, has been disbarred pursuant to a stipulation for discipline, approved by the Supreme Court effective September 9, 1998.

In the stipulation, Mr. Guinn admitted that during the period from December 1986 through May 1989, he converted $19,996 in trust funds belonging to one of his clients.

On September 30, 1992, Mr. Guinn was convicted by a jury of First Degree

Theft for taking funds belonging to his client. Mr. Guinn was sentenced to 180 days, with 90 days converted to community service, and was required to pay restitution to his client. He has been suspended from practicing law under Rule for Lawyer Discipline 3.2 since August 8, 1991.

Mr. Guinn stipulated that his conduct violated the following rules: (1) RLD 1.1(a) (commission of any act involving moral turpitude, dishonesty or corruption); (2) RLD 1.1(b) (willful disobedience or violation of a court order); and (3) RLD 1.1(i) (violating the Rules of Professional Conduct) and, in particular, RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); and (4) RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

The Hearing Officer was Stephen J. Fredrickson of Seattle. Kurt Bulmer represented Mr. Guinn. Disciplinary Counsel Jonathan Burke represented the Bar Association.

SUSPENDED

Brian Easton (WSBA Number 12629, admitted November 1982) was ordered suspended from the practice of law for 60 days effective September 29, 1998 by order of the Washington State Supreme Court.

The discipline imposed was reciprocal to Easton's suspension in the State of Alaska by order of the Supreme Court of the State of Alaska dated May 22, 1997. Easton's suspension was based on his noncompliance with the terms of probation ordered by the Supreme Court of the State of Alaska in earlier disciplinary proceedings. Those proceedings were based on Easton's failure to answer a grievance filed against him and failure to respond to bar counsel.

Easton did not respond to the Washington State Supreme Court's order issued pursuant to Rule 12.6 of the Rules for Lawyer Discipline, which directed him to inform the court of any claim that the imposition of identical discipline in this state would be unwarranted and, if so, the reasons therefor. Disciplinary Counsel Felice P. Congalton represented the Bar Association.

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James A. Heard (WSBA No. 12272, admitted 1982), of Aberdeen, has been suspended from the practice of law for two years by order of the Washington Supreme Court, dated September 24, 1998. The suspension, effective immediately, is based on his financial and sexual exploitation of a client.

Financial Misconduct

In 1989, Mr. Heard represented a 23-year-old woman who suffered serious head injuries and was in a coma for two weeks as a result of a motorcycle accident. Mr. Heard negotiated settlements on her behalf with her insurance company and the insurer for the owner of the motorcycle. Each insurer settled for policy limits of $25,000. The other driver settled by purportedly transferring a portion of an undocumented and unrecorded interest in a house and the title to an automobile registered to the driver, both of which assets proved illusory. Mr. Heard valued the total settlement at $150,000. The two

$25,000 insurance checks were the only cash received in settlement of the client's claims; Mr. Heard kept all of the cash as his one-third contingency fee.

Mr. Heard never provided his client with an accounting of the settlement proceeds and fee.

In assigning a specific value to the purported transfer of the house, Mr. Heard relied on the statements of the driver, who claimed he paid money to his sister for the house, that it was titled in her name, and that she owned an undivided, but untitled interest in it. Prior to the execution of the settlement agreement, Mr. Heard took no other steps to independently verify the existence or valuation of the driver's interest in the house. Mr. Heard did not have the automobile appraised prior to the settlement.

Mr. Heard did not advise his client of problems which might result from the failure to verify the existence or value of the house interest or the automobile. Nor did he advise his client that he was retaining the only cash received in the settlement. Shortly after the settlement, the driver's sister sold the house. The client received nothing from the sale.

After Mr. Heard received his fee, he took no steps to ensure that the client obtained the benefit from the purported house transfer, nor did he advise his client of contacts his office had with the driver's sister, wherein she denied any claim on her house by his client.

Sexual Misconduct

Prior to final settlement of this matter, Mr. Heard went to the client's house and asked her to go with him to a restaurant/lounge to talk about the case. Although the client told Mr. Heard she should not be drinking alcohol, and he knew from her medical records that she had a history of alcohol and sexual abuse, he bought drinks for her. After leaving the lounge, he asked her to drive his car to another lounge even though she had told him she could not drive because she was a habitual traffic offender with outstanding warrants. At the second lounge, he bought additional drinks for her. They then left and, at his suggestion, went to his apartment, where they spent the night together and engaged in consensual sexual relations.

The Court found that Mr. Heard's financial exploitation of his client violated RPC 1.5; his failure to ascertain the status of the interest in the house violated the requirements of RPC 1.1 and 1.3 to completely and diligently represent the client; his failure to keep his client advised of the status of her matter violated RPC 1.4; and his sexual exploitation of his client was an act of moral turpitude in violation of RLD 1.1(a).

Mr. Heard was represented by John Farra. Disciplinary Counsel Maureen Devlin and Randy Beitel represented the Bar Association.

Reprimand

Charles Nelson Berry, III (WSBA No. 8851, admitted 1979), of Seattle, has been ordered reprimanded pursuant to a stipulation for discipline, approved by the Disciplinary Board on May 18, 1998. The discipline is based on Mr. Berry's conduct during a trial in 1993. Following the Court's oral ruling dismissing portions of his client's claim for damages, Mr. Berry spoke directly to the Court and referred to its rulings as as "disgusting" and shameful, and as constituting a "travesty of justice." He also stated that he was "outraged by the way this Court has handled this whole case."

In addition, the Court also found that Mr. Berry engaged in a pattern of misconduct during the jury trial by expressing his personal opinions as to the veracity and credibility of witnesses during cross examination despite the Court's repeated admonitions to cease such conduct.

Mr. Berry stipulated that his conduct violated RPC 3.4(c) (disobeying an obligation under the rules of a tribunal), RPC 3.4(e) (asserting personal knowledge of facts in issue); RPC 3.4(f) (stating personal opinions as to the justness of a cause or credibility of witnesses); and RPC 8.4(d) (engaging in conduct that is prejudicial to the administration of justice). The Hearing Officer was Kenyon E. Luce of Tacoma. Robert Wayne represented Mr. Berry. Disciplinary Counsel Jonathan Burke represented the Bar Association. ■

"On Behalf of the Lawyers of the State of Washington . . ."

Robert D. Welden, WSBA General Counsel

So begins the letter from the Lawyers' Fund for Client Protection to each of the victims of the few lawyers who are found each year to have misappropriated or failed to account for funds or property of their clients.

The Fund makes discretionary gifts to at least partially compensate clients who have been victimized by lawyers. This year, the Lawyers' Fund Committee and Trustees have approved gifts from the Fund totaling $193,000. These involved 22 applications concerning 11 lawyers. More than $140,000 of this went to the victims of one lawyer.

It is a terrible thought that any lawyer would steal from or defraud a client, but the fact that this only involves 11 lawyers out of a population of more than 20,000 active lawyers in the WSBA offers some solace. Every active lawyer supports this Fund through a $10 assessment that also supports the Fund Committee and staff time. Because most of the investigative work is done by the Office of Disciplinary Counsel, the Fund overhead is less than 6% of its total budget. Because of the limits on the Fund, the maximum which may be paid on any one claim is $30,000.

Before gifts are made from the Fund, the recipient is required to sign a subrogation agreement with the Bar. Restitution is sought where possible, but it is chiefly received as a result of court-ordered restitution in criminal matters, or when a disbarred lawyer seeks reinstatement.

There were a variety of circumstances which led to approved gifts from the Fund:

- Of the 22 approved claims, seven concerned a lawyer who practiced Federal tax law. His clients were in delinquency. The lawyer advised the clients to tender funds to the IRS in an Offer in Compromise. The lawyer was given more than $200,000 by clients for this purpose. The lawyer misappropriated all of the funds and fled the country. His whereabouts remain unknown. The Fund paid a total of $140,309 to these applicants.

- One application concerned a lawyer for whose clients seven claims totaling $154,000 were approved in 1997. The current claim arose from a $55,000 settlement in a personal injury claim. The lawyer, who had been friends of the client's family and had delivered the eulogy at the client's father's funeral, fled to New Zealand with this and other clients' funds totaling about $380,000. The lawyer subsequently returned to the U.S., and he has been charged with 13 counts of theft and two counts of fraud. The Fund paid $29,569, the claim limit.

- Three applications were for recovery from a lawyer who failed to perform services or return fees in two legal matters, and who forged a client's endorsement

to a $200 check given to the lawyer as an award of sanctions to the client. The Fund paid a total of $5,440.

- One unusual application involved a lawyer who had resigned from the bar. He settled a personal injury claim on behalf of a client without the client's knowledge, and the funds were never paid to the client. The Fund paid $4,879.

- Two applications concerned fees paid to a lawyer who was initially associated with a law firm, and subsequently opened his own practice. In one case, while with the firm, the lawyer accepted fees to file two contingent fee cases. He did nothing while with the firm or after. In the disciplinary proceeding, the hearing officer found that neither the lawyer nor the law firm was entitled to any fees. The firm returned the portion of fees it had retained; the lawyer did not. The second application also concerned failure to return unearned fees accepted in his solo practice. The Fund paid a total of $3,500.

- One application involved fees paid in a criminal case to a now-deceased lawyer. The lawyer accepted an advance fee deposit which he deposited into his general, rather than trust, account. He failed to perform the services for which he was employed. The Fund paid $1,500.

- One application concerned funds withheld from a settlement to pay litigation costs. The lawyer never paid the costs, nor did he pay the money to the client. The Fund paid $1,780.

- Six applications concerning four separate lawyers each involved refusal or inability to return unearned fees in situations where the lawyer performed absolutely no services for the client. In one case, the lawyer in a separate matter pled guilty in Federal Court to forging the signature of a judge to a court document. In another, the lawyer abandoned his practice before commencing the work for his client. In the third, the lawyer became disabled but the client's funds were not returned. In the fourth, the lawyer did nothing on the client's case and was disbarred on other grounds.

All of these lawyers have been suspended or disbarred, except for the one who is deceased, and one who is on disability inactive status. ■

For a copy of the 1998 Annual Report of the Lawyers' Fund for Client Protection, please call the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722).

NOTICE

The Washington State Access to Justice Board is in the process of evaluating the implementation to date of its Plan for the Delivery of Civil Legal Services to Low Income People in Washington State. We are very interested in your comments and feedback. Please contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org if you would like to receive the information packet, or visit www.ejc.org. Thank you for your interest and support.

Emeritus Training Set for January

The Washington State Supreme court recently approved the adoption of APR 8(e), which creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law. The practice of a lawyer admitted under this section shall be limited to providing legal services for no fee through a qualified legal services provider; or serving as an unpaid governing or advisory board member or trustee of or providing legal counsel or service for no fee to a qualified legal services provider. The goal of this rule is to encourage pro bono participation by highly skilled and experienced attorneys and judges who wish to make a significant contribution to current access to justice-related efforts.

To qualify for Emeritus status, an attorney must be in current good standing as a lawyer and meet minimum active practice experience requirements. Washington lawyers will pay the annual inactive fee of $50. Non-Washington lawyers will pay $235 (subject to approval by the Washington State Supreme Court.) to apply for limited admissions as Emeritus members. To obtain an Emeritus status application form, please call (206) 727-8227.

Emeritus attorneys are exempt from Continuing Legal Education requirements. However, they must complete a free, full-day training program to be held ***Wednesday, January 27, 1999*** at the WSBA offices in Seattle. The training will include an introduction to the Washington State Legal Services Provider Network; an overview of types of volunteer opportunities; an overview of key substantive areas of law; and an overview of key legal issues and communication barriers involving specific client populations. Please call Sharlene Steele at (206) 727-8262 to register for this training session. The deadline to register for the training is ***Monday, January 4, 1999.***

Emeritus applicants must identify the legal services provider for whom he or she will be providing pro bono services. For a listing of qualified civil legal services programs, please call (206) 727-8227. Emeritus attorneys may also volunteer at any of the public defender offices listed below:

Associated Counsel for the Accused	Seattle	(206) 624-8105 x237
Clallam-Jefferson County Public Defender	Port Angeles	(360) 452-3307
Counsel for Defense	Spokane	(509) 625-3443 x11
Northwest Defender Association	Seattle	(206) 674-4700
Pierce County Dept. of Assigned Counsel	Tacoma	(253) 798-6062
Seattle-King County Public Defender Assn.	Seattle	(206) 447-3900 x603
Skagit County Public Defender	Mt. Vernon	(360) 336-9405
Snohomish County Public Defender	Everett	(425) 339-6300 x201
Society of Counsel Representing Accused Persons	Seattle	(206) 322-8400 x3147
Spokane City Public Defender	Spokane	(509) 625-4472
Spokane County Public Defender	Spokane	(509) 456-4246
Thurston County Office of Assigned Counsel	Olympia	360) 754-4897
Whatcom County Public Defender	Bellingham	(360) 676-6670
Washington Appellate Project	Seattle	(206) 587-2711
Yakima County Dept. of Assigned Counsel	Yakima	(509) 574-1160

WSBA Service Center in Full Swing

The **Washington State Bar Association Service Center** has been busy answering a wide variety of inquiries from Bar members and the public. Callers can get answers to their questions about licensing fees, status changes, MCLE compliance, various dates and deadlines, CLE seminars and credits, section membership, publication orders, address changes, and much more.

The Service Center took 1,644 calls in October (its first full month of operation) and currently receives about 80 calls per day. The knowledgeable and helpful service center representatives are ready to help you Monday through Friday, from 8:00 a.m. to 5:00 p.m. Contact the WSBA Service Center at:

800-945-WSBA (9722)
206-443-WSBA (9722)
questions@wsba.org

Volunteer for CASA

King County Superior Court is looking for volunteers to train as Court Appointed Special Advocates to represent children involved in custody and visitation disputes in family law cases.

The CASA volunteer will receive extensive training and supervision and will conduct interviews, write reports and testify in hearings or trials on behalf of these children.

Classes are scheduled for December 1998 at the King County Court House in Seattle.

For more information and an application packet, call **(206) 296-9320**.

USURY RATE

The average coupon equivalent yield from the first auction of 26-week treasury bills in November 1998 is 4.52 percent. The maximum allowable interest rate permissible for December is therefore 12 percent. 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 52 of the June *Bar News*, and in the online edition of the *Bar News* at http://www.wsba.org/barnews/usuryrate. html.

The Washington Protection and Advocacy System, a statewide organization, is seeking persons with legal expertise to serve on its Board of Directors. We need volunteers from diverse cultures and areas of the state who share our passion for advancing the rights of people with disabilities. If you would like to be considered for one of the current openings, please call 800-562-2702 and ask for Robin.

The Speakers Bureau Wants You

The WSBA Speakers Bureau is a public education program that promotes public understanding of the law, increases citizen awareness of legal rights and responsibilities, and builds positive community relations. Through the Speakers Bureau, lawyers volunteer their time and expertise to help citizens understand how the legal system works and how the law affects their lives. Lawyers speak to civic, professional and school groups on a variety of different topics and may also volunteer to guide students through mock trial programs.

The WSBA has made a concerted effort to rebuild the Speakers Bureau during the last six months. Thanks to the attorneys who have already volunteered. While the speaker pool is expanding, there is still plenty of room for interested lawyers. Some of the benefits to attorney-volunteers include: honing speaking skills, educating and inspiring others, achieving personal satisfaction, cultivating respect for lawyers and the legal system, and obtaining potential future clients.

Speaker referrals are already in progress. If you have ideas or questions or would like to join the Speakers Bureau, please contact the Law-Related Education Coordinator, Laurie Rosenfeld, at (206) 727-8226.

Calendar

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

To announce a seminar, please send information to:
WSBA, *Bar News* Calendar
2101 4th Avenue, 4th Floor
Seattle, WA 98121-2330
fax: 206-727-8320
e-mail: comm@wsba.org

Information must be received by the 1st of the month for placement in the following month's issue.

BANKRUPTCY

Fundamentals of Bankruptcy Law and Procedure in WA
Dec. 8 – Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-7909.

BUSINESS LAW

Contract and Purchasing Law in WA
Dec. 16 – Seattle. 6.5 CLE credits (incl. .5 ethics). By NBI 715-835-7909.

COMPUTER LAW

9th Annual Seattle Conference on Computer Law
Dec. 3 & 4 – Seattle. 14.5 CLE credits (incl. ethics). By LSI 206-567-4490.

CONSTRUCTION LAW

Advanced Construction Law in WA
Dec. 11 – Seattle. 6.5 CLE credits (incl. 1.25 ethics). By NBI 715-835-7909.

CRIMINAL LAW

The Masters of the Criminal Practice
Dec. 16 – Seattle. 6.5 CLE credits estimated. By WSBA CLE 800-945-WSBA 206-443-WSBA.

EDUCATION

Special Education Law in WA
Dec. 3 – Seattle. 6.5 CLE credits. By Professional Development Network 414-798-5242.

EMPLOYMENT

Employee Discharge and Documentation in WA
Dec. 3 – Seattle. 6.5 CLE credits. By Lorman 715-833-3959.

How to Conduct an Internal Investigation
Dec. 3 – Seattle. 6 CLE credits. By Council on Education in Management 925-988-1837.

Advanced Workers' Compensation in WA
Dec. 17 – Seattle; Dec. 18 – Spokane. 6.25 CLE credits (incl. 1.25 ethics). By NBI 715-835-7909.

ENVIRONMENTAL

WA Clean Water
Dec. 10 & 11 – Seattle. 13.25 CLE credits. By LSI 206-567-4490.

ESTATE PLANNING

How to Draft Wills and Other Estate Planning Documents
Dec. 3 – Seattle and Spokane. 6.5 CLE credits (incl. .5 ethics) estimated. By WSBA CLE and Young Lawyers Division 800-945-WSBA / 206-443-WSBA.

How to Probate an Estate and Handle Post-mortem Matters
Dec. 4 – Seattle and Spokane. 6.5 CLE credits estimated. By WSBA CLE and Young Lawyers Division 800-945-WSBA / 206-443-WSBA.

ETHICS

Ethics From the Inside Out
Dec. 2 – Seattle. 6.5 ethics CLE credits. By KCBA 206-624-9365.

Ethics in the Pro Se World
Dec. 2 – Seattle. 2 ethics CLE credits. By KCBA 206-624-9365.

Ethics Tele-seminars
Dec. 2 (estate planners; family lawyers); Dec. 16 (litigators). 1.5 CLE ethics credits. By WSBA CLE 800-945-WSBA / 206-443-WSBA.

Legal Ethics Seminar
Dec. 8 – Seattle. CLE credits TBA. By West Group 206-628-6435

Ethics: Multi-party/multi-level Defense and Coverage Litigation
Dec. 10 – Seattle. CLE credits 1.5 ethics. By NW Environmental Claims Organization 206-689-8500.

Ethics Seminar
Dec. 11- Seattle. 3.75 CLE ethics credits pending. By WDTL 206-521-6559 or www.wdtl.org

Ethical Issues in the Plaintiff's PI Practice
Dec. 12 – Seattle. 6 ethics CLE credits. By WSTLA 206-464-1011.

Ethical Issues in the Plaintiff's Personal Injury Practice
Dec. 18 – Seattle. CLE credits 6.00. By WSTLA 206-464-1011.

Professional Responsibility Institute
Dec. 19 – Seattle. CLE credits TBA. By UW CLE 206-543-0059.

Professionalism and Character: How Intertwined?
Dec. 21; Jan. 28; Feb. 23 – by telephone. 2 CLE ethics credits pending. By TRT Inc. 800-672-6253 or www.trt-cle.com

Twin Professional Problems: Substance Abuse and Elimination of Bias
Dec. 28, Jan. 27, Feb. 16 – by telephone. 2 CLE ethics credits pending. By TRT Inc. 800-672-6253 or www.trt-cle.com

Sanctions Competence & Diligence
Dec. 30, Jan. 29, Feb. 15 – Seattle. CLE credits 2. By TRT, Inc. 1-800-672-6253 or www.trt-cle.com

GENERAL

Communication in the Courtroom
Dec. 4 – Tacoma; Dec. 8 – Seattle; Dec. 10 – Yakima; Dec. 11 – Spokane. 7.5 CLE credits. By Carl Grant 206-364-5289.

What Lawyers Need to Know About Investments
Dec. 4 – Seattle. 6 CLE credits (incl. 2 ethics). By WA Law Institute 206-726-9337.

7th Annual Water Law
Dec. 4 – SeaTac. 6 CLE credits estimated. By WSBA CLE 800-945-WSBA / 206-443-WSBA.

The CD Law CLE
Dec. 5 & 15 – Seattle. 3 CLE credits. By Washington Continuing Legal Education 360-452-7688, or e-mail mbaumann@tenforward.com

The Internet as a Law Office Tool
Dec 5 & 15 – Seattle. CLE credits 4.25 (incl. .5 ethics). By Washington Continuing Legal Education 360-452-7688, email: mbaumann@tenforward.com

Lawyers and the Internet: What Every Lawyer Should Know about Using the Internet
Dec. 9 – Seattle. 7.5 CLE credits (incl. 2 ethics). By Sequoia Professional Development 202-955-9373.

Best of CLE 1998
Dec. 10 – Seattle. 6.5 CLE credits (incl. 1.5 ethics). By WSBA CLE and General Practice Section 800-945-WSBA / 206-443-WSBA.

Creation of the Constitution
Dec. 18 – Seattle. 3.5 CLE credits estimated. By UW CLE 206-543-0059.

Cross Training 101
Dec. 21 – Seattle. CLE credits TBA. By UW CLE 206-543-0059.

Last Chance Video Round-up
Dec. 21-23 – Seattle (WSBA offices). 21.25 CLE credits (incl. 6.5 ethics). By WSBA CLE 800-945-WSBA / 206-443-WSBA.

Psychology and the Legal Profession
Dec. 29; Jan. 25; Feb. 22 – by telephone. 2 CLE credits pending. By TRT Inc. 800-672-6253 or www.trt-cle.com

HEALTH CARE

HMFA Workshop
Dec. 18 – Seattle. 7.75 CLE credits. By Healthcare Financial Management Association 253-848-6661 ext. 2830.

IMMIGRATION

Winning Asylum Cases
Dec. 7 (advanced); Dec. 9 (intro) – Seattle. 3.75 CLE credits. By NW Immigrant Rights Project 206-587-4009.

INSURANCE

WA Title Insurance
Dec. 11 – Seattle. 6.25 CLE credits (incl. 1.5 ethics). By Lorman 715-833-3940.

LAND USE

Land Use Training
Dec. 8-11 – Seattle. CLE credits TBA. By UW CLE 206-543-0059.

WA Boundary Law and Adjoining Landowner Disputes
Dec. 17 – Lynnwood; Dec. 18 – Seattle. (Also self-study.) 6.5 CLE credits. By Professional Education Systems 715-833-5296.

LITIGATION

Trial Masters at Work
Dec. 4 – Seattle. CLE credits TBA. By WSTLA 206-464-1011.

The Tacoma CLE
Dec. 10 – Tacoma. CLE credits TBA. By WSTLA 206-464-1011.

South Sound Year End Smorgasbord
Dec. 10 – Tacoma. 7 CLE credits (incl. 1 ethics). By WSTLA 206-464-1011.

DUIs and the 1998 Legislation
Dec. 11 – Seattle. 7.5 CLE credits (incl. 1 ethics). By NW College of DUI Defense 425-451-1995.

REAL ESTATE

10th Annual Conference on Commercial Real Estate
Dec. 3 & 4 – Seattle. 15 CLE credits (incl. 1 ethics). By LSI 206-567-4490.

Constructing Your Case
Dec. 4 – Seattle. 6.25 CLE credits (incl. 1 ethics). By WACDL 206-623-1302.

Real Estate Exchanges Under §1031 I.R.C.
Dec. 11 – Bellevue. 7.25 CLE credits. By Center for Professional Seminars 206-340-1311.

Curran Mendoza P.S.

is pleased to announce that

Kenneth M. Kilbreath

has joined our firm as an associate.

Mr. Kilbreath's practice will concentrate on estate planning and tax guidance in the area of estate planning and probate.

Post Office Box 140
555 West Smith Street
Kent, Washington 98035-0140
(253) 852-2345

C
M

The Law Office of David N. Mark

is pleased to announce

Patrick M. Pasion

has joined the firm as an associate.

Mr. Pasion is a University of Washington 1998 law graduate, who worked with this firm as a summer law clerk on the *Ryder v. Taco Bell* class action.

Our new offices are located at:

Central Building
810 Third Avenue, Suite 412
Seattle, Washington 98104
(206) 340-1840

We will continue to represent employees in wage and hour litigation, including class actions.

Carney Badley Smith & Spellman

is pleased to announce that

Steven J. Hopp

Formerly of Davis Wright Tremaine has joined the firm as a Shareholder practicing in the areas of Federal Taxation, Corporate Finance, Mergers and Acquisitions

and we are also pleased to announce that

Edmund V. Caplicki, III

practicing in Construction Law

and

Diane Kownacki

practicing in Environmental and Insurance Law

have joined the firm as associates

701 Fifth Avenue, Suite 2200
Seattle, Washington 98104-7091
Telephone: (206) 622-8020
Facscimile: (206) 467-8215
E-mail: info@carneylaw.com

THE LAWYERS OF

Vandeberg Johnson & Gandara

A PARTNERSHIP OF PROFESSIONAL SERVICE CORPORATIONS

are pleased to announce that

Danferd W. Henke

has joined the firm Of Counsel

and that

Lucy R. Clifthorne

and

Robert J. Burnett

are associates of the firm

VJ &G Vandeberg Johnson & Gandara
A PARTNERSHIP OF PROFESSIONAL SERVICE CORPORATIONS

TACOMA OFFICE
1201 PACIFIC AVENUE
SUITE 1900
P.O. BOX 1315
TACOMA, WA 98401-1315
FACSIMILE (253) 383-6377
(253) 383-3791 (TACOMA)

SEATTLE OFFICE
ONE UNION SQUARE
SUITE 2424
600 UNIVERSITY STREET
SEATTLE, WA 98101-1192
FACSIMILE (206) 464-0484
(206) 464-0404 (SEATTLE)

Pearson • Merriam, p.c.

Attorneys at Law

is pleased to announce that

Cynthia Unwin Seu

has joined the firm as an associate.
Ms. Seu's practice will emphasize state and federal tax controversies.

300 Grand Central on the Park
216 First Avenue South
Seattle, Washington 98104
Telephone: (206) 382-0590
Facsimile: (206) 622-3812

The firm continues its emphasis on

Tax Controversy, Tax Planning,
Estate Planning, and Insurance Taxation.

Williams, Kastner & Gibbs PLLC

is pleased to announce its new associates

Janet S. Chung
Ryan W. Collier
John S. Cullen
Casey L. Jorgensen
Ann M. Molitor
Rashelle C. Tanner

Two Union Square • 601 Union Street
Suite 4100
Seattle, WA 98101-2380
(206) 628-6600
(206) 628-6611 (Fax)
WWW.WKG.COM

Ellis, Li & McKinstry PLLC

Attorneys at Law

is pleased to announce that

A. Chad Allred

has joined the firm as an associate.

Ronald E. McKinstry
Chi-Dooh Li
Michael R. McKinstry
Jan P. Olson
Daniel J. Ichinaga
Steven T. O'Ban
Lawrence F. Brown, Jr.
Keith A. Kemper
Heidi J. Abrams
Andrew J. Toles
Kyle D. Netterfield
Nathaniel L. Taylor
Kristen K. Waggoner
A. Chad Allred
Of Counsel
Edward J. Larson

3700 First Interstate Center
999 Third Avenue, Suite 3700
Seattle, Washington 98104-4006
(206) 682-0565 • Fax (206) 625-1052
elm@ellisli.com

Foreman Arch Dodge Volyn & Zimmerman p.s.

takes pleasure in announcing that

David M. Abercrombie

has become associated with the firm and will manage our Chelan office

Dale M. Foreman
Michael A. Arch
Robert G. Dodge
Scott A. Volyn
Steve A. Zimmerman
Ronaldo P. Delgado
Barbara J. Black
Douglas G. Webber

113 Woodin Avenue, Suite 200
Chelan, Washington 98816
(509) 682-4053

Professionals

Appeals

Douglass A. North announces his availability for referral, consultation or association on appellate arguments and briefs.

Douglass A. North

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

Construction Site Injuries

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

Fury Bailey

1300 Seattle Tower
1218 Third Avenue
Seattle, WA 98101-3021
(206) 292-1700 or
(800) 732-5298

Lawyer Ethics & Discipline Former WSBA Chief Disciplinary Counsel

Leland G. Ripley
2442 N.W. Market St., #409
Seattle, WA 98107
(206) 781-8737
fax (206) 782-8111
e-mail: lawethics@juno.com

Title 11 RCW

Bruce G. Hand (admitted 1969) is available for assistance, referral, mediation or arbitration in matters governed by Title 11 RCW.

Bruce G. Hand, P.C.
4122 - 128th Ave. SE, Ste. 301
Bellevue, WA 98006
(425) 747-0968

Appellate Consultant

Heather Houston

Offering an appellate perspective on every phase of your case. Sixteen years' experience evaluating, briefing, and arguing appeals. Former law clerk to Justice Robert F. Utter, Ret.

Gibbs Houston Pauw
1111 Third Avenue #1210
Seattle, WA 98101
(206) 682-1080

Labor and Employment Law

William B. Knowles is available for consultation, referral and association in cases involving employment discrimination, wrongful termination, wage claims, unemployment compensation and federal employee EEOC or Merit System Protection Board appeals.

(206) 441-7816

Insurance

Richard Gemson

Former adjunct professor of law at UPS and former in-house counsel for North Pacific Insurance Co., is available for consultation, association or referral in matters involving all types of insurance coverage.

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

Tax-Deferred Exchanges

James Robert Deal, P.S.
The Maplewood Exchange Corporation
425-774-0233 800-232-1457

Medical Negligence & Product Liability

Chemnick, Moen & Greenstreet is available for referral or association in plaintiff's medical negligence and product liability claims.

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
2001 Western Avenue
Seattle, WA 98121
(206) 443-8600

California/Washington Dual Licensed/Dual Offices

Candace K. Ladley
20 years' exp. in CA/10 years in WA
Family Law/Real Estate/Collections
Estate Planning/Probate/Living Trusts
Guardianship/Conservatorship

7382 View Park Rd. SE
Port Orchard, WA (360) 871-0320
303 N. Glenoaks Blvd. #740
Burbank, CA (818) 841-2266

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

Classifieds

FOR SALE

Washington Reports, 1st and 2nd Series; Washington Appellate Reports, Vols. 1-79; misc. office equipment. 425-827-5653.

Library for sale: Washington Practice, RCWA, Washington Digest 2d, all current and in excellent condition. Best offer for whole library or individual sets. 206-282-2886.

Complete library for sale: Washington Reports 2d, vols. 1-130, Washington Appellate Reports, vols. 1-86, Washington Digest 2d, Michies RCWA, Shepards Washington Citations. All current. $4,500.00. 206-292-7400.

Washington Reports Second, vols. 1-129, Washington Appellate Reports, vols. 1-84, Washington Digest and Shepards, Revised Code Washington Annotated. All updates current to June 30, 1998. Oak conference table and seven leather chairs. Condition of the books and furniture is excellent. Make offer for any or all items. 206-224-8295.

$59.95: 1998 Washington State child support worksheets and financial declaration computer program. Program calculates wages, FICA, taxes (Schedule A, Head of Household/Day Care Credit/Earned Income Credit, etc.), imputes income, residential care credit, and Arvey (split custody) allocation. 1998 update $17.95. Call Law Office of Frederick L. Hetter 253-759-6853.

Worksheets in your pocket: PocketCalc is the handy way to calculate child-support worksheets using a pocket calculator. Portable, inexpensive. Calculates taxes, imputed income, deviations, needs standard, split custody. The YABI Co. 253-939-7196; www.yabi-co.com/~rag or e-mail info@yabi-co.com

SPACE AVAILABLE

Three large, prime water view offices, available in AV-rated firm. Fully serviced, including reception, phone system, law library and other services. Available 1/1/99; call Groshong & Thornton 206-448-7172.

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.

First Interstate Center, 32nd Floor: view attorneys' offices. Completely equipped law office, including receptionist, conference room, library, kitchen. Secretarial station available. Call Harris, Mericle, Wakayama & Mason 206-621-1818.

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. For more information, please call AnnaMarie at 206-624-9400.

We have large and small offices to sub-rent in our upscale Lynnwood office. Must have E&O. Call James Robert Deal 425-774-0233.

POSITION WANTED

Seeking in-house position: Attorney with 7 years' experience in private practice and the pubic sector. Background in general business and information technology transactions, employment law, investigation, and regulatory matters. Reply to WSBA *Bar News* Box 568 or send e-mail to stevenel@nwlink.com

POSITION AVAILABLE

Large Phoenix law firm has a position open for a litigation attorney with at least five years' experience in subrogation, insurance defense and coverage. Superior academic and professional credentials required. Send résumé to: Recruiting Administrator, O'Connor, Cavanagh, Anderson, Killingsworth & Beshears, One East Camelback Rd., Ste. 1100, Phoenix, AZ 85012-1656; fax 602-263-2900.

Lawyers needed full- and part-time. Two or more years' experience. AV rated general practice firm. Respond to calls from members of organization re variety of legal questions. Spanish-speaking a plus. Résumé to Hiring Partner, 2200 6th Ave. #1122, Seattle, WA 98121.

Floyd & Pflueger, PS, a four-attorney law firm, wants to hire a fifth attorney. Our practice involves defense litigation, particularly construction defect and personal injury. Applicants need at least two years' litigation experience. Send résumé to Kim

Professionals

State & Local Tax

Frank Dinces is available for consultation and referral on any aspect (planning, audits, litigation or lobbying) of state and local taxation.

With over 10 years of focused experience, Mr. Dinces seeks to represent clients being audited, engaging in major transactions, pursuing legislation, challenging tax assessments, seeking tax refunds or under investigation for tax evasion or fraud.

THE DINCES LAW FIRM

Seattle Office
720 Olive Way, Suite 1300
Seattle, WA 98101-1812
(206) 713-1287

Pierce County Office
4607 Saddleback Drive NW
Gig Harbor, WA 98332-7859
(253) 858-1400

Dental Malpractice & Disciplinary Proceedings

John J. Greaney announces his availability for referral of

1) plaintiffs' claims of dental malpractice, and
2) representation of healthcare providers in disciplinary matters.

(425) 451-1202, Bellevue

Referrals, Associations and Consultations in
Immigration Law Matters

Robert H. Gibbs
(19 years' experience)

1111 - 3rd Avenue
Suite 1210
Seattle, Washington 98101
(206) 682-1080

Higher Education Law Education Law

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

Former counsel to state universities, state Superintendent of Public Instruction. University teaching, research, administrative experience. 20+ years public, private practice of law.

Available for referrals, consultation, association or mediation in disputes involving faculty, students.

Thomas Killin Dalglish
5215 Ballard Avenue NW
Seattle, WA 98107
(206) 706-1000

Child Abuse Allegations

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

(206) 382-0000

Pflueger, 2505 3rd Ave., Ste. 300, Seattle, WA 98121.

The Civil Division of the Snohomish County Prosecuting Attorney's Office is accepting applications for the following positions. *Tort/litigation attorney:* a minimum of three years' experience in civil litigation with an emphasis on employment law. Responsibilities will include defense of the county, its employees and officials in employment-related and other civil litigation. *Land use attorney:* a minimum of five years' experience in advising clients in areas relating to land use regulation including zoning, GMA, comprehensive plans. Technical writing and ordinance drafting experience is desired. Experience in computer-aided research and word processing is extremely desirable. Salary dependent upon qualifications. Generous fringe benefits and leave. Specify which position is sought. Submit résumé and writing sample to: Diane Libby, Chief Civil Deputy Prosecuting Attorney, 2918 Colby Avenue, Ste. 203, Everett, WA 98201. Snohomish County is an equal opportunity employer.

Assistant general counsel position as senior trademark counsel available after January 1, 1999 at Nike in Beaverton, Oregon. Applicants should have at least eight years' experience in private/corporate practice focused on trademark prosecution, trademark litigation, trademark searches and clearance and client counseling in both domestic and international subject matter areas. Position requires excellent academic background, writing skills and the ability to be a team player in a fast-paced environment. Salary commensurate with experience. Excellent benefits. Send résumé and cover letter, indicating job code POBAR-LE9424, with salary expectations and any additional pertinent information immediately to Nike, Inc., attn. Eric Baum, Human Resources Dept., One Bowerman Dr., Beaverton, OR 97005-6453 or fax to 888-767-9855. Nike employs opportunity equally.

Health-care attorney: 30-plus attorney firm in Bellevue, Washington, has an opening in its health care law section for an attorney with at least five years' experience. Existing clientele preferred. Must have experience in one or more of the following areas: managed-care contracting, Medicare/Medicaid fraud and abuse defense, mergers, PHOs, IPAs, PPOs, MSOs, Medicare/Medicaid reimbursement, corporate compliance programs, and Stark issues. Superior academic credentials and excellent writing skills are required. All inquiries confidential. Send résumé, law school transcript and references to: Stephen D. Rose, Inslee, Best, Doezie & Ryder, PO Box C-90016, Bellevue, WA 98009-9016.

Attorney, Eastern Washington practice: experienced sole practitioner looking for associate with abilities in contract drafting, litigation and criminal law. Pay depending on experience. Contact Harold J. Moberg, PO Box N, Moses Lake, WA 98837.

Reply to WSBA *Bar News* Box Numbers at:

WSBA *Bar News* Box ____
Bar News Classifieds
2101 4th Ave., 4th Fl.
Seattle, WA 98121-2330

Positions available are also posted by telephone at:
206-727-8261

and online at www.wsba.org

Associate attorney wanted for products liability defense practice. Law enforcement, engineering or mechanical background preferred. Send résumé and references to Olds Law Offices, PA, Scott Olds, PO Box 752, Grangeville, ID 83530.

Seeking attorney with experience in real estate law. James Robert Deal, Box 427, Edmonds, WA 98020; fax 425-670-0400; e-mail deal-james-robert@msn.com

Attorney for health care practice: one year and litigation experience preferred. Familiar with contracts, collections, and insurance law. Excellent legal writing skills required. 36K plus benefits. Must be willing to reside in Pierce County. Send cover letter, résumé, references and writing sample from appellate brief to: Terry A. Schuh, Attorney at Law, 8114 – 112th St. Ct. E., Puyallup, WA 98373.

Seattle University: The Albers School of Business and Economics of Seattle University invites applications for an Assistant Professor of Business Law position (tenure track) beginning Fall quarter 1999. Teaching responsibilities will include the following areas: undergraduate and graduate business law, international business law, employment law, negotiation and arbitration. An applicant should have superior credentials in law, demonstrated classroom excellence, promise as an outstanding scholar, and a commitment to university service and collegiality. Applicants who have qualifications to teach additional business courses, the ability to develop new courses (such as technology law and risk management), and practical legal experience and research knowledge with Westlaw/Lexis will be given preference. Salary is competitive. Seattle University, founded in 1891, continues a 450-year tradition of Jesuit higher education. The University's Jesuit ideals underscore its commitment to the centrality of teaching and learning, of values-based education grounded in the Jesuit tradition of service and social justice, of life-long learning, and of educating the whole person. Seattle University is an equal opportunity/affirmative action employer. The search committee will begin reviewing completed applications on December 15, 1998, and will continue until the position is filled. Each applicant should send a cover letter and vita, along with names, phone numbers and addresses of two professional references to: Department of Management, Business Law Search Committee, Albers School of Business and Economics, Seattle University, 900 Broadway, Seattle, WA 98122-4460, attn.: Kiu Trang.

Egger Betts Austin, PLLC, an Eastside tax law firm, seeks attorney with at least three years' experience to join dynamic and challenging practice advising closely-held business owners and individuals with taxable estates. Applicant should have graduated in the top 10% of his or her law school class, earned an LL.M. in taxation, and possess superior written and oral communication skills. Law review experience preferred. This full-time position includes a competitive compensation package, based on experience and qualifications. Qualified candidates should submit cover letter, résumé and self-edited writing sample in confidence to: Egger Betts Austin, PLLC, attn. Recruiting Coordinator, PO Box 53050, Bellevue, WA 98015-3050; fax 425-450-3310; e-mail eba@nwtaxlaw.com

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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. www.attorneyjobs.com

To Place a Classified Ad:

Rates: *WSBA members:* $25/first 25 words; $0.25 ea. add'l. word. *Non-members:* $35/first 25 words; $0.75 ea. add'l. word. Blind-box number service: $7. (Responses will be forwarded.) Check payment (to WSBA) must accompany order. We do not bill for classified ads or accept payment by credit card.

Deadline: Text and payment received (not postmarked) by 1st of each month for issue following, e.g., January 1 for February issue. No cancellations after deadline. **Mail to:** WSBA *Bar News* Classifieds, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Qualifying experience for positions available: State and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., "5-10 years"). **Questions?** 206-727-8213; comm@wsba.org

Bennett Bigelow & Leedom, PS, a 22-lawyer firm concentrating in health care law, seeks two litigation associates. A minimum of two years' experience, superior academic credentials and excellence in tax, health care law and/or antitrust preferred but not essential.

Mid-sized Seattle law firm is seeking an associate or contract attorney with at least 2 years of litigation experience in the area of environmental law, including experience with the regulatory process. The position requires excellent academic credentials, writing skills, references and interpersonal skills. Send résumé in confidence to Hiring Coordinator, WSBA *Bar News* Box 569.

Lawyer-Estate Planning/Tax: seeking an experienced lawyer with excellent credentials in complex estate planning and tax in our Seattle office to complement an existing tax/estate planning practice in our Portland office. If you possess the qualifications, have some established clientele and are interested in talking about possibilities, please send a résumé and letter to David Coyle, Weiss, Jensen, Ellis & Howard, Suite 2600, 520 Pike Street, Seattle, WA 98101.

James Robert Deal, PS, seeks contract attorney or associate. We do real estate law, exchanges, leasing, probate, estate planning. Fax résumé to 425-670-0400.

Paine, Hamblen, Coffin, Brooke & Miller LLP, a Spokane-based law firm with 50+ attorneys, has an immediate opening for a corporate and securities attorney with 3+ years' experience with the 1933 Act (public and private offerings) and 1934 Act (reporting companies). Excellent salary and benefit package available. Please send résumé to Phillip S. Brooke, III, Paine, Hamblen, Coffin, Brooke & Miller LLP, 717 W. Sprague Ave., Spokane, WA 99201; e-mail pbrooke@paine-hamblen.com

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Minzel & Associates is a temporary placement agency for lawyers and paralegals. We provide highly qualified attorneys and paralegals on a contract basis to law firms, corporations, solo practitioners and government agencies. Jeff Minzel, who worked at Davis Wright Tremaine for a number of years, carefully screens all attorneys and paralegals. Highlights of the screening process include a personal interview, a detailed review of the applicant's legal and non-legal work experience, a review of the applicant's educational background, an evaluation of the applicant's legal skills, reference checks, a review for bar complaints and malpractice suits, and verification of good-standing status. These lawyers and paralegals can help you enhance profits, control costs, manage growth, increase flexibility, improve client service, and increase career satisfaction. For more information, please call us at 206-328-5100 or e-mail us at M-and-A@msn.com

Forensic document examiner: trained by Secret Service/US Postal Crime Lab examiners. Court-qualified. Currently the examiner for the Eugene Police Dept. Only civil cases accepted. Jim Green 541-485-0832.

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

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WILL SEARCH

Melvin Floyd Brewster: Anyone who has prepared a will for Melvin Floyd Brewster, who died in Tacoma 8/4/98, please contact attorney Gaylerd Masters at 253-383-1406.

Zola E. Brooks: Anyone with information concerning the will of Zola E. Brooks, deceased July 22, 1998, contact A. Colby Parks at 253-272-2105.

Joseph David Allard: Anyone having knowledge of any legal document for Joseph David Allard please contact Jeanette Gilbert at 1-800-824-4929.

MISCELLANEOUS

Sunny Maui Magic: Deluxe oceanfront condo with new interior now available. Any closer to ocean and you'd be in it! Nonsmoking one- or two-bedroom with spacious lanai, $130-150 April-Nov, $160-180 Dec-March, weekly/monthly rates available. Ocean view hotel-type room $60 summer, $80 winter. Great swimming/snorkeling. On-site restaurant, groceries, salon, apparel, activity desk at Mana Kai. Beautiful sandy beach walk to Wailea. 425-747-1000 or toll-free 888-747-1002.

Hood Canal Waterfront: great beach! 3br/2ba, fireplace, no pets/smoking. $125-150/night, $1,000/week. 503-223-0532 or rgpdx@aol.com.

Kihei, Maui: deluxe 1 or 2br non-smoking condos. Located directly on 4-mile sand beach. Panoramic ocean views, pool, BBQ. Winter rates from $110/1br, $155/2br. Summer rates from $95/1br, $135/2br. 800-877-3926.

Cabo San Lucas: Luxurious one-bedroom waterfront condo. Fully equipped kitchen, a/c, pool and restaurant on premises. Prime location. 503-393-5059. Email: fpesola@yahoo.com

Lump sums cash paid for remaining payments on seller-financed real estate notes and contracts, business notes, structured settlements, annuities, inheritances in probate, lottery winnings. Since 1992. Cascade Funding 800-476-9644. www. cascade funding.com

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Italy: *Tuscany:* classic 18thC house, just restored, views of San Gimignano's medieval towers, 30 miles SW of Florence, 4 miles to train, 6 bedrooms (sleeps 15), 3 baths, about 2,500 square feet, private road, set in vineyards, olives, apricots, weekly $1,600-2,500. 14thC villa, former monastery, 17 miles south of Florence, rent as 1-3 living units, 3-10 bedrooms (sleeps 7-27), 3-8 baths, about 5,000 square feet, private road, wine, olive estate, pool, gardens, weekly $1,300-5,000. *Rome:* central, view, large (1,000+ square feet) two-bedroom one-bath apartment, sleeps 5, living room, dining room, kitchen, weekly $1,500. Law office of Ken Lawson (Seattle) 206-632-1085, fax 206-632-1086.