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The New .08 Alcohol Standard

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COLUMNS

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Free Markets Can Replace Affirmative Action

Editor:

I'm sick of hearing "women only make $.75 on the dollar compared to men, thus discrimination exists."

Psychology teaches us that "correlation does not equal causation." Just because two things appear together at the same time does not mean that one causes the other. Lower wages to women doesn't prove discrimination causes it. There could be other variables.

One reason might be that women take more time off work than men. And the real-world marketplace can prove that it is not discrimination that is causing this disparity. If it were, then economics teaches us that all-female firms would form and pay their female staff less than their male competitors and drive the male firms out of business because they would be able to charge less to consumers because of lower labor costs. The competitive spur of the market would force male firms to hire women at fair rates, or go under.

The only color a free market sees is green, the color of money. In competitive markets, if I turn away qualified women, or pay them less, they'll go across the street to my competitor who'll hire them. The market exacts heavy costs on irrational behavior, be it stupid business practices or racist and sexist hiring practices.

Economics teaches us that discrimination can't work in a free market. Competitive pressures are too great to allow bigotry to last. Private bus companies in the South during the 60's initially objected to segregated buses because they knew it would hurt business. Imagine an NBA team turning away minorities; they'd be losers in no time, because the NBA is so competitive that teams must look only at skill, not color.

Remember, monopolies can't occur for long without government support. Remember the OPEC cartel of the 1970s that tried to monopolize oil? It eventually crumbled because there was no overarching world government to preserve it. Contrary to popular belief, the free market does not inevitably lead to monopoly, as there is always an incentive to undercut competitors' prices.

1960s black separatist Malcolm X would agree. He argued that blacks should quit depending on white government, and spend money in their own communities and hire their own people. So women, if you think you're really being discriminated against, then form all-female firms and out-compete the male firms. If discrimination alone explained the wage disparity, then this would be happening and there would be a rash of male firm bankruptcies. It hasn't happened, so something other than discrimination must be going on. Economics and psychology teach us this.

Free markets, not more affirmative action, is needed. Government has always been the greater purveyor of bigotry, so let's end racist and sexist affirmative action and let markets do their color blind thing.

Jeff E. Jared
Kirkland

Out With the Old...

by Sherrie Bennett
Editor

After the excesses of the holidays, many of us are feeling the annual need to tighten our belts a little with our food intake and our budgets. The post-holiday diets now begin in earnest, and we try not to spend money unnecessarily as we recover from gift-giving binges.

Most of us could also benefit from putting our office environment and processes on a diet, too. Having recently purged a quantity of paper from my office, I am amazed at how much more space I now have for useful items (and they are a lot easier to find now that all available surfaces aren't covered with non-useful items). But there's no reason to stop at paper purging. Do you really need that plant that didn't survive the holiday office party? Do the extra staplers left over from the sixties that you keep around just in case your new staplers break really enhance your life? And what more productive use might you make of those old *American Digests* on that top shelf that haven't been cracked in at least ten years? (Hint: They make great substitutes for broken table legs, and your spouse might love the "Ralph Lauren"-ish look they impart to any room!) Of course, being the "techy" group that everyone knows Washington state lawyers to be, we probably all have old computer manuals from three upgrades ago that could be tossed without being missed. Once you get in the tossing mode, you'll be astounded at how much stuff now cluttering up your office you can do without. I have also found that a "Clear the decks" mood is contagious, because it either provokes guilt or invites competition.

I have also found that a "Clear the decks" mood is contagious, because it either provokes guilt or invites competition.

Of course, purging shouldn't stop with paper and books. Once your office is physically clear and de-junked, you might start thinking about just how useful and efficient some of your procedures and processes really are. Might there be faster, better ways to accomplish everyday office tasks? Could you get more office supplies for your buck at a different supplier? Are there some office tasks you trudge through every day that have genuinely lost their usefulness and you could simply stop doing? Could your time be better spent on vital projects you want to start but never seem to find the time for (the ones that require some quiet thinking time before you can begin)? And do you really need those three percent of your clients who don't pay their bill but are taking up about 40 percent of your time? Might that 40 percent of your time be better spent working on the cases of clients who *are* paying their bills? It's amazing how much time you can gain just by not doing one or two things that really don't need to be done. Delegating can produce found time as well, although it seems that many of us don't have delegating personalities, being by definition inclined toward obsessive-compulsive perfectionism. But even a small shift in task assignment can reap big time benefits.

And In With the New...

After purging and reorganizing, you will have the space and time to concentrate on the cases and projects that *you* want to focus on, rather than being driven by always having to put out fires and oiling the squeakiest wheel. Try it, you'll like it!

You'll be seeing some tangible changes on the pages of the *Bar News* in the new year ahead. We've renegotiated our printing contract and are now going to bring you eight extra pages and full color every month, for the same printing cost. Please let us know what you think of the new look, and take the time to fill us in on any hot topics you think we should cover in 1999. I can be e-mailed at comm@wsba.org or faxed at 206-301-9373.

Happy New Year and good luck ridding yourself of the old and welcoming the new!

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M. Wayne Blair, President 1998-1999

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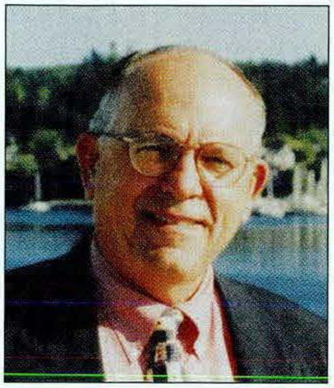

Let's Discuss the Supreme Court—Everyone Else Has

by M. Wayne Blair
President

We have all read recently about seeming controversies and personality disputes at the Washington Supreme Court. Because the Supreme Court regulates lawyers and the legal profession, in addition to deciding cases which affect all citizens of our state, what goes on at the Court is of great interest to the Board of Governors.

I have great respect for the Court as an institution, as well as for the individual justices. We all know that there are deep philosophical differences between and among some of the justices, and some of those philosophical differences have given rise to acerbic language in some recent opinions. While they may not spend a lot of time socializing with one another, it is my belief that the justices personally get along fairly well.

> **While they may not spend a lot of time socializing with one another, it is my belief that the justices personally get along fairly well.**

The relationship between the Board of Governors and the Supreme Court is an important and sensitive one. The Supreme Court, through its rule-making authority, and as a result of such decisions as *Graham v. Washington State Bar Association,* 86 Wn.2d 624 (1976) and *The Washington State Bar Association v. The State of Washington,* 125 Wn.2d 901 (1995), regulates the practice of law in this state. Through the General Rules, the Admission to Practice Rules, the Rules of Professional Conduct and the Rules for Lawyer Discipline, the Supreme Court has authorized the State Bar to act on its behalf and under its authority in regulating the legal profession. As a result of these rules, the Supreme Court and the Board of Governors spend considerable time working together.

There are a myriad of formal and informal contacts, communications, and meetings between the Supreme Court and the Board of Governors, and between individual justices and individual members of the Board of Governors. These contacts are usually in those areas that touch upon regulatory matters or rule-making, but also are in those areas that relate to the State Bar as a professional association of lawyers. The result is that the Board of Governors and the Supreme Court, either individually or collectively, are in fairly constant communication with each other. We need to, and do, work together well.

Although there are occasional areas or instances in which the Supreme Court and the Board of Governors disagree, such disagreements are not very different from Supreme Court decisions that are not unanimous or Board of Governors' decisions that are divided. Sometimes our differences are public and sometimes they are private. Nonetheless, I believe there is a healthy level of respect on the part of both institutions for our differing roles and the need to work together constructively. As institutions, the Court and the Bar are committed to disagree agreeably in those instances when differences do arise. One of my paramount duties as President of the Washington State Bar Association is to work with the members of the Supreme Court, individually and collectively, in a manner that is constructive, but which, at the same time, allows for candid discussion. I am certainly comfortable with the current working relationship between the Supreme Court and the Board of Governors.

There are also changes at the Supreme Court which merit comment. Perhaps the most significant change is that Justice James M. Dolliver, after 22 years on the Court, is retiring at the age of 74. The legal profession is deeply indebted to Justice Dolliver for his many years of service to the public and the legal profession, and for his commitment to the administration of justice and the concept of equal justice under law.

In his noteworthy career, Justice Dolliver has served in all three branches of government: the legislative branch as administrative assistant to a member of Congress; the executive branch as chief of staff to a governor; and, of course, the judicial branch as a member of the Supreme Court. As a true man of letters, he is the institutional memory of the Supreme Court. Through his many efforts over the years, Jim Dolliver truly has changed the legal fabric of this state for the better. He will be missed by all of us. On behalf of all of the lawyers in this state, I thank Jim Dolliver for his many years of service to the public and to our profession.

Another significant change at the Court is that Chief Justice Barbara Durham is stepping down as Chief Justice. She became the first woman Chief Justice of the Supreme Court in January 1995, and is the first person to have served as Chief Justice for four years. She is also the only current member of the Court to have served at all four court levels in the state, i.e., District Court (Mercer Island District Court), Superior Court (King County Superior Court), Court of Appeals (Division I, where she was Chief Judge in 1984), and the Supreme Court.

As Chief Justice, Barbara Durham has been very active in judicial education, and was a co-founder of the Judges in the Classroom project. She has worked long and hard to get judges into the schoolrooms of the state, so students will have a better understanding of how our court system functions. She is also largely responsible for changing the method by which the Chief Justice is selected, from a system of rotation every two years, to a system of election by fellow justices for a four-year term. Chief Justice Durham led the effort to have the legislature refer this matter to the voters, via SJR 8210, because the change required a constitutional amendment. She campaigned arduously throughout the state, and secured its passage by a wide margin in 1995.

It is general knowledge in the legal community that Chief Justice Durham is in line for an appointment to the Ninth Circuit Court of Appeals, and is awaiting the formal nomination from the White House expected at any time. I have had the pleasure of working with Chief Justice Durham during the referendum campaign, on the Board of Judicial Administration, and during my terms as both WSBA President-elect and President. I have enjoyed the opportunity to work with her, and wish her the best in her anticipated appointment to the Ninth Circuit.

Another significant change at the Court was the recent election of Richard P. Guy of Spokane to be the next Chief Justice of the Washington Supreme Court. Justice Guy was originally appointed to the Court in 1989 by then-Governor Booth Gardner, and has since been elected twice. He is a lifelong resident of Spokane. He has served in the State Attorney General's office, as a Superior Court Judge, and as a member of the firm of Winston & Cashatt in Spokane.

As has been reported in the newspapers and from my experience in working with him, Justice Guy is a conciliator. His fervent hope is to tone down the differences, real and perceived, among his colleagues, and to bring the Court together, emphasizing the ways in which the justices agree. It is my understanding that during his tenure as Chief Justice, he plans to strengthen the role of the Board of Judicial Administration and improve the level of citizen trust and confidence in the court system. Having worked with Justice Guy since he became a member of the Supreme Court, I have enjoyed a continuing dialogue with him on a variety of subjects over the years, and look forward to working with him as Chief Justice.

Finally, we have a new personality on the Court. Faith Ireland moves up from King County Superior Court, where she has been a judge for the past 15 years. For 13 years before that, she practiced law as an attorney in private practice, emphasizing civil and criminal litigation and family law matters. She is highly regarded by her colleagues, and has recently completed a term as President of the Superior Court Judges Association. She has been active in numerous professional and community organizations, and has broad knowledge of her community and of the state. She has a reputation for being fair-minded and hard-working—traits that will serve her well as a Supreme Court Justice. Best wishes, Justice Ireland!

One of the more enjoyable aspects of serving as President of the Washington State Bar Association is having the opportunity to work with the individual justices of the Supreme Court, to get to know them better, and, working together with shared values, to make a difference in our profession and the administration of justice.

Where Three Key WSBA Issues Converge

Fundamental Rights to Legal Services, Definition of the Practice of Law, Legal Services Funding

by Jan Michels
Executive Director

Each of the issues named in this article is a cause and has a constituency. But there is a danger in seeing them as separate or competing, when in fact they are interdependent. When viewed from the perspective of a common underlying value of equal access-to-justice services for everyone, the issues converge. The Washington State Bar is in the best position to be a significant voice on these issues, but that voice will be most effective if the common message is widely carried and heard. I offer the following observations toward developing a message that is legislatively strong, supportive of the profession and WSBA's mission, and easily understood.

We take for granted our rights to life, liberty and the pursuit of happiness, and yet these rights often need court protection.

Quality Legal Service is a Fundamental Right.

This is the concept that access to the justice system is a fundamental, constitutionally guaranteed right. We take for granted our rights to life, liberty and the pursuit of happiness, and yet these rights often need court protection. Fundamental rights cannot be abridged; they accrue to everyone equally. Because of financial restraints and political erosions, however, these rights have been taken to guarantee only representation and access to legal services to criminal defendants. Are a potentially egregious eviction, denial of benefits or other infringements any less constitutionally threatening? Parallel to baseline medical care, disability aid and aid to children, there should be a baseline of access to the legal system for the address of wrongs. It is the obligation of government to assure that legal rights are protected and that, assuming a "means test" is passed, the level and degree of quality representation needed is guaranteed. This is an underlying value of a society committed to living by the rule of law.

The Practice of Law Must be Defined to Preserve Quality and Consumer Protection.

Interdependent with legal services as a fundamental right is the concept of a standard for what means is required for citizens to access the legal system. The concept means more than accessing the courthouse (i.e., getting into it); it means making true use of the legal system's support and protections. To analyze the concept, we have to start defining *where* access is to be guaranteed and *what* legal representation will assure quality legal services; then, we have to know *who* can represent those in need. I do not intend to argue for any particular definition or inclusion or exclusion, only that some definition is necessary before we can start to discuss what citizens are entitled to and who is authorized to provide that service. Secondarily, we need to be sure that there is adequate consumer protection in the form of licensing and regulation to assure that the service offered is sound and that redress for disreputable providers is available.

Legal Services Must be Funded.

A focus that is too narrow on this key issue leads to secondary controversies over where the money comes from and who is responsible for the funding of adequate legal services. With access to legal services a fundamental right, and with a developing concept of what legal services are, comes a different paradigm in which to view the funding of legal services that are constitutionally guaranteed and which must be available to all citizens. Within this paradigm of access to justice as a fundamental right and of the protection of citizens in exercising this right, is the need for addressing this right for citizens without funds to secure the needed assistance. The argument is constitutional and strikes out smaller symptomatic treatment arguments.

We stand as a profession that practices the law and protects the rule of law. When we see that our key issues join us together on a plane that serves the profession and citizens, we can mount a strong and easily understood campaign on these three key issues. Please work with WSBA, the legal service community, and local and state policy makers on understanding the relationships among these issues and understanding the values they are based on. Active dialogue will assist us all in promoting our basic values rather then appearing to conflict among ourselves about funding legal services and defining the practice of law.

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Defending the Sober Driver:
The New .08 Alcohol Standard

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"While the majority begins by noting that the legislature intended to proscribe driving while drunk, it sustains parts of the statute which appear to make the drunkenness of the driver at the time of driving totally irrelevant." *State v. Crediford,* 130 Wn.2d 747 (1996) Sanders, J., concurring.

By Ken Fornabai

More Phony Science

The warlords of phony science continue to pillage common sense. The historical degradation of scientific integrity has reached a new and absurd low. Dr. Barry Logan, a state toxicologist, once admitted on direct examination in *State v. Osborne,* in Aukeen District Court, that my client (who "blew" a .31 alcohol concentration rating) could have been under a .10 at the time he drove. The test was taken half an hour after the stop. Nonetheless, the legislature amended Section 502 of the drunk-driving laws to prohibit driving if one's alcohol concentration met or exceeded a .10 within two hours, ignoring a history of science regarding retrograde extrapolation.

With these most recent amendments that reduce the "legal limit" to .08, good science is once again tossed out the window and the intelligence of the citizens of Washington is attacked by the political machine. This statute is offensive insofar as it conclusively presumes a juror is incapable of determining when a person's driving ability is in fact impaired by the alcohol consumed. Historically, the statute required the fact-finder to determine the ultimate question: Was the driver impaired at the time of driving? Prior to the *per se* laws going into effect in the late 70s, certain presumptions followed from a particular breath-test reading. For example, a person was presumed unimpaired if the breath-test reading was a .10 or less. There was no presumption between a .10 and a .15. Over a .15, the person was presumed, but only presumed, impaired. Thereafter, "new science" compelled the legislature to conclude that everyone with a .10 was in fact impaired to an appreciable degree. Human physiology didn't change, but politics certainly did. Thus, the *per se* laws went into effect. Because of the obvious difficulty associated with retrograde extrapolation, the prosecutorial whine resulted in the "two-hour rule." Now, despite the fact that the state patrol's own manuals indicate that only two out of every 10 people will show any sign of psycho-physical impairment at a true blood alcohol level of .08, the new law goes into effect on January 1.[1]

The Significance of the Breath-test Result Under the New Law

Much like a Section 503 violation of a minor operating a vehicle with a .02 or more within two hours, the .08 law will require the defense attorney to attack the machine as never before. Because the average person with a .08 blood-alcohol level will not show psycho-physical symptoms of impairment, the jury may nonetheless convict if they are convinced beyond a reasonable doubt that the .08 reading within two hours is an accurate and reliable measurement of the person's breath alcohol level.

Keep in mind that .08 levels rarely produce physical symptoms of impairment. My experience has shown that juries historically look to other aspects of the case to confirm or deny the integrity of a breath-test reading. Despite the fact that 80% of the time no psycho-physical impairment will be evident, police officers may still grade field sobriety tests ("FSTs") in a manner which suggests a "corroboration" of the breath-test reading.

Where We Go From Here

When I analyze a DUI case, I divide the evidence into five categories. They are:

1. the driving;
2. physical observations;
3. performance of roadside maneuvers;

4. alcohol influence report form questionnaire statements; and
5. breath-test results.

Driving and Physical Observations

Strive to provide an equally plausible, innocent explanation for any incriminating evidence in each of these five categories. For instance, if your client was weaving down the road, several factors — distractions from other passengers in the car, mechanical problems with the vehicle, etc. — may be used to demonstrate an innocent cause of the observed driving. Likewise, observations such as watery, bloodshot eyes; fumbling with wallet, etc., can undoubtedly result from factors other than intoxication. It's best to synthesize the prosecutor's case into your own to avoid conflicts in evidence because of the credibility edge police officers have in any DUI case. Ultimately, the best defense case is one in which the prosecutor's evidence can be met with the response of "so what." This ideal factual pattern rarely exists, however, in our day-to-day practice. Instead, there will usually be evidence which has to be dealt with head-on. Typically, one such piece of evidence is the ubiquitous "slurred speech" observation made in almost every DUI case. Unless your client has some medical cause for this reported condition, such as loose teeth or a speech impediment, it boils down to a "he said, she said" factual confrontation. One way to address this problem is to examine what the officers *didn't* do. For example, it costs about 20 dollars for a cassette recorder which can easily be used by an officer to record a suspect's speech. The fact that this wasn't done must be presented to the jury.

Always emphasize that which the client did well. You will find it in every case by the absence of the police officer's report addressing all aspects of your client's condition throughout the course of contact. For instance, the typical police report indicates that after the officer stopped your client and immediately noticed the strong odor of alcohol and slurred speech, your client fumbled with the license. Point out to the jury all the things that your client did right — properly responding to the emergency lights, signaling to indicate intention to yield, parking safely, placing the car in park, undoing the seatbelt, providing the vehicle paperwork without problems, etc. Remember that the police officer's report is written after the contact and after the breath test has been taken. It is a decision-justifying document that undoubtedly will point out only the things that your client did poorly. It will rarely, if ever, indicate those things that your client did well. The things that your client did well evidence sobriety. This tends to cast doubt on the breath test.

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Roadside Tests

A description of your client's poor performance of the roadside test is usually accomplished after a breath test is taken. No wonder your client failed. The officers rarely, if ever, write notes about the performance as the tests are taken. A thorough familiarity with the National Highway Traffic Safety Administration (NHTSA) manuals and Washington State Patrol manuals of roadside sobriety testing is essential in cross-examining a police officer effectively. These manuals are available either through discovery in a particular case or through a Freedom of Information Act request directed to the Washington State Patrol or other police training facility.[2] Only three tests are approved by the federal government as screening devices in DUI cases. These are:

1. the leg-raise test;
2. the heel-to-toe test; and
3. the horizontal gaze nystagmus test.

All other roadside tests were examined and rejected in the most exhaustive study done attempting to correlate roadside performance with physical impairment in the operation of a motor vehicle. In fact, correlations, even for the three approved tests, were so poor that the NHTSA advised against using the tests as substantive evidence to prove intoxication, and instead advised only to use them a screening devices to determine if an arrest is appropriate.[3]

Alcohol Influence Report and Statements

The average DUI case includes responses to the approximately 30 questions on the alcohol influence report form questionnaire. The State will introduce this evidence through the testimony of the arresting officer and point out to the jury all the questions on which your client "screwed up." You, in turn, must complete the picture by pointing out all the responses that were correct. Statements about drinking location, drinking buddies, and times and amounts of alcohol consumed must be integrated into your case. The answers to these questions you probably must live with in the course of your defense. Integrate them into your trial theme. Obviously, if your client has answered that he or she felt his or her ability to drive was affected by alcohol use, point out to the jury that this is really a trick question. It is fundamentally unfair because any amount of alcohol will affect a person. The question is whether the alcohol affected the client to "an appreciable degree."[4]

The fact of the matter is that many people who answer this question in the affirmative do so not because they believe their ability to drive was impaired, but because they do not want to confront the officer and incur his or her wrath. Rather, they are submissive and cooperative with the hope that they will not be booked into jail. Always find out from your client if the police officer suggested that cooperation would result in release. I've had occasions where police officers, however benign their reasons, indicated to clients that any disagreement with the police officer will result in immediate incarceration. No wonder they said what they thought the officer wanted them to say!

Attacking the Breath Test

You don't have to be an expert on the breath-test machine in order to cross-examine the technician effectively. You do, however, need a thorough under-

Male Blood Alcohol Concentration Chart:
(Percentage of Alcohol in Bloodstream)

Your Weight	Number of Drinks Consumed per Hour								
	1	2	3	4	5	6	7	8	9
100	.04	.08	.11	.15	.19	.23	.26	.30	.34
120	.03	.06	.09	.12	.16	.19	.22	.25	.28
140	.03	.05	.08	.11	.13	.16	.19	.21	.24
160	.02	.05	.07	.09	.12	.14	.16	.19	.21
180	.02	.04	.06	.08	.11	.13	.15	.17	.19
200	.02	.04	.06	.08	.09	.11	.13	.15	.17
220	.02	.03	.05	.07	.09	.10	.12	.14	.15
240	.02	.03	.05	.06	.08	.09	.11	.13	.14

standing of its operational capabilities and its limitations. The difficulty is in presenting a simple, plausible explanation or cause to doubt the machine's accuracy. Taking a huge body of facts and selecting the appropriate issues to present to the fact finder is the challenge in every case. In each case, there will be different reasons for doubt. A basic inventory of such reasons follows (these are in addition to the physical actions of your client that deny intoxication):

1. operator error;
2. "Widmark's Formula";
3. repair and maintenance records;
4. interference (known and unknown);
5. indirect-measurement breathing patterns and partition ratio; and
6. the machine's warranty.

Operator Error

A thorough familiarity with both the policy and procedures manual and the applicable administrative code provisions is necessary to determine if operator error is a viable issue to raise to the jury. With the new software in place, there will rarely be an evidence ticket that is void or invalid on its face. Nor will a breath-test reading be obtained if attempted in less than 16 minutes from the observation time reported by the officer. Remember that the observation time is simply that which is reported by the officer, and no more. The officer types in the time it began. The clock counts minutes. The clocks are notoriously unreliable. In fact, the technician is not required to write a repair record unless the clock is off by at least 30 minutes. The presence of foreign material in the mouth, or an interruption in the observation period (such as the officer leaving the room momentarily to obtain paperwork or to address a question by another officer), are facts which must be thoroughly investigated by the defense attorney.

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Widmark's Formula

Recently, the State Liquor Control Board has produced a "new and improved" blood-alcohol chart. Formerly, the estimates of blood alcohol levels based upon body weight and number of drinks consumed applied to both male and female drivers. In an attempt to refine this chart to reflect more accurately the predicted alcohol levels for men and women, a new chart is available *(left)*:

There are two ways to use this information in attacking the breath test reading. The first is to indicate predicted blood-alcohol level based upon the number of drinks your client had. You then compare this with the breath-test reading obtained on the machine. Let's say that your client is a 180-pound male who drank six beers in three hours from 9:00 p.m. to midnight. He was given a breath test at 2:00 a.m. Based on the new chart of Widmark's Formula, your client's peak BAC would have been a .13. That does not take into account, however, the amount of alcohol your client burned off from the period of time that he commenced drinking until he took the breath test. Over this five-hour period (9:00 p.m. to 2:00 a.m.), your client, being the statistical average, would burn off approximately .015 percent per hour. Five times .015 is .075, meaning that the true alcohol level at the time of the test should have been about a .055! (Peak alcohol concentration .13 minus burn off, five hours times .015 equals .075, equals .05.)

The second way to use this information is to compute the amount of drinks your client would have had to have in order to reach the reported breath-test reading. This usually results in an enormous quantity of alcohol. For example, in order for your client to have reached a .13 at 2:00 a.m., he would have had to consume 11 beers. The computation is as follows: According to the chart it would take six beers for this 180-pound man to reach a .13. Keep in mind that over the five-hour period of drinking, your client burned off approximately .075 percent of the alcohol consumed. Add the five beers he burned off to the six reported as being needed to reach a .13 and you have a total alcohol consumption of 11 beers.

Repair Records

In every case where there is a breath test, the defense attorney must thoroughly examine the repair records and database for the machine. The new database provides much more information than did the old database. The manuals and protocols necessary to interpret the database can be obtained through the Washington

State Patrol Breath Test Section, in discovery or through a Freedom of Information Act request. In the database, look for repeated breakdowns and repairs, the occurrence of error codes and any abnormalities in the reported values. Keep in mind that, although the new software will prevent an evidence ticket from being printed where the observation period, solution range or two-test range exceeds Washington Administrative Code standards, this information is nonetheless available in the database. It also indicates the number of attempts your client made to obtain the breath sample and the duration of breath exhaled in quarter-seconds. This information is particularly useful in refusal cases where your client unsuccessfully tried to blow and the officer says your client "faked."

Never forget that the prosecutor has to prove both *accuracy and reliability beyond a reasonable doubt.* Breakdowns go to the issue of reliability. They imply inaccuracy by a lack of reliability. Additionally, computer-based operator complaints are collected at the State Patrol Breath Test Section. These exist in addition to repair records, quality-assurance procedures and the database. The operator complaints are computerized and result from an operator indicating to the dispatch operator that there is some problem, breakdown or malfunction with the machine. The date and time are reported, as well as which technician responded to the particular problem. Frequently, there is no corresponding repair record because of the limitations on production of such documents set forth in the protocol for breath technicians. This action has been encouraged by the Supreme Court's decision in *State v. Wittenbarger,* 124 Wn.2d 467 (1994). Nonetheless, some trooper technicians keep a field diary which will demonstrate contacts with the machine, in addition to those routinely discovered by an analysis of the typical discovery items. Don't forget to ask for these.

The operator complaints are useful because they demonstrate that there is a lot more going on with this machine than what the government wants the jury to see. Much like Dorothy's astonishment at discovering the real "wizard" in *The Wizard of Oz,* this information implants into the jury's mind that they are not getting the whole picture. You can use analogies that anchor this in the jurors' everyday lives. The "used car" analogy is a very effective one that I have used with success. The analogy simply emphasizes the fact of the numerous contacts, repairs and problems shown by the computer-based complaints, which were not either testified to or evidenced by a corresponding repair record in the technician's direct testimony. The fact that you had to bring them out on cross-examination enhances the impact of this evidence. Here is how the analogy works: After establishing that the technicians have many more contacts with the machine than are revealed by the repair records and that these contacts are in addition to the repair records which the State failed to mention in its case, you might say: "Folks, one way of determining if the breath test in this case is accurate and reliable is to compare it to things that we experience in our everyday lives. Let's say that you were shopping for a used car. You met the salesman and took a test drive. The salesman tells you that the car runs fine and that it's a good reliable car.

As you return to the car dealership, the glove box suddenly opens. In it, you find a history of repairs and breakdowns. You see that the prior owner complained on several occasions that the car stalled or the brakes didn't work. You see that the mechanics couldn't find the problem and indicated that there was nothing wrong. Would you buy that car? That's exactly what the State is asking you to do with the breath test in this case."

Interference

There are approximately 102 compounds on the normal human breath that absorb infrared energy at the same wavelength as ethyl alcohol. These compounds can result in a false high breath-test reading if not detected by the datamaster. The manufacturer indicates that the interferant detectors on the machine will avoid this problem. Prior to the new software, the interferant detector was specific for acetone, which is on the breath of diabetics and people who are on diets. The threshold for the acetone detection was set at .001. Formerly, the machine would subtract the quantity of acetone detected on the breath from the breath-test reading and still print a ticket. Now, the machine will not print a ticket where interferant is detected and it is not considered a valid test under the Administrative Code. If interferant is detected in successive tests, the Administrative Code concludes the motorist is "incapable of providing a breath sample" and ostensibly permits the analysis of blood. See WAC 448.13.055. The new and improved machine is supposed to eliminate this problem by a dual-filter system. This remains to be seen.

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The manufacturer or the datamaster has less confidence in its product than GE does in a $12 two-slice toaster.

Breathing Patterns

"The harder you blow, the higher you go." This is like saying the longer you stand on the scale, the heavier you get. What kind of machine is that? The fact that in most breath test cases, duplicate breath analysis indicates a variance not accounted for by burn-off or absorption establishes that the machine is imprecise in the measurement of a person's alcohol level. Besides the inherent error, recalling the .02 variance tolerated in a known .10 solution, breathing patterns can significantly affect breath test readings. In short, this is because the machine seeks to obtain the last third of deep lung air for analysis. The amount of alcohol in the bottom third of the lungs is greater than the amount of alcohol in the top two-thirds of the lungs. In addition, temperature fluctuations as a result of exhalation can significantly increase the breath test level. For an excellent article addressing the effects of breathing patterns on the accuracy of the breath test, see Dr. Michael Hlastala's article entitled "Voo Doo Science."[5]

The Warranty

The manufacturer of the datamaster has less confidence in its product than GE does in a $12 two-slice toaster. The warranty provided by the manufacturer for the datamaster contains the following language:

"There are no other warranties expressed or implied including, but not limited to, any implied warranties of merchantability or *fitness for a particular purpose.* In no event shall NPAS be liable for any loss of profit or any indirect or consequential damages arising out of any such defect in material or workmanship." [emphasis added]

Compare that warranty to the warranty that accompanies a simple toaster. When the manufacturer says the toaster is not warranted for fitness "for a particular purpose," it's not warranting the machine for breath testing. But the only purpose of a breath-test instrument is to accurately measure a person's breath alcohol concentration. You can argue that a warranty excluding this "particular purpose" is evidence that the manufacturer knows the machine is a lemon.

Your imagination is the only limit to discovering aspects of this breath-test that can provide doubt in a particular case. Simple things, such as the fact that the breath-sample chamber contains four mirrors which reflect infrared light, can always be used to some degree in a reduction of infrared light reaching the detector. This results in a higher breath-alcohol measurement.

There are many other ways to present a defense on the breath-test reading where you don't have a lot of repair records or other issues. For example, the Administrative Code permits a variance on the measurement of the external standard of up to .02 (.09 to .11). This permits you to argue to the jury, just by establishing those simple innocuous facts in cross-examination, that the machine is accurate only 90% of the time. To anchor this concept to the jurors' common experience, you might ask them how they would feel if they received their paycheck on Friday and it was 10% less than what it should have been. Would this be "acceptable accuracy"? The acceptable variances between two breath-test readings can likewise be used to your advantage. An analysis of the Administrative Code's three-digit computation will result in an acceptable variance between two readings over .08—the new legal limit! For example, readings of .387 and .473 represent a variance of .09. This is "acceptable accuracy"?

Conclusion

One of the most important things to remember when cross-examining the technician is to understand when you've got the ammunition necessary for closing argument. Rarely can you be successful going toe-to-toe with a technician. The longer the technician talks, the more points the State will score. Prepare your discovery demands methodically. Select your issues carefully. Of all the issues you may have, select your best three. Ask the questions for which you know you will get an anticipated response. Stop when you've received the facts. Don't get greedy, and stop while you're ahead. Then, argue your points to the jury.

There is no such thing as an easy DUI defense. These cases require substantial investigation and preparation. There are no shortcuts. To win at trial, you must be more prepared than your opponent. My friend James F. Campbell has a sign on his office wall which reads: "The harder I work, the luckier I get." So true.

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Blood Alcohol Level	Percentage of People Displaying Some Outward Sign of Impairment
.02%	0%
.04%	5%
.06%	10%
.08%	20%
.10%	40%
.16%	60%
.20%	80%
.30%	100%

1 (Above) Page 19 DUI Enforcement Manual, Washington State Patrol Academy, Sept. 1992.
2 Washington State Criminal Justice Training Commission, P. O. Box 40905, Olympia, WA 98504-0905.
3 See, for example, Cowan, Jonathan D. and Jaffee, Suzanna G., *Proof or Disproof of Alcohol Induced Driving Impairments Through Evidence of Observable Intoxication and Coordination Testing*, 9 Am Jur Proof of Facts 3d 459 (1990).
4 See *State v. Hurd*, 5 Wn. 2d 308, 105 P.2d 59 (1940).
5 Dr. Michael P. Hlastala can be reached at Division of Pulmonary and Critical Care Medicine, Box 356522, University of Washington, Seattle, WA 98195-6522, phone 206-543-3166, e-mail: mike@colossus.pulmcc.washington.edu

Challenging the American Dream:

A rapidly changing workforce dictates another look at traditional property settlements in divorce cases

by Janice E. Reha, Kathleen A. Miller and Hank Fields

As we enter the 21st century, workplace trends will alter the social and business models that divorce settlements are still based upon today. The Manufacturing Age jobs that our society was built upon are disappearing. Salaries in the service industries no longer keep up with the needs of a middle-class family. Technical and highly skilled positions are the fastest-growing area of employment. Education is becoming more important to maintaining a middle-class lifestyle.

These trends have great impact on divorcing couples, and particularly women who are re-entering the workforce following their divorce. Many are either under-educated or underemployed — that is, their education either lacks or exceeds the requirements of the jobs they work in. When these women find themselves going through a divorce, many need to make career changes in order to survive financially. In today's society that almost always requires additional education and specialized training.

From the Manufacturing Age to the Knowledge Society

Traditional property settlements and maintenance agreements emanate from Manufacturing Age business and social models. These are based upon the husband working in a large corporation in some type of product manufacturing such as airplanes, cars or trucks. The husband was the primary wage earner, while the wife remained in the home or worked part-time to supplement the family income. That is no longer the reality of the workforce.

The U.S. Bureau of Labor Statistics projects that service industries will employ 77.4 percent of the workforce by 2000. Forecasting International estimates that number to be higher — about 85 percent by 2000. In contrast, employment in the agricultural and manufacturing sectors will continue to plummet. In the Puget Sound Region, manufacturing jobs made up 28 percent of employment in 1957. Today, only 15 percent of the Puget Sound Region's jobs are in the manufacturing sector. That figure is expected to slide to 12 percent by 2020. By 1982 the number of people working in service-related industries — health care, legal services, computer and data processing, social services and engineering — had surpassed the number of people working in manufacturing industries. The service sector's employment share continues to expand and will make up nearly one-third of non-farm jobs in Washington by 2020.

Economist and futurist Peter Drucker calls this the transformation to a "knowledge society." As he states in *From Capitalism to Knowledge Society*, we are right in the middle of a great social change. We are moving away from a time when brawn and physical labor reaped financial rewards, to a time where brainpower will be the key commodity in a services-based economy. According to Drucker, the primary resource in the post-capitalistic society will be knowledge, and the leading social groups will be "knowledge workers" — those who have higher levels of education, are problem-solvers, and can manipulate technology.

Service Workers vs. Knowledge Workers

Although the service sector has expanded rapidly and has now replaced manufacturing as the dominant type of industry, it's important to understand that not all people who work in service jobs are knowledge workers. According to government classifications, service jobs also include check clerks in the supermarket, the cleaning staff at the hospital, and delivery-truck drivers. Service-worker groups also include retail workers, cosmetologists, childcare workers and anyone who performs a hands-on service.

These workers may be paid between $7 and $15 per hour. They are paid according to productivity — hourly in many cases — and are performing what is in effect "production work," which differs from the factory workers only because the service is performed in an office. These workers do not, however, have the powerful unions that manufacturing workers once had. Consequently, they have little bargaining power to raise their pay, establish pension plans and negotiate benefits. These service-sector workers currently account for one-quarter of the work force.

Meanwhile, knowledge workers may work in government-classified service industries, but their economic and social stature is very different. Knowledge workers are a more highly skilled labor force that can innovate and manipulate technology and information. They have higher

When these women find themselves going through a divorce, many need to make career changes in order to survive financially.

educational levels and respond to new challenges with little supervision. They usually possess, at minimum, a bachelor's degree, but often have earned advanced or professional degrees. This group consists of attorneys, financial planners, computer programmers and analysts, and marketing specialists. Because of their increased level of education, it is knowledge workers who command the higher salaries.

Here are some examples of how education level compares with salary. According to The American Marketplace, men with bachelor's degrees earned a median of $43,325 in 1995. Those with only a high-school education earned just $25,257. Women with bachelor's degrees earned a median of $28,252 in 1995. Women who never progressed further than high school earned a median of just $15,017. Those with professional degrees, such as doctors and lawyers, earned a median of $67,000 in 1995.

In the knowledge-based society, education credentials are becoming more and more important as highly educated and trained workers are financially rewarded.

The financial reward for higher education is just one piece of evidence of the transformation to a knowledge society. The middle class has been feeling the stress of this major social shift for at least a decade. Consider these trends:

Downsizing

Technology innovations and the inability of some industries to keep up with foreign companies have resulted in massive layoffs within large manufacturing-based companies. Many Manufacturing Age workers are no longer able to find comparable, high-earning positions. Downsized workers are facing the reality that they will have to take jobs at lesser salaries supplemented by stock options, which are replacing some of the traditional, more secure benefits such as pensions.

Growth in technology industries

Thanks to the rapid pace of the integration of technology into society and business, a career half-life is now 4.5 years. That is, half of what a person needs to know to effectively do his job today will be obsolete in four-and-a-half years. Meanwhile, job growth continues in the services and information sectors. Service and information sector jobs require higher math, language, reasoning and communication skills.

Smaller organizations

According to Dunn and Bradstreet data by firm size, companies with fewer than 500 employees are generating virtually all of the new jobs. Large companies continue to downsize and separations are exceeding hires. Small micro-businesses with one to four employees generate approximately 35 percent of the net new jobs, while firms with five to 19 employees create another 32 percent of new employment opportunities.

Meanwhile, experts say the number of contingent or temporary workers will nearly double in the next few years and the current average of eight jobs in a lifetime will continue to increase. More workers are employed in small companies, which offer fewer benefits and less security, and 12 million workers are classified as "alternative workers." They work as independent contractors or on-call workers, or they contract through temporary agencies. Because of the uncertainty of large organizations, many people are also choosing to start their own companies. As a result, we are now working with a growing number of clients who are co-owners of companies.

Longevity

Life expectancy now averages 74.5 years, and the reality is that people will work longer before they retire. The Andrus Center at the University of Southern California indicates a minimum of eight million people over age 65 want to continue working. A Harris Poll indicates that 70 percent of pre-retirees said they hope to work beyond retirement. Yet another study estimates that 75 percent of baby boomers will *have* to work beyond traditional retirement age to maintain their lifestyles.

Working moms

Seventy-three percent of mothers with school age children are currently in the labor force. Women with young children are more likely to work part-time, but the proportion who work full-time has nearly quadrupled since 1970 — from 10 to 39 percent. Families now require two incomes in order to achieve a middle-class lifestyle in today's economy.

Even though progress has been made in closing the disparity-in-earnings gap, women still earn only 65 to 74 percent of the earnings of their male counterparts with similar education (according to the Bureau of Labor Statistics).

Self-funded retirement

Pension plans are being replaced with self-funded 401(k) and IRA accounts. The promise of a government-funded retirement through social security is no

Today, attorneys and courts should consider more enlightened measures of economic value, such as tax issues, liquidity, education, stock options and potential earnings of both spouses.

longer a reality. Workers are also being offered stock options in lieu of large salaries, and must learn to manage their own finances and fund their own retirement savings.

Impact on Divorce Cases

In the Knowledge Society, the roles of parent, breadwinner and homemaker are merging and are no longer sharply defined. These changing scenarios will directly affect the nature of divorce cases and the clients we will serve in the future. Conventional tests for spousal maintenance based on need, ability to pay, length of marriage and the health of both parties must be broadened.

Today, attorneys and courts should consider more enlightened measures of economic value, such as tax issues, liquidity, education, stock options and potential earnings of both spouses. More of the family's assets — specifically the family home and property — will need to be liquidated to invest in education.

Typically, when a couple are divorcing, they pay much attention to who gets the house. Attorneys work out settlements where the wife keeps the house and the husband pays maintenance to his ex-wife for a set period of time. What often occurs, however, is that the woman is working in a lesser-paid position and cannot afford the house payment without finding a second job or extending the maintenance agreement. She becomes a victim of the much-documented disparity-in-earnings gap, and the quality of her life suffers as the quality of her ex-husband's life increases.

We advocate a more enlightened settlement, which liquidates the equity in home and uses the proceeds from the sale to invest in the wife's education. According to The American Marketplace, the average household in 1995 owned a median of $13,000 in financial assets; meanwhile the median value of Americans' primary residence was $90,000. The home is the largest non-financial asset of 65 percent of American households. As we will examine in the following scenario, investing the assets of the family home in education ensures better financial health over the long term.

Client Scenario

Linda and Brian Henry have been married 11 years. Linda is 39 years old and Brian is 41. They have two children, ages 10 and seven. Brian is a systems analyst at a large telecommunications company. He has worked for the company for 15 years and earns $80,000 a year. He has a Bachelor of Science degree in computer systems engineering. Linda has a Bachelor of Arts degree in Sociology. Prior to marriage, she worked briefly as an office administrator. The couple agreed that she would stay home to care for their children.

At the time of the divorce the couple jointly owned a home in Issaquah valued at $380,000, with a $225,000 balance due on the mortgage and an interest rate of 8.25 percent. The down payment on the home was $100,000 — $50,000 from the sale proceeds of their first home and $50,000 from Brian's inheritance funds. The monthly mortgage payment, including taxes and insurance, is $2,000 per month.

Their other assets include a $20,000 van, which Linda drives, that was paid for three years ago for $35,000 by using Brian's inheritance funds. Brian drives an automobile worth $10,000, which was paid for with the balance of his inheritance funds. Furnishings and appliances total $7,500 in Linda's possession and $1,500 of the same in Brian's possession. During the marriage, the couple also contributed $55,000 to a 401(k) fund and purchased $10,000 in US West stock. There is no pre-nuptial agreement and no community-property agreement. There is no debt except the mortgage, $3,500 owed to Nordstrom, and $2,500 owed to the US West Credit Union.

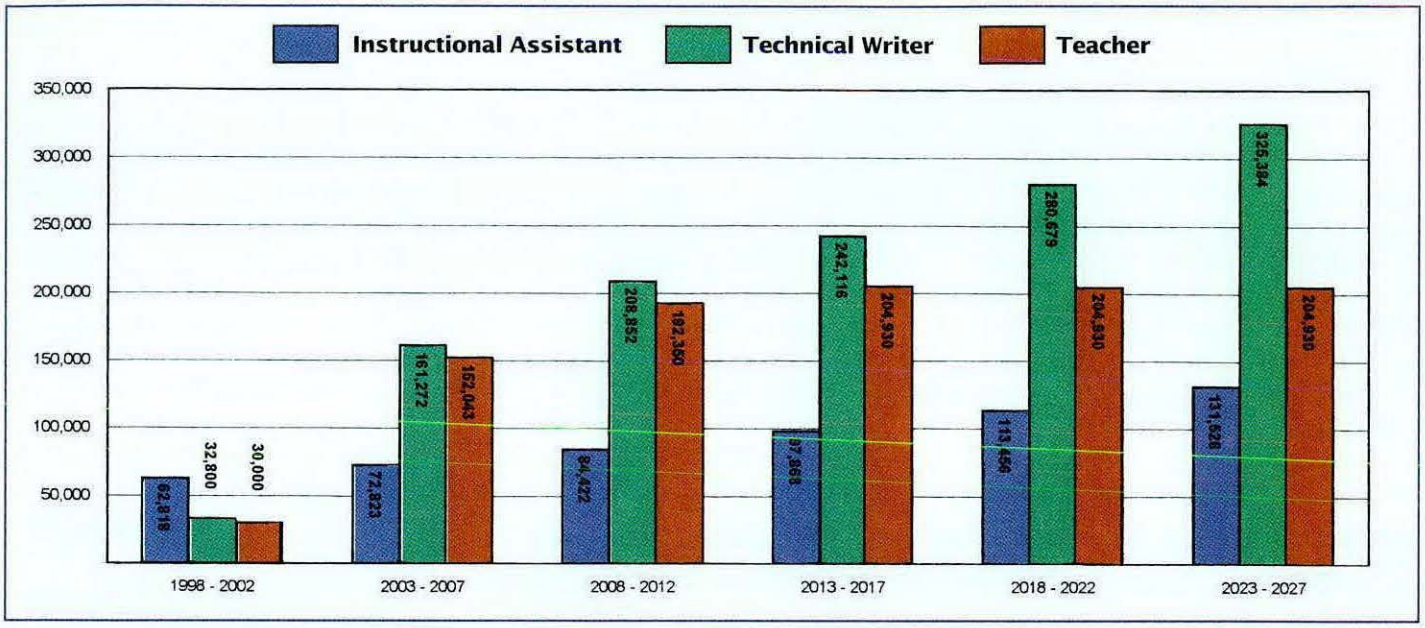
Brian is somewhat concerned about his job after the year 2000 when all of the computer systems have been brought online. His industry has been subject to layoffs in the last 10 years. Two years ago, when their youngest entered school, Linda started working to supplement the family income and decided to work as a teacher's assistant in order to work around her children's schedule. She enjoys the job and currently works five-and-a-half hours a day, five days a week. She grosses $812 per month and is paid 10 months a year. Linda researched the possibility of becoming a full-time teacher, but decided that the pay for the extra education she would need does not meet her economic needs.

After career assessment and counseling, Linda discovered an arena that suited her interests and strengths. She explored the emerging occupation of technical writing and discovered that two years of education was required to enter the field. A newly established technical-writing program was offered at a nearby community college. According to local area employment agencies, recruiters and educational administrators, employers want highly skilled people for full-time employment in technical writing. Therefore, graduates from local educational programs are encouraged to obtain internships during their training. In addition, they may have to volunteer, or perform entry-level editing work, which usually tends to be part-time or on a project-work basis. Linda may have to work in this mode for a minimum of two years prior to obtaining high-level skills to qualify for full-time employment, as is often the case for many contemporary occupations. According to local employers and educational institutions, the job outlook for skilled technical writers is excellent in the local Seattle area. For the first two years of her employment, Linda's salary for the two-year time ranges between $10 and $12 per hour. After three to five years of developing her skills, she can earn $35 to $40 per hour.

Linda's educational costs will be approximately $9,000, including purchase of a new computer and various software programs. She will attend the community college from January 1998 until Fall 2000. She will start working part time in 2001. From 2001 until 2003, she will gradually increase her hours from five hours a week, 40 weeks a year at a pay rate of $12 per hour, to 30 hours a week, 45 weeks a year at $35 per hour. After 10 years she will work full time at a rate of $40 per hour.

To qualify for a full-time teaching position, Linda would probably have to obtain work experience as a substitute before becoming recognized for her ability and hired by the school district as a full-time teacher. The occupational outlook for teachers is good for part-time or substitute teachers, but more limited for full-time positions.

If Linda had chosen to maintain her job as an instructional assistant (service-sector job), she would earn nearly $63,000 in the five-year period following her divorce (see chart). The technical-writing career she chose (knowledge job) would pay her only $32,800 over that same period, and the teaching position would pay even less. (During that period Linda would be in school and working only as a substitute or in entry-level, part-time technical-editing jobs.) On the surface it



appears Linda is better off staying in her position as an instructional assistant.

As the bar graph illustrates, however, Linda will more than double her potential earnings over the long term by investing in education and pursuing a technical career. She will be better able to provide for her family, share responsibility for her children's educational needs, and buy another home down the road. Meanwhile, Brian will pay less spousal maintenance over time and will also have a pool of money from which to draw for his own educational needs, should he be subject to a layoff.

Assumptions:

1. Wages increase at 3% per year. Wages do not include benefits. Working from age 39 until age 68.
2. During the first five-year period, the instructional assistant works full-time. The teacher and technical writer attend school for two years full-time and work part-time for the next 2-3 years to gain work experience prior to full-time employment.
3. Instructional Assistant makes $1,183.20/month, 10 months per year.
4. Technical Writer starts at $12/hour, 10 billable hours/week, 40 weeks/year. This increases to $20/hour, 20 billable hours/week, 40 weeks/year and tops out at $30/hour, 30 billable hours/week, 40 weeks/year.
5. Teacher finishes Masters program in 2001, substitutes for two years and has no cost-of-living increases.

Divorce Agreement Structure

If Linda wants to go obtain the kind of training that will provide her with the optimum long-term career choice, she won't receive as much in spousal maintenance and child support as she will need. She may have to use the property she is awarded to help fund that educational investment.

Brian may have to pay maintenance for a significantly longer period of time than traditional thinking allows, given the length of the marriage. The property that will have to provide the alternative source of "investment capital" for Linda's career pursuit will deprive him of what might otherwise be awarded to him. What guarantee does he have that if he is made to pay for the eight years it will take to get her launched into that career that she will actually use the money for the intended purpose?

One solution might be to sell the house and set aside a given amount of the sale proceeds as a fund to pay for the direct education costs of tuition, books and other necessary materials. If Linda fails to complete the process, the funds remaining would either be divided between them, to complete the execution of the property division, or be distributed in full to Brian, depending on whatever property settlement has been worked out.

Another solution might be to award the home to Brian, subject to a lien in Linda's favor to be paid upon her termination of the maintenance. Her lien could be subordinated to an established amount that he would borrow against the home to fund her education. His payment of the ongoing educational costs would be part of the maintenance obligation with the borrowed funds being set aside in a sequestered fund to guarantee the fulfillment of his obligation.

The second solution would award Brian a significantly disproportionate percentage of the assets—perhaps as high as 75 to 80 percent. In other words, Linda would receive a term of maintenance for far longer than traditional awards would allow in these circumstances. He would receive the kind of property division that traditional approaches might normally award her, given the disparity in their earning capabilities at the time of the divorce and the length of the marriage.

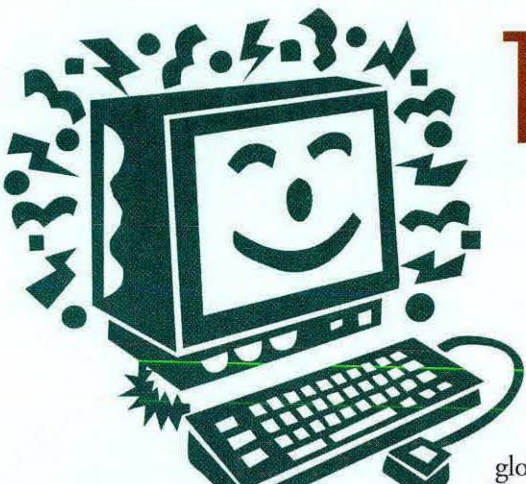
There is nothing radical about either of these solutions. They are simply a different implementation of the same principles that have governed maintenance awards and property divisions for decades. The paramount consideration in awarding property, regardless of character, should be the relative economic circumstances of the parties as they face the future. Additionally, maintenance should be awarded both for rehabilitative purposes subject to ability to pay, and to accommodate the equitable division of assets and liabilities.

The possible solutions here, among others, are simply non-traditional means to accomplish those same well-established traditional principles. But the changing realities in the marketplace will require lawyers, clients and judges to re-examine their views of what those well-established principles really mean to both parties. These challenges to creative decision-making will include retraining for displaced wage earners in more innovative settlement agreements.

Janice Reha, owner of Career Discovery, is a career counselor who specializes in vocational expert services for dissolution. She co-developed the Displaced Homemaker Program at Bellevue Community College in 1977 and has had a private practice in Bellevue for the past 17 years.

Kathleen Miller is the president of Miller Advisors, Inc. in Bellevue, and author of Fair Share Divorce for Women. *She has specialized in cash flow analysis, investment management and financial planning in pre- and post-divorce cases for the past 15 years.*

Hank Fields has been active in the Washington State Bar since 1974 and has devoted his practice almost exclusively to the area of family law. He is a fellow in the American Matrimonial Lawyers Association, has served as a Judge Pro Tem, and is currently a King County Family Court Commissioner Pro Tem.



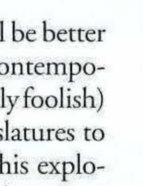
The Greyhaired Cyberpunk

by Robert Apgood

OK, I admit it. I'm a "computer hacker." I know, I know… but, I come from an era when having the handle of "computer hacker" was a compliment. It referred to individuals who had attained an understanding of computers and how they work that surpassed the abilities of the average programmer. Unfortunately, the press has misused the term in recent years and tainted it to invoke images of straggly-haired, unbathed, Coca-Cola–swigging, bleary-eyed mumbling mammals capable of conversing with inanimate objects, whose existence is focused on breaking into Pentagon computers to steal national secrets. Well, nothing could be farther from the truth. Most of us don't even care about Pentagon computers.

I started using the Internet about 10 years ago (we didn't capitalize it, though — it was just "the internet") to exchange email with peers, to transfer files and programs, and eventually to engage in discussions on various topics in USENET news groups. Belaboring the obvious, the Internet has changed significantly in the past five years. And while we can't seem to pick up any publication without reading something about how the Internet is changing the globe in business, education, the arts, and just about everything else, we read/see/hear very little about how these changes affect, and are affected by, changes in the law. It is the intent of this column to help cast at least a small ray of illumination on these changes. I'll start back in the dark ages of the Internet (oh, say, 1990 or so) and examine some of the cases that have had profound effect of the state of the law today. Each month, I'll examine a significant case or two, moving chronologically forward to modern times. This historical perspective accomplished, we'll be better informed when examining contemporary litigation and the (frequently foolish) attempts of Congress and legislatures to enact statutory regulation to this explosive medium (this is the part where I get to put my law degree to use).

Similarly, radio, and then television, provided unique modes of "publishing" ideas to increasingly larger audiences.



New technologies have profound effects on the world. With the advent of the telegraph, communications over long distances became commonplace and changed the manner in which business was conducted, news was disseminated, and people interacted with one another on a daily basis. As a result, the law was forced to change and expand in order to deal with new problems that arose in the formation of contracts, ascertaining jurisdiction, regulating interstate commerce, and generally defining how society ordered its conduct through the use of this new medium. Similar problems arose with the common availability of the telephone. However, with the telephone, sexually oriented communication in an anonymous environment took its foothold, creating a new and wholly unique set of legal dilemmas. Similarly, radio, and then television, provided unique modes of "publishing" ideas to increasingly larger audiences. Society responded to conflict by enacting laws and resolving legal disputes as they arose. But, society had the luxury of dealing with these problems in a fairly serial manner. Although the impact of the technologies was profound, it wasn't nearly as pervasive in scope as the Internet.

The Internet touches virtually every aspect of communications—from traditional print publishing to sales of goods and services, from transmission of traditional televised events to one-on-one, real-time communications historically reserved for the telephone. Embracers of the technology are canceling print-media subscriptions because they get the news faster and in more succinct forms from Internet news services. Stock-market investors can now trade directly over the Internet, thereby cutting out the broker middle-men, and get confirmations of trades directly from the computers that effected the trades on their behalf. Using web-based cameras and imbedded voice capabilities of their computers, businesspeople can have visual/audio communications between their Seattle headquarters and Hong Kong satellite offices — all for the cost of an in-expensive Internet link to a local provider. The technology is truly phenomenal. But, like its telegraph and telephone predecessors, the technology is giving rise to the very same problems of contracts, jurisdiction, interstate commerce, etc. And, like the telephone, wholly new vehicles for the exchange of sexually oriented materials and communications have been discovered. No, this column is not a thinly disguised front for an anti-pornography agenda. Neither is it a thinly disguised front for a pro-pornography agenda. I give slightly increased attention to the subject for several reasons: 1) it has been the basis of statutory and case law that has the most effect to date on regulation of the medium; and 2) like it or not, pornography on the Internet has funded the most progressive advances in Internet technology. In future installments, I'll discuss how these technological advances will ultimately benefit all users of the medium.

While the primary focus of this column will be the study of the relationship of cyber-technology and the law, I'll take the opportunity to share some of the plethora of legal resources that are freely available on the Internet. Typically, I'll focus on sites that relate to the subject of the month's topic. This month's introductory nature affords me the opportunity to share sites that are general in nature (see sidebar).

Federal Sites

http://law.house.gov – House of Representatives' Internet Law Library. Links to U.S. code, CFR's, Fed Reg's, treaties, laws of other nations, and much more. See also, **http://www.house.gov**

http://thomas.loc.gov – U.S. Congress on the Internet. Bills, Roll Call votes, Congressional Record, Committee info, links to historical documents

State Sites

http://www.mrsc.org – searchable RCWs and WACs

http://www.wa.gov/courts –
just about anything you might need for WA courts

Municipal Sites

http://www.mrsc.org/codes.htm –
Municipal Codes for many Washington counties and cities

http://www.spl.org/govpubs/municode.html –
links to Municipal Codes for many cities in many states

Useful Sites

http://www.mother.com/~randy/tools.html –
attorneys' tools and primer for searching on the Internet

http://LegalNews.FindLaw.com –
legal news (updated daily or more frequently)

http://www.jmls.edu/cyber/index/index.html –
Cyberspace Law subject index

http://www.findlaw.com – the name says it all

Make a New Year's Resolution to Plan for Retirement

by Zella Ozretich
WSBA Lawyer Services Department

It's a new year and many people have made their resolutions (and broken some already as well). Even though New Year's Eve has passed, it's not too late to make one more important resolution. Lawyers should resolve to take time to think about retirement planning for themselves and/or for older lawyers in their firm. Is there a plan in place through the firm which will help ease the transition for those who are near retirement age? Does each individual have a plan that includes both the financial and personal implications of retirement?

Although most people don't like thinking about it, it's a fact that older professionals (including lawyers) will eventually need to consider retirement. This is a difficult topic to broach with others, particularly if an older lawyer does not see the need to make adjustments in his or her duties or to retire. But there are ways that firms and individuals can prepare for retirement and avoid the potential pitfalls of this period of life.

Planning Through the Firm

The best way for a firm to smooth the transition to retirement is to have a policy in place before retirement becomes an issue for specific firm members. Partners should consider how they would like to handle retirement, both for themselves and for other employees, right from the start. Some methods that firms have used to structure retirement policies for partners include:

- Voluntary retirement – usually starting at age 60 with a requirement that the partner have been with the firm for a set number of years.
- Mandatory retirement — usually imposed on partners by their 70th birthday, unless they are given permission to continue practicing by a vote of the remaining partners.
- Gradual reduction of duties leading to full retirement – for example, a four-step phasing-out period starting at age 65 and continuing over three years. During the three-year period, the person's partnership interest as well as his or her workload would be decreased.

Ideally, the firm would set up funding for its retirement plan as well as establish a policy specifying how retirement will be handled for partners. An insurance professional and/or a financial planner can help set up retirement plans as part of the firm's employee-benefits package.

Planning as an Individual

Whether a partner in a firm or a solo practitioner, each lawyer should make realistic plans for retirement as an individual, apart from any provisions made in the workplace. This planning involves addressing personal, as well as financial, issues.

During the decade preceding retirement, individuals and spouses (if applicable) should realistically assess their financial preparations. For many, retirement can be a time to realize dreams and delayed ambitions. It also may be a period of anxiety for those who have postponed thinking realistically about the ways financial identity will change — income, savings, investments, credit, insurance, job benefits, and perhaps living arrangements. For married couples, both partners should be involved in retirement planning and may wish to discuss their plans with adult children.

The decade prior to retirement is also a good time to take inventory of assets and obligations and to make financial choices aimed at maximizing future resources. These years are typically a peak earning period and can offer the opportunity to reduce major debts, such as a home mortgage, and to increase savings and income-producing investments. Households with the combined expenses of educating children and caring for aging parents may find saving difficult during pre-retirement years. In these cases, making a realistic financial appraisal is more useful. The individual and his or her spouse (if applicable) might ask themselves this question: What are our sources of retirement income and how much will each provide – monthly or in a lump sum?

Sources may include:

- Social Security
- pensions, IRAs, Keoghs
- savings and investments
- sale of assets
- home equity

When estimating the income anticipated from these and other sources, the individual should remember to take inflation, taxes, and market fluctuations into account. Depending on anticipated income potential, the individual may decide to postpone retirement, or plan to work part-time.

The cost of serious or long-term illness is a major burden for many older Americans, as Medicare does not cover all health-care expenses. An individual considering "medigap" insurance to supplement Medicare should shop carefully for a policy that supplements, rather than duplicates, Medicare coverage.

Long-term health insurance for either nursing homes or home health-care is an additional option. For many, Long-term Care insurance is worthwhile; it can prevent drain on one's personal savings and cover services Medicare does not provide. However, each individual should be sure to examine all the terms of any such policy before buying.

Personal and Emotional Preparations for Retirement

While financial planning is important, emotional and personal preparations for this major life-transition are just as crucial. Retirement can provide opportunities for growth and enrichment in areas that the individual has never had time to pursue. To begin the transition from actively practicing law to full-time retirement, a person must ask several important questions:

- What is important to me?
- What do I want to accomplish?
- How do I want to live the rest of my life?
- What kinds of rewards do I want?
- What are my strengths?
- What are my weaknesses?

Determine what stands in the way of reaching these goals, and decide what areas need to be changed or improved in order to get there. The issues to anticipate and analyze include changes in such areas as time structure, identity and self-worth, and relationships.

Relationships with both family and friends change with retirement in several ways. Family relationships go through stages as people age:

1) Aging parents may still depend on adult children who are approaching retirement age.
2) Adult offspring rely on parents less as they establish an independent life.
3) Older adults approaching retirement begin to rely on adult offspring more.

Friendships also change as people age, particularly after they retire. Friendships established at work will fade and dissolve if based on work only. In order to maintain friendships after retirement, individuals should cultivate their outside interests and make new friends, or perhaps pursue outside interests with work friends so that there is a basis for friendship other than the workplace.

Retirement provides opportunities for new relationships, and for personal and spiritual growth. But it can also be a painful time plagued with problems, particularly for a person who is unprepared to deal with this life-change. Possible dangers for the retired person include isolation, procrastination, imbalance, depression, and the abuse of alcohol and other drugs.

To avoid such dangers, the person approaching retirement should examine his or her personal needs and goals for retirement and make plans for fulfilling them. Few people are really satisfied with taking it easy day after day; most soon look for an outlet for their talents and energy. Retirement definitely does not mark the end of a one's useful life. In fact, many retired people go on to second careers or find fulfillment in volunteer work.

Employment Options for Retired Lawyers

Retiring from one's primary practice does not mean that a retired lawyer cannot continue to work in some capacity. One doesn't have to relinquish the role of law professional, but the role may change. Some options which may be available to retired lawyers are included in the following three categories:

Compensated Professional Service:

This opportunity is available primarily for those who have a particular area of expertise, or who continue a relationship with their present firm. Opportunities include:

- part-time "of counsel" relationships with one's firm
- a second career in a different area of law, or in a completely different field (make sure to prepare in terms of training and/or developing expertise)
- consulting in particular areas of law
- (for retired judges) working as a "rent-a-judge"

- adjunct teaching at a law school
- (for retired government lawyers) temporary work on special projects

Pro Bono Volunteer Legal Practice: Many retired lawyers welcome the chance to "give back." Some programs that offer pro bono services include:
- legal-services agencies
- bar-association-sponsored projects
- legal-assistance programs for older persons
- legal hotlines
- court-annexed dispute-resolution programs
- health-insurance counseling
- long-term-care ombudsman programs
- lawyer-assistance programs

Uncompensated Volunteer Service: This type of opportunity is almost limitless, and though not directly related to the law, can be rewarding. Some ideas include:
- serving as a board member for a non-profit organization
- serving as a member of the governing body of a condominium or cooperative apartment complex
- general community service

Keeping active and recognizing the need to be mentally stimulated will help make retirement an enjoyable time of life.

When a Lawyer is not Willing to Retire

Under certain circumstances, a lawyer may not be ready or willing to retire. The reluctance to retire may be due to lack of financial preparation, or personal connection to the profession as the person's sole identity. If this situation arises, then the firm or others concerned for the individual lawyer and his or her practice may need to intervene.

For the lawyer unable to function in the legal milieu because of age-related mental or physical impairment, the issue becomes one of how much accommodation and/or support the legal setting can offer before the client, the firm and the lawyer are put at risk.

The firm must then ask how skilled at evaluating the situation are those in positions of authority; how comfortable are the firm members in initiating some sort of intervention; who, what, and where are the resources for the firm when assistance is needed. Like any type of intervention, intervention leading towards retirement should address specifics and include respect for the aging colleague's abilities.

Compassionate Intervention Guidelines

Begin by consulting with:
- a physician
- a mental-health provider

Gather important information:
- a list of family members, friends and colleagues who may also be concerned and would be willing to help
- some idea of the lawyer's present condition, health, habits, behaviors, and attitudes
- list of medications — over-the counter and prescriptions, currently being taken
- name(s) of treating physician(s)
- short personal history including significant life events

Proceed with an intervention:
- Treat the person with dignity.
- Be kind without being condescending.
- Avoid being confrontational.
- Talk about the problem as it presents itself now.
- Plan to address the issue over a period of time.
- Be specific. Talk about the events and situations you have observed.
- Talk about the impact of the lawyer's behavior on those people and things he or she values.
- Avoid using medical terms. Focus on the behavior.

Lack of planning and the assumption by firms and/or individuals that every lawyer can work in the same capacity indefinitely can contribute to the painful necessity for intervention. If firms and individuals have made their own policies and plans for retirement, have considered options and created a realistic picture of life after retirement, a situation requiring intervention can probably be avoided.

Making the resolution to plan for a financially sound and emotionally healthy retirement is a great way to start the new year.

Further reading:

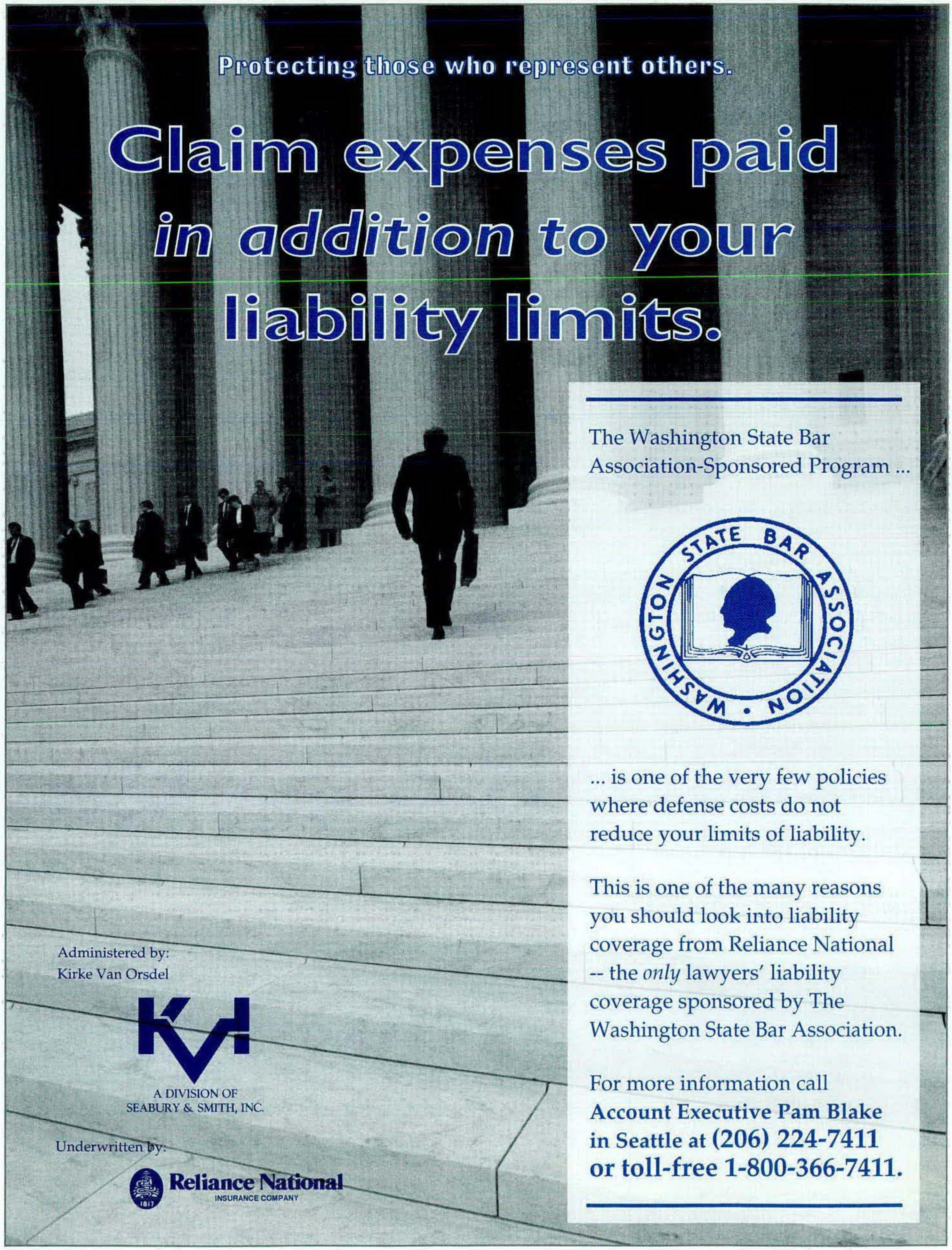
The Lawyer's Guide to Retirement,
David A. Bridewell

Transitions: Making Sense of Life's Changes,
William Bridges

Closing Doors, Opening Worlds,
Vern Drilling

You've Earned It, Don't Lose It,
Suze Orman

Your Next Fifty Years,
Ginita Wall and Victoria F. Collins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Claim expenses paid in addition to your liability limits.
The Washington State Bar Association-Sponsored Program ...
WASHINGTON STATE BAR ASSOCIATION
... is one of the very few policies where defense costs do not reduce your limits of liability.
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WSBA Legislative Agenda Forms

by Sherrie Bennett
Bar News Editor

At the December 4-5 meeting in Bellevue, the Board of Governors set the legislative agenda for the 1999 session into place. Some of the issues which will be supported or sponsored by the WSBA include:

Trust and Estates Dispute Resolution Act ("TEDRA")
This legislation would update and streamline the current statutory construction and incorporate mediation and arbitration into the probate process. A new provision would give special representatives the right to present any agreements to the court for review and approval. If the agreement is approved, the special representative would be granted protections similar to those provided to guardians ad litem. If the agreement is not presented to the court, actions could be brought against the special representative within a period of three years.

Estate and Gift Tax Revisions
Technical amendments regarding definitions, unified credit, etc. occasioned by the 1997 federal statute would be made to RCW 11. 108.060. There would also be updates to the Internal Revenue Code references in RCW 11 and 83, and technical corrections to the disclaimer statute at RCW 11.86.041(2) and RCW 11.86.041(4).

"Employee Benefit Plan" Expansion
RCW 6.15.020 would be expanded to extend protections to Roth IRAs, education IRAs, medical savings accounts, state-funded plans for political subdivisions and state college pre-funding accounts.

Amendment of RCW 6.13-Homestead Exemptions
Provisions of RCW 6.13 regarding calculation of net value of property would be amended in response to *Miller v. Coltran,* 87 Wn. App. 112 (1997).

Modification of Parenting Plans
The modification sections of RCW 26.09.260 would be amended to allow non-residential parents more time with their children if the parenting plan does not provide reasonable time and the court finds it is in the best interests of the children. The proposed legislation would also allow courts to modify parenting plans based upon a showing of substantial change of circumstances of either parent or a child.

Removal of Nonprofit Corporate Directors By Judicial Proceeding
Changes to RCW 24.03 would allow the Superior Court of the county where a nonprofit corporation's principal or registered office is located to remove a director of a corporation if the court finds that the director engaged in fraudulent or dishonest conduct and removal is in the best interest of the corporation.

Expansion of Equal Access to Justice Act
Amendments to RCW 4.84.340-360 would extend existing law that allows for the award of attorneys fees on appeal from an agency decision to include fees arising from the administrative hearing itself.

The complete text of these proposed legislative amendments can be accessed at www.wsba.org/barnews.html.

Supreme Court Update
Mary McQueen and Chuck Foster gave the Board an update on Supreme Court activities. The duo unveiled a proposed "Court Improvement Act of 1999" which would shift some nondiscretionary court funding (such as salaries, indigent defense costs and expert witness and jury fees) from the Public Safety and Education assessment to the general state fund. Members of the Supreme Court have yet to vote on whether or not to propose this legislation. Mary McQueen presented the 1998 Court Management Council Award to WSBA Executive Director Jan Michels.

The Board reviewed a letter received from Justice Guy proposing a constitutional amendment requiring judicial candidates to have a minimum number of years in practice (10 for the Supreme Court, seven for the Courts of Appeal and five for Superior Courts).

The Board voted to send on to the Supreme Court a proposed amendment to CrRLJ 4.2 (Pleas and Pre-trial Disposition form for deferred prosecutions). The complete text of this proposed amendment can be accessed at www.wsba.org/barnews.html.

Fred Diamondstone, Chair of the WSBA Court Rules and Procedures Committee, presented a draft of a revised GR 9 (Supreme Court Rulemaking). The Committee proposed submitting the draft to the Supreme Court and inviting members of the Court's Rules Committee to meet with the Bar committee for a discussion of the rulemaking process. The Board concurred with this request. The next meeting of the Court Rules and Procedures Committee will take place at the WSBA offices on January 25, 1999. When the Committee agrees on a final draft, it will be presented to the Board for its approval and formal submission to the Supreme Court.

HIV/AIDS Sample Employment Policy for Washington Legal Employers
After some hesitancy and thought, the Board voted to accept sample HIV/AIDS Employment policies presented by Joyce Thomas. Governor Thompson noted that "the fact that individual bar members may be uncomfortable with or don't want to discuss an issue doesn't diminish the Board's responsibility." These policies are now available online at www.wsba.org/barnews.html and can be used by law firms in drafting its employment policies regarding these matters.

Office of Disciplinary Counsel Review and Recommendations

Executive Director Jan Michels presented a progress report on the implementation of the recommendations of the 1993-94 Joint Task Force on Attorney Discipline and a reevaluation of the workload and staff resources projected to accomplish backlog reduction and achieve real-time grievance processing. Her recommendations included:

1) Assigning investigators and legal assistants to disciplinary counsel teams and assigning temporary paralegals as interns, term employees or temporary employees.

2) Developing a career secretary position for all department routine support functions of copying, mailing and review hearing paper preparation.

3) Adding a paralegal function to the ODC Diversion section of the Consumer Affairs division and assigning collection functions to this unit.

4) Creating a three-grade support staff incentive program and implementing a three-grade attorney incentive step with parallel tracks for management and senior status.

5) Temporarily supplementing case processing resources with contracted special Disciplinary Counsel and temporary paralegal support.

6) Temporarily assigning one attorney as a temporary full-time investigator for cases presumed to be dismissable after preliminary investigation.

7) Creating a collection system for the enforcement of cost and restitution orders.

8) Reassigning some consumer and administrative tasks from ODC to other departments.

9) Implementing case management automation for docketing and all case management and statistical reporting.

10) Installing WESTLAW access for disciplinary counsel.

11) Vigorously pursuing the use of mediation as diversion to discipline.

12) Reducing the frequency of the full discipline docket to the Board of Governors.

13) Establishing a three-classification grievance system which weights grievances for purposes of assignment.

14) Establishing firm standards for grievance processing: 75% in under 6 months, 90% in under 12 months, and 99% in under 18 months

15) Re-evaluating file maintenance, storage and retrieval systems.

Celebration 2000 Slated

The Board voted to commit to holding a WSBA "convention" in mid-September 2000 in Spokane in conjunction with Access to Justice and judicial functions.

Amicus Curiae Brief Policy Considered

Donnelly Wilburn and Doug North of the Amicus Curiae Brief Committee presented a draft of the brief policy which the committee has been working on. This draft is available online at www.wsba.org/barnews.html.

Comments and feedback should be faxed to General Counsel Bob Welden at 206-727-8320.

Law Office Management Assistance Program Manual

Barbara Harper, Peter Roberts, Marijean Moschetto, Richard Schenkar, Chris Sutton and Marty Potter of the Law Office Management Assistance Program Advisory Committee presented a new book entitled "Up and Running: Operating Instructions for the Small Law Office." The manual covers law office management topics for use by solo and small-firm lawyers and can be ordered for $40 through Kaitlin Mee 206-733-5914 or the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

WSBA Receives $65,000 Grant

The Open Society Institute recently granted $65,000 to the WSBA to be used October 1998 through September 1999 to develop a Washington State Equal Justice Model Training Manual.

Appointments

The Board appointed Evelyn Fielding-Lopez to the Northwest Justice Project Board. The Honorable Gregory J. Tripp and Cynthia Imbrogno were appointed to the Legal Foundation Board.

Budget and Audit Committee Charter Approved

The Board unanimously approved the Budget and Audit Committee's Charter, which sets out the composition and activities of the committee.

MCLE Implementation Committee

The Board will be forming an MCLE Implementation Committee to consider the following issues: the operating agreement between the Board of Governors and the MCLE Board; recordkeeping technology, forms and processing; sponsoring accreditation, audit and revocation or termination of accreditation; monitoring private law firm and government agency CLEs; and finances and fees.

Civil Immunity for Bar Examiners

The Board supports an APR rule change which will give civil immunity to law examiners and staff, similar to a model rule recently adopted by the ABA.

Support Group for Women Lawyers

The WSBA Lawyers' Assistance Program invites women lawyers to participate in a group provided in a supportive and confidential setting.

Possible topics to examine:

- Specific challenges in one's personal and professional life
- Life enhancement

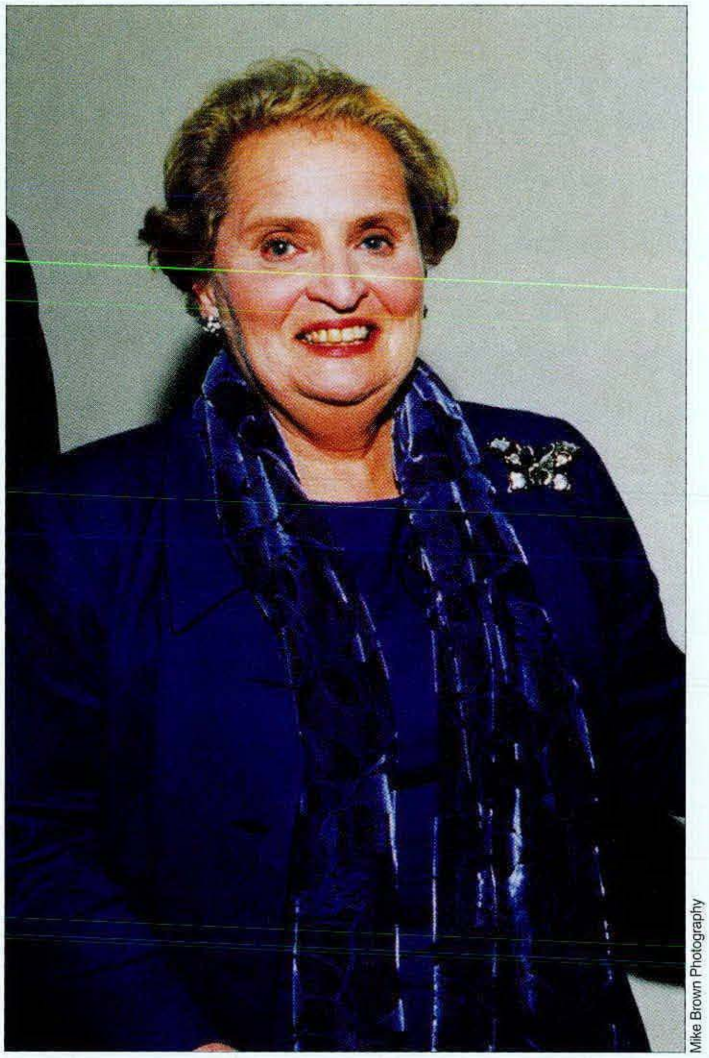
Biweekly meetings will be held on Thursdays 12:00 - 1:30 p.m. Co-facilitated by Jean Johnson, MSW, and Rebecca Nerison, Ph.D., LAP therapists.

Fee: $10 per session

For further information and initial meeting date, please call Jean Johnson or Rebecca Nerison, Lawyers' Assistance Program

206-727-8268

Services provided by LAP are confidential.



Madeleine Albright

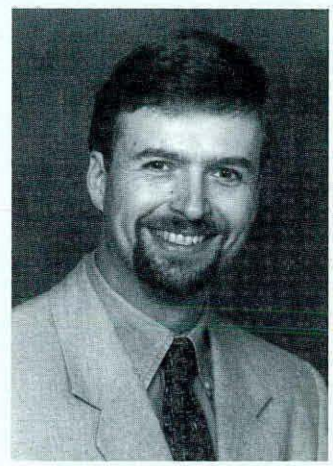
Albright Connections

What do **Madeleine Albright** and the Washington State Bar Association have in common? A daughter! At a recent appearance at the University of Washington School of Law, Albright told law students that one of her daughters started her legal carreer as an attorney in Snohomish County. Albright received laughs and applause after explaining that, although she herself is not an attorney, she is referred to as the "mother of all attorneys" by her lawyer children.

Honors and Awards

The **Perkins Coie** law firm has received the fifth annual Community Service Award from the Association of Legal Administrators Puget Sound Chapter.The firm recently included a strong commitment to community service in its mission-and-principles statement, and attorneys and staff are made aware of community service opportunities through memos and announcements in the firm's Weekly Bulletin.

Kathleen Thomas Petrich



Stephen T. Parkinson

Alexandra K. Smith

Lorna Luebbe

Kelly Meagher

Masahiro "Max" Yoshimura

Movers and Shakers

McDonald & Quackenbush PS, one of the region's prominent intellectual property litigation law firms, is joining Preston & Gates LLP. Also joining the firm are **Allen B. Draher**, whose entertainment and general practice clients include the rock group Pearl Jam, and **G. William Shaw**, who has a national products liability litigation practice, (including asbestos claims). The firm has also named **J. Christopher Lynch** a partner in the Spokane office. Lynch focuses on intellectual property issues and has represented both plaintiffs and defendants in copyright, patent, trademark, trade secret and antitrust litigation. **Kristine Holm**, new of counsel in the Seattle office, brings extensive experience in all aspects of environmental compliance and litigation. New associates include **Jonathan J. Fisher**, who previously practiced with a large Chicago-based firm; **Robert D. Starin**, who is developing a practice in the federal, state and international taxation arena; and **Theresa L. LaLone**, who focuses on commercial, environmental, employment, real property and contract litigation.

Kathleen Thomas Petrich has announced the formation of the Petrich Law Firm PLLC in Seattle. Her practice will continue to focus in the areas of procurement and enforcement of intellectual property rights.

Marten & Brown LLP has elected **Stephen T. Parkinson**, an environmental litigator geared toward Superfund cost recovery, natural resource damages, environmental class actions and insurance coverage disputes, as partner. New associates include **Alexandra K. Smith** and **Lorna Luebbe**. Ms. Smith currently serves as editor of the newsletter for the Federal Bar Association of the Western District of Washington and has contributed to the *Washington Real Property Deskbook*. Ms. Luebbe represents clients in hazardous waste, environmental media, natural resource and permitting disputes.

Rongwei Cai has relocated from Hong Kong to join the Seattle office of Graham & James LLP. The firm has also added **Suzanne M. Larsen** and **Matthew LeMaster** to its expanding Real Estate Practice Group and **Sandra Brown** and **Dan Gunter** to its Litigation Practice Group. New additions to the firm's Corporate Practice Group include **Kirk Schumacher** and **David Wickwire**.

Kelly Meagher has become an account executive in the Seattle office of The Affiliates, a staffing service specializing in project attorneys and other legal personnel.

Masahiro "Max" Yoshimura has joined Lane Powell Spears Lubersky LLP in the Seattle office as an associate and will concentrate his practice in the areas of international and federal corporate taxation and business transactions.

The Bishop & Lynch PS firm recently announced the addition of associates **Michael A. Padilla** and **Ann T. Marshall**. Mr. Padilla will continue to practice in the areas of commercial and real property litigation, construction law and bankruptcy, and Ms. Marshall will focus her practice in the areas of real estate, creditors' rights and civil litigation.

James M. Shore has joined the firm of Graham & Dunn, where he will co-chair the firm's Labor and Employment Practice Team. Shore represents employers in union matters, employment discrimination, wrongful death, breach of contract, trade secret and tort litigation, and appeals in federal and state court. Joining the firm's Litigation Group as an associate is **Deirdre L. Runnette**, a civil litigator.

Bogle and Gates PLLC has added five new attorneys to its Seattle office. **Charlene A. Launer** is of counsel in the Technology and Intellectual Property Practice Group, and has worked in both the public and private sectors. **Cynthia Kennedy** is an associate in the Land Use Practice Group. **Christopher L. Moore**, previously admitted to the bar of England and Wales, joins the Corporate and Commercial Practice Group. **Thomas G. Morton** will be a Member of the Tax and Transactions Practice Group. **Dierdre C. Thomas** will focus her practice as an associate on employee benefits and the Employee Retirement Income Security Act in particular.

Timothy L. Boller recently joined Seattle-based intellectual property firm

Seed and Berry LLP as an associate in the Litigation Department.

Williams Kastner & Gibbs PLLC has added five new associates in the Seattle office. The practices of **Janet S. Chung** and **Rashelle C. Tanner** involve labor and employment issues. **Ryan W. Collier** will focus in the commercial litigation, business and administrative law, and real estate areas. **Ann M. Molitor** plans to practice in the real estate and business transactions areas, and **Casey L. Jorgensen** will concentrate his practice on business transactions and sports law.

Joyce J. Dillon, experienced in copyright coverage and the defense and preparation of copyright and trademark applications, has cast her lot with Foster Pepper & Shefelman PLLC.

Perkins Coie LLP has announced the addition of **Kurt E. Linsenmayer** as Of Counsel in the Tax Group, where his practice will focus on advising clients regarding design, administration and compliance aspects of retirement plans, welfare plans, executive compensation and other fringe-benefit arrangements.

Geri Ann Baptista was recently hired as an associate in Cairncross & Hempelmann PS's Civil Trial and Appellate Litigation and Employment Law Group. **Erik Marks** joins the firm's Real Estate practice. **Thomas M. McBride** will practice with the Creditor's Rights and Bankruptcy Group. Also joining the firm are **Nancy Bainbridge Rogers** in the Land Use, Natural Resources and Environmental Law Group; **Albert Chou** in the Civil Trial and Appellate Litigation and Intellectual Property Groups; **Russell King** in the Civil Trial and Appellate Litigation Group; and **Dwight Wheaton** in the Strategic Business Planning Group.

Amy C. Williams-Derry has joined the Seattle firm of Hillis Clark Martin & Peterson as an associate, where her practice will emphasize commercial litigation and real estate law.

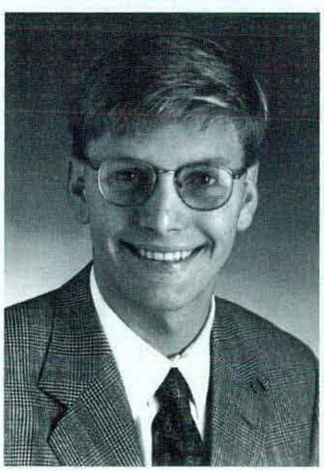
Richard B. Jolley, previously a deputy prosecuting attorney in Clark County and an officer and judge advocate in the United States Marine Corps, has joined Keating, Bucklin & McCormack, Inc. PS as an associate.

James M. Shore

Deidre L. Runnette

Janet S. Chung

Rashelle C. Tanner



Ryan W. Collier

Ann M. Molitor

Casey L. Jorgensen

David S. Levin and **Kenneth M. Odza** have associated with Stoel Rives LLP in the firm's Seattle office. Levin will concentrate his practice in traditional labor and employment law, and Odza will focus on general commercial litigation.

Seattle-based Reed McClure has added two new associates. **David S. Cottnair** has previous insurance experience and **Mark A. Rowland**, an accountant, will concentrate on tax matters.

In Memoriam

William L. "Bill" Bennett passed away in Spokane on October 28, 1998. Formerly a Circuit Court judge and an attorney for the Washington State Senate, he ended his career as an attorney for Playfair Race Course. He was a member of the Spokane County Bar Association and the Spokane Elks Lodge.

Former president of the Spokane County Bar Association and vice-president of the Washington State Bar Association **Harold W. Coffin** passed away September 19, 1998. He was 90 years of age, and practiced law for 60 years.

Doug Leightner of Vancouver passed away at home November 17, 1998 at the age of 59. He was a member of the WSBA Legislative Committee and a sole practitioner in the Cascade Park area. He will be especially missed by his many colleagues in the Criminal Defense Section of the Clark County Bar Association.

Retired Clark County Superior Court judge **Robert D. McMullen** passed away October 9, 1998 at the age of 80.

Charles R. "Tex" Nelson, assistant corporate counsel for the City of Seattle from the mid-1950s through the 1970s, passed away on October 5, 1998.

Camas attorney **Robert W. O'Dell** passed away at the age of 74 on September 11, 1998. Practicing law for 37 years, he also served in the Washington State legislature, representing the 17th District.

Robert C. "Saint" St. Louis passed away on October 17, 1998 at age 73. In 1959, he founded the law firm now known as Aiken, St. Louis & Siljeg.

Francis A. "Walt" Walterskirchen, former King County Superior Court judge, passed away September 25, 1998 at the age of 93. A dignified presence on the King County bench for 16 years, he was also a former athletic coach and King County chief criminal deputy prosecuting attorney, and helped form the Retired Judges' Association. His daughter, Lisa, is also an attorney.

Andrew Murray "Mike" Williams passed away September 6, 1998 of injuries suffered in a fall at his Vashon Island farm. He was 81 years of age. He was a former member of the Perkins Coie legal teams for Boeing, the former Puget Power and the Seattle Pilots baseball organization.

The Preamble to the Rules of Professional Conduct:

An Important Guide to Professionalism

by Barrie Althoff
WSBA Chief Disciplinary Counsel

Most of us consult the Rules of Professional Conduct (RPCs) only when we recognize a specific ethical problem. Usually this is when we are uncertain whether we should or should not do something, and then we tend to read the RPCs to our advantage, hoping they will allow us to do what we want. Sometimes, after we have already done something, we consult them retrospectively, usually with a certain trepidation, to see whether what we have already done was ethically permissible. At those times, we tend to read the RPCs narrowly like a criminal statute, with all of the marvelous twists of thought and justifications we lawyers are capable of, to prove that we did not violate them.

In our haste to resolve a specific problem, we often leap into the RPCs to find a particular rule in the midst of the nearly 11,000 words of the RPCs. In doing so we usually skip over the Preamble to the RPCs. We often do this without thinking of what the RPCs are really all about. We forget that the RPCs are not to be consulted only in a moment of decision, action or crisis, but are also to be consulted as a guide to basic standards of behavior (even if only minimal ones) on how to become a more complete and more fulfilled professional.

The etymology of the word preamble, "to walk in front of," should help us understand the Preamble's central role in our ethics rules. The Preamble can be our ethical guide, walking before us, leading us on our quest to be the best professionals we can be. Too often we become enmeshed in our practices, in our problems of the moment, and forget this guide which will help show us the way through the ethical complexities of our profession.

The Preamble to the RPCs is only 334 words long. Yet without it, the remaining 11,000 words of the RPCs may be seen as merely a collection of do's and don't's, with little unifying theme or underlying rationale, merely another unwanted regulatory intrusion into our lives. Without the Preamble, we might ask ourselves, for example: Why must we be competent and diligent? Why must we communicate with clients? Why must we be candid? Why must our fees be limited to "reasonable fees"? Why must we maintain our clients' confidences and secrets? Why must we avoid conflicts of interest? The answer is not just that the Supreme Court, by adopting the RPCs, has told us we must do so. So, why do we have these rules at all?

In our haste to find something that applies to a specific problem, we often leap into the RPCs to find a particular rule in the midst of the nearly 11,000 words of the RPCs.

If we were selling furniture or cars or computer software, none of the standards of competence, diligence, communication, reasonableness, and so on, would be mandated by any regulatory body. Instead, the marketplace dictates who will prosper and who will fall by the wayside. If an individual violates all the voluntary standards of most unregulated trades or occupations, nothing (other than the marketplace) prevents the individual from continuing to ply his or her occupation. A salesperson or a software programmer, no matter how often or seriously he or she delays projects, is never prohibited by law from continuing as a salesperson or a software programmer. The marketplace, by possibly lowering the profitability of that person, may limit that person, but it does not exclude that person, nor does it prevent that person from moving elsewhere to start a new business without regard to how miserably in the past he or she has failed to meet the needs of his or her clients.

Being a lawyer is different. The marketplace may determine who among us will financially prosper. But financial prosperity is not the motivating goal of most satisfied lawyers. Further, if a prosperous lawyer is found to be unethical, then, even if the marketplace has "said," by making the lawyer prosperous, that it wants the lawyer to be in the "legal" marketplace, the lawyer may be excluded from that marketplace against both the will of the lawyer and of the marketplace.

For lawyers, there is something beyond the marketplace. It is not just the Supreme Court's rules. But, if we do not understand what that something is, if we do not understand why we have the RPCs, if we do not want to serve our clients far better than the minimal standards laid out in the RPCs, we are unlikely, in the long run, to want to remain lawyers.

Various surveys suggest that many lawyers are dissatisfied with the practice of law. Some lawyers undoubtedly became lawyers for the wrong reason, or for no reason. They discover that mistake only too late, they believe, ever to do anything about it. They then feel trapped in the

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

law, hating it, hating their clients and fellow lawyers, and become bitter and cynical. Sometimes they became lawyers primarily to prosper financially, not realizing how hard the average lawyer works for very little compensation.

Satisfied and fulfilled lawyers usually give willingly, without regret, to their clients, to the profession, and to the public, without worrying about what, if anything, they may receive in return. They obviously need to make an income, but the income does not dictate their practices. They keep on giving even when they know there is no return. They continue giving simply because as professionals they want to and they know it is not only the right thing to do, but that without it they will lose far more than they gain by not giving away their services. They realize that the standards set out in the RPCs are not arbitrary, but are instead the best ideas that thoughtful and dedicated lawyers like themselves could come up with to resolve very difficult and competing interests.

Let's take a minute to reacquaint ourselves with the Preamble:

> *The continued existence of a free and democratic society depends upon recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual and the capacity through reason for enlightened self-government. Law so grounded makes justice possible, for only through such law does the dignity of the individual attain respect and protection. Without it, individual rights become subject to unrestrained power, respect for law is destroyed, and rational self-government is impossible.*
>
> *Lawyers, as guardians of the law, play a vital role in the preservation of society. The fulfillment of this role requires an understanding by lawyers of their relationship with and function in our legal system. A consequent obligation of lawyers is to maintain the highest standards of ethical conduct.*
>
> *In fulfilling professional responsibilities, a lawyer necessarily assumes various roles that require the performance of many difficult tasks. Not every situation which a lawyer may encounter can be foreseen, but fundamental ethical principles are always present as guidelines. Within the framework of these principles, a lawyer must with courage and foresight be able and ready to shape the body of the law to the ever-changing relationships of society.*
>
> *The Rules of Professional Conduct point the way to the aspiring and provide standards by which to judge the transgressor. Each lawyer must find within his or her own conscience the touchstone against which to test the extent to which his or her actions should rise above minimum standards. But in the last analysis it is the desire for the respect and confidence of the members of the legal profession and the society which the lawyer serves that should provide to a lawyer the incentive for the highest possible degree of ethical conduct. The possible loss of that respect and confidence is the ultimate sanction. So long as its practitioners are guided by these principles, the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise.*

The central message of the RPCs is in this short Preamble, not in the myriad details of the rules that follow. We each need to integrate the message of the Preamble into our everyday lives as lawyers. If we do not do so, we will forget why we are lawyers and lose our way as professionals. Our law practice will degenerate from a profession into a mere business. A client will become a mere customer, a source of income, not a person to *serve.*

Without an overwhelming reason, surely no sane person would devote his or her life to solving the complex problems of others, or to fighting and arguing for them with others paid to prove they are wrong, especially when we each ourselves have more than enough of our own unsolved problems. Without an overwhelming reason, surely none of us would willingly spend our lives reading dense and tedious statutes, administrative regulations, legislative history, or judicial decisions when we could instead be reading Homer, Dante, Chaucer, Shakespeare, Voltaire, Melville, or even a good mystery, romance, or the sports pages of our local newspaper. Without an overwhelming reason, surely none of us would spend our lives looking after persons who sometimes resent our very existence as professionals, who if we prevail for them conclude it was because they were right or innocent, but if we lose conclude it is because we are incompetent, corrupt and merely "part of the system," and who in any case often will not pay us after we have served them well. Surely, without an overwhelming reason, none of us would do what we each do, day-in and day-out, in our everyday practices.

Behind the drudgery, behind the often thankless long hours, behind the public's recurrent revilement and resentment of lawyers, lies the overwhelming reason we are lawyers: we are fiercely dedicated to justice and to the rule of law, for both the rich and for the poor, for the defenseless, and for the oppressed.

We believe passionately in assuring that the dignity of the individual attains respect and protection under the law. We are outraged at the inadequacy of legal resources available to maintain that dignity, and we weep when we hear that a domestic violence victim is now routinely turned away without legal assistance because she has not been physically beaten within the last 24 hours. Is that all that our society really means when it promises "justice for all"?

We are the guardians of the law, and we play an integral role in building and preserving a society wherein the dignity of the individual is treasured. We continually test and challenge and goad and lead our society to live up to its stated goal of providing "justice for all." We try daily to assure that the dignity of the individual is not lost to the prejudices of the majority.[1]

At a great price to ourselves, we make a difference in the everyday lives of our fellow citizens. We in the legal profession — whether as judges, or as lawyers in private or government practice, as prosecutors, defense counsel, or as in-house counsel — are the means whereby our fellow citizens can seek and find not only access to justice, but justice itself. We demonstrate by our lives and profession that justice is not merely a destination or a result. Rather, justice is also a life-long journey of due process, of trial and error, of testing and retesting.

We can bring justice to others only if we ourselves fervently believe in justice, only if we are committed to and work for justice, and ultimately only if we ourselves are just. The Preamble to the RPCs reminds of our role in society and outlines why we as lawyers should be concerned with RPCs. The RPCs themselves guide us towards being just with our clients by setting out standards to help us.

The Washington Supreme Court, in 1985, adopted the RPCs to replace the prior Code of Professional Responsibility (CPR), which the Court had adopted effective as of January 1, 1972. The RPCs as adopted are overwhelmingly based on the American Bar Association's Model Rules of Professional Conduct. Washington did not adopt, however, the preample to the model rules, which Washington's drafters described as "directed to the media rather than to the lawyers affected." Instead, Washington carried over to our RPCs, without substantive change, the Preamble to the CPRs. Thus, the RPCs Preamble has been the preamble to our lawyers' ethical rules for nearly thirty years, and has served as the Preamble to both the CPRs and the RPCs. This versatility itself recognizes that the preamble enunciates some of our core ethical values.

The values expressed in the Preamble to the RPCs and the CPRs are not newly discovered values for lawyers. The Preamble perhaps better articulates, however, in Alexander Pope's words, "What oft was thought, but ne'er so well express'd."[2] The core values enunciated in the Preamble are values that generations of lawyers have lived by. In 1887 the Alabama Bar Association adopted one of the earliest codes of ethics. That code served as the primary basis for the first national ethics code, namely, the American Bar Association's Canons of Professional Ethics. Washington State was the birthplace of those Canons when the American Bar Association adopted them in Seattle on August 27, 1908. Washington first mandated the canons as the required ethics standard for Washington lawyers in Section 20 of Chapter 115 of the 1917 Sessions Laws.

The Preamble to the ABA Canons sets out the basic theme of justice and the necessity for lawyers to be just that is later more thoroughly expressed in our present preamble to the RPCs. The Preamble to the ABA Canons, as in effect at the time the Washington State Bar Association was formed in 1933, included the following:

> *In America, where the stability of Courts and of all departments of government rests upon the approval of the people, it is peculiarly essential that the system for establishing and dispensing Justice be developed to a high point of efficiency and so maintained that the public shall have absolute confidence in the integrity and impartiality of its administration.* ***The future of the Republic, to a great extent, depends upon our maintenance of Justice pure and unsullied. It cannot be so maintained unless the conduct and the motives of the members of our profession are such as to merit the approval of all just men.*** [emphasis added]

The message is again simple but eloquent: our society is based on the concept of justice, we lawyers play a vital role in the maintenance of justice, and for justice to be both done and seen to be done we lawyers must conduct ourselves ethically. Our current Preamble has expanded this simple message and helped us better understand its implications.

If we as lawyers do not each live the message of the Preamble, basically, to eat, drink, breathe and live a life in pursuit and in service of justice, we will lose track of what lawyers are all about, and we will lose the respect not only of others, but, more importantly, of ourselves. In the concluding words of the Preamble, so long as we are guided by the principles enunciated in the Preamble, "the law will continue to be a noble profession. This is its greatness and its strength, which permit of no compromise." Are we living this life, or are we compromising? If we are compromising, we are not likely to be satisfied or fulfilled in the law. If we want satisfaction and fulfillment in the law, the Preamble guides us to it.

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[1] For a brief discussion of the cultural heritage on which the Preamble to the RPCs is based, see Barrie Althoff, "Beyond the Rules," *Bar News*, November 1997, page 40.

[2] *Essay on Criticism*, part ii, line 98.

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.

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-727-8252, leaving the case name and your address.

Suspended

Stephen C. Haskell (WSBA No. 7832, admitted 1977), of Spokane, has been suspended for two years by order of the Supreme Court effective September 18, 1998. The discipline is based upon his misrepresentations to clients or their insurers that he performed certain legal services actually performed by associates and that costs billed were valid charges for that client's matter. Various insurance companies hired Haskell to represent their insureds. He had bills to the insurance companies altered to reflect his initials and billing rate for certain tasks, such as depositions of key witnesses, in place of the initials and billing rates of the less-experienced associates who actually performed the work. He also sent status reports that indicated he performed these tasks.

One of the insurance companies had a policy of reimbursing only for coach-class airfare. Haskell flew first class on several occasions and had a phony travel voucher presented to the insurance company that reflected coach-class travel but the first-class ticket price. On other occasions, Haskell charged the insurance company for full-price fares when he actually purchased lower-priced excursion fares. He used the additional fare money to cover his or his wife's personal travel expenses.

Haskell had long-distance telephone charges and blueprint copying expenses related to the building of his summer cabin "buried" in bills to clients whose matters had no relationship to Haskell's cabin.

Haskell's conduct violated RPC 8.4(c), which prohibits a lawyer from engaging in acts involving dishonesty, fraud, deceit or misrepresentation, and RPC 1.4, which requires that a lawyer explain a matter to the client. His conduct in deceiving clients about who performed services and his conduct in billing the summer cabin expenses to clients also violated RPC 1.5, which requires a lawyer's fee to be reasonable. Haskell's fraudulent scheme to reimburse himself for unauthorized airfares and his billing of cabin expenses to clients also violated RPC 8.4(b) and RLD 1.1(a), which prohibit conduct that violates criminal laws (theft and mail fraud).

The Hearing Officer recommended Haskell be disbarred. By a vote of 10-1, members of the Disciplinary Board also recommended his disbarment. The Supreme Court reduced the sanction to a two-year suspension, citing the need for proportionality with sanctions imposed on other disciplined lawyers.

Diehl Rettig of Kennewick served as the Hearing Officer; Kurt Bulmer of Seattle represented the respondent; Disciplinary Counsel Anne Seidel and Joy McLean represented the Bar Association.

Censured

Seattle lawyer Willard Hatch (WSBA No. 1513, admitted August 5, 1948) has been ordered censured following a hearing. This discipline is based on Mr. Hatch's entering a business transaction adverse to his client without allowing the clients a reasonable opportunity to seek the advice of independent counsel, as required by RPC 1.8(a) and (b). Mr. Hatch was the billing lawyer for clients in both a litigation and a bankruptcy matter. Mr. Hatch and another lawyer from his firm discussed with the clients the possibility of securing the firm's fees. Mr. Hatch mailed the clients an assignment of a deed of trust and a UCC financing statement to secure Mr. Hatch's firm's fees. The clients did not sign or return these documents. Later, Mr. Hatch briefly discussed a lien on the clients' three-and-one-half-acre property to secure the firm's fees. In the minutes prior to a settlement conference, Mr. Hatch presented to the clients a deed of trust assignment and financing statement for the three-and-one-half acres. The clients testified that when they had questions about the amount of fees to be covered and the interest rate, they were told to sign the documents before they went to the settlement conference. They signed the documents. The clients retained subsequent counsel to set aside the deed of trust. The hearing officer found that Mr. Hatch believed that he had cleared the idea of the deed of trust with the clients in the earlier telephone conversation.

By presenting the deed and security documents to the clients just prior to the settlement conference, Mr. Hatch prevented them from obtaining independent legal advice on this adverse business transaction, as required by RPC 1.8.

The hearing officer was Jack Rosenow. Special Disciplinary Counsel Julian C. Dewell represented the Bar Association. Thomas Kelly and Frederic Tausend represented Mr. Hatch.

Reprimanded

Redmond lawyer Richard Dorn Atherton (WSBA No. 10970, admitted October 24, 1980) has been ordered to receive two reprimands pursuant to a stipulation for discipline, approved by the Disciplinary Board on September 30, 1998. This discipline is based on Mr. Atherton's failure to diligently represent two clients and failure to keep the same two clients informed about the status of their cases.

In 1994, Mr. Atherton represented an out-of-state client in a child support modification action. On November 7, 1994, Mr. Atherton notified the client that a hearing was scheduled that day. Later that day, Mr. Atherton told the client that the client's child support had been retroactively increased and the final hearing had been continued to December 15. The client asked for copies of the orders, but never received them.

Mr. Atherton failed to attend two status conferences and filed no pleadings after November 1994. On March 6, 1995, the court entered an order of default against Mr. Atherton's client. The Commissioner noted on the order that if the client filed a response and paid opposing counsel $750.00 prior to 9 a.m. March 13, 1995, the default order would be vacated. Mr. Atherton never told his client about this order. On March 15 the Parenting Plan was entered and on April 18, the Order of Child Support was filed.

In March 1995, the client retained new counsel and discovered that terms/fees had been assessed against him on October 19, 1994 and that consideration of his pleadings at the November 17 hearing was conditioned on his prior payment of those terms/fees. He also learned of the default order, Parenting Plan and Order of Child Support. The client's new counsel was able to vacate the default and other orders, except for the Parenting Plan and attorneys' fees. The parties reached agreement and the case settled.

The client filed a malpractice action against Mr. Atherton in June 1997. The client obtained a default judgment that has not yet been paid.

In the second grievance, also in 1994, Mr. Atherton represented a client in a dissolution. Temporary orders were filed in April 1994. After July 1994, Mr. Atherton failed to perform any work on the client's case. On October 19, 1994, the court entered an order of default. On January 4, 1995, the Court entered a Decree, Parenting Plan and Order of Child Support. The client retained new counsel, who successfully set aside the default orders. The parties reached agreement. The client filed a malpractice action against Mr. Atherton and obtained a default judgment, which Mr. Atherton has paid.

During this time, Mr. Atherton suffered many personal and emotional problems. These problems mitigated the sanction to two reprimands. Mr. Atherton agreed to satisfy the client's judgment as restitution.

By failing to file pleadings, attend court dates and prevent default orders, Mr. Atherton's conduct violated RPC 1.3, requiring a lawyer to diligently represent his clients.

By failing to keep his clients informed of the status of their cases, Mr. Atherton's conduct violated RPC 1.4(a).

Jean Kelley McElroy represented the Bar Association. Mr. Atherton represented himself.

Admonished

Gregory Rockwell (WSBA No. 03887, admitted 1971), of Bellevue, has been ordered admonished by a Review Committee of the Disciplinary Board. The admonition is based upon the Review Committee's finding that Rockwell violated ethics rules in his processing of a settlement check.

Rockwell settled a property damage claim on behalf of a couple, with their knowledge and authority. The settlement check forwarded to Rockwell was made payable to the clients and Rockwell. Without specific authority from the clients, Rockwell endorsed their names to the check to facilitate the deposit of the check into a business account. Rockwell distributed the funds due the clients. Rockwell's conduct in signing the clients' names to the check without express authority violated RPC 8.4 (c), prohibiting conduct involving dishonesty. Rockwell's deposit and processing of the settlement funds through a non-IOLTA account violated the trust account rule, RPC 1.14.

Disciplinary Counsel Maria Regimbal represented the Association. Respondent represented himself.

▪

Robert Mandich (WSBA No. 12513, admitted 1982), of Seattle, has been ordered admonished by a Review Committee of the Disciplinary Board. The admonition is based upon his neglect of a client's marriage dissolution matter, in violation of RPC 1.3, his failure to keep the client adequately informed about the status of her case, respond to her reasonable requests for information, and explain the matter sufficiently for her to make informed decisions about the representation, in violation of RPC 1.4(a) and (b), and his failure to promptly return the client's files to her upon his discharge from representation, in violation of RPC 1.15(d).

Mandich agreed to represent a client in a marriage dissolution case filed by the client's spouse. Initial matters were resolved by agreed temporary orders. The opposing party's lawyer withdrew, and the opposing party suffered severe changes in his employment and financial condition, which required revisions to all of the temporary orders. Mandich informed his client of this, and the client expected him to make the changes and finalize the dissolution. Mandich then suffered significant personal problems that prevented him from performing the work for about five months. After five months, the client attempted to contact Mandich several times, but he did not return her telephone calls. After another five months, the client and Mandich finally spoke and the client discharged Mandich. Despite promises to promptly return her file to her, Mandich did not send the client her file for about 10 months after he was discharged.

Disciplinary Counsel Jean Kelley McElroy represented the Bar Association. Respondent represented himself.

NONDISCIPLINARY NOTICES

Interim Suspension

Barbara J. Beatty (WSBA 17968, admitted 1988), of Seattle, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order effective November 16, 1998. Interim suspension is pursuant to RLD title 3 and is not a disciplinary sanction.

▪

Sally J. Murray (WSBA 24851, admitted 1995), of Edmonds, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by order of the Washington State Supreme Court dated October 21, 1998. The suspension is effective immediately. Interim Suspension is pursuant to RLD title 3 and is not a disciplinary sanction.

Disciplinary Counsel Joanne Abelson is representing the Bar Association. Ms. Murray is representing herself.

Service Opportunities

Several openings are available for qualified attorney members on various committees and boards.

Please send inquiries and applications to the people specified below. Mailing address: Washington State Bar Association, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Access to Justice Board

Application deadline: January 13, 1999

The Washington State Access to Justice (ATJ) Board announces three vacancies, effective May 1999. These include: a representative of the Pro Bono Community, currently held by Phyllis Selinker; a representative of the Washington State Bar Association Board of Governors, currently held by Paul L. Stritmatter; and an at-large representative, currently held by Kenneth H. Davidson.

The ATJ Board consists of nine attorney members nominated by the Board of Governors of the Washington State Bar Association and appointed by the Supreme Court. The following groups are represented on the ATJ Board: Washington State Bar Association Board of Governors, Board for Judicial Administration, Legal Foundation of Washington, State and/or Federally-funded Legal Services Programs of Washington, and the Pro Bono Community. Four at-large members are selected on the basis of a demonstrated commitment to, and familiarity with, access-to-justice issues. Board members may serve up to two three-year terms. The ATJ Board has full-day meetings approximately seven times per year, usually in Seattle.

The Washington State Supreme Court established the Access to Justice Board in 1994 to assure access for low- and moderate-income residents of the State of Washington to the civil justice system through high-quality legal services. The ATJ Board has become a nationally recognized model as a result of its effectiveness in developing, coordinating and implementing statewide access-to-justice initiatives. In addition to these functions, the Board oversees the work of 10 committees. The Access to Justice Board strives to have a membership that reflects ethnic, gender, geographic and other diversity. Interested individuals may apply by sending a letter and summary of qualifications to to M. Janice Michels, Executive Director, WSBA. For more detailed information about the ATJ Board, please contact Joan Fairbanks at 206-727-8282 or joanf@wsba.org.

Commission on Judicial Conduct

Application deadline: January 18, 1999

The WSBA is seeking letters of interest from members interested in sitting as an alternate for Margo Keller on the Commission on Judicial Conduct. The term runs until June 2000. Harold P. Clark III, now Judge Clark, has resigned given his recent election to the Spokane County District Court. To apply, please send a letter of interest and résumé to M. Janice Michels, Executive Director, WSBA. The appointment will be made in February.

Judicial Recommmendation Committee

Application deadline: February 5, 1999

The WSBA Judicial Recommendation Committee is currently accepting applications from attorneys and judges seeking consideration for appointment to fill potential appellate-court vacancies. Interested candidates will be interviewed by the Committee at its March 19, 1999 meeting. The Committee's recommendations are reviewed by the WSBA Board of Governors and then referred to the Governor for review when appointments are made to fill vacancies on the Washington Court of Appeals and Supreme Court.

If you are interested in scheduling an interview, please write to Scot Stout at WSBA, call 206-727-8227 or e-mail scots@wsba.org to obtain a questionnaire. Please specify whether you need the questionnaire designed for a judge or for an attorney.

Limited Practice Board

Application deadline: January 29, 1999

The WSBA will be appointing two attorneys to serve four-year terms on the Limited Practice Board. The Board oversees administration of and compliance with the Limited Practice Office Rule (APR 12) and meets every other month. If you are interested in serving, please send a letter of interest and résumé to to M. Janice Michels, Executive Director, WSBA.

Northwest Justice Project Board of Directors

Application deadline: January 29, 1999

The WSBA will be appointing in February one attorney member to serve a three-year term on the board of directors of the Northwest Justice Project. Those interested in serving are encouraged to send a letter of interest and résumé to M. Janice Michels, Executive Director, WSBA. For more information, e-mail Patrick McIntyre at mac@nwjustice.org.

YMCA Mock Trial Program Seeks Volunteers

The YMCA Youth in Government Mock Trial Program is seeking volunteers to serve as advisors to high schools participating in the statewide Mock Trial Competition. The level of involvement is up to you. You may advise or coach a local school team, provide single or multiple presentations on trial procedure for students, or undertake an e-mail or telephone-advising relationship in which you answer a teacher's questions on trial procedure or evidence. Trial attorneys with courtroom experience are especially needed. Attorneys are also needed to serve as audience-raters during district and state competitions in February and March 1999. To volunteer, please contact Allison Roberts, Mock Trial Coordinator, YMCA Youth in Government Mock Trial Program, 360-534-0155 or e-mail djrasr@aol.com

To contribute news and information, please call the WSBA Communications Department at 206-727-8203 or e-mail comm@wsba.org.

APPLAUSE!

Thanks to attorneys Susan Rhodes, Allison Wallin, Kelly Willig and Lisa Yost from the WYLD Public Service Committee for assisting Mercer Island High School students with their simulated Supreme Court Oral Argument projects.

Goldmark Award Luncheon

Join the Board of Trustees of the Legal Foundation of Washington to recognize the work of volunteer attorneys and legal-services attorneys on behalf of poor people. The 13th annual Goldmark Award Luncheon will be held Tuesday, February 23, 1999 at the Washington State Convention & Trade Center from noon to 1:30 p.m. The foremost purpose of the luncheon is to bestow the Goldmark Award on an individual who does extraordinary work in providing legal services to low-income persons.

Ron Pollack, Executive Director, Families USA, will be the featured speaker. In 1997, Mr. Pollack was appointed the sole consumer organizational representative on the Presidential Advisory Commission on Consumer Protection and Quality in the Health Care Industry.

Prior to his current position at Families USA, Mr. Pollack was Dean of the Antioch University School of Law. He was also the Founding Executive Director of the Food Research and Action Center (FRAC), a leading national organization focused on the elimination of hunger in the United States. In that capacity, Mr. Pollack successfully fought for Congressional legislation expanding U.S. food programs for the poor, and successfully argued many cases — including two cases on the same day in the U.S. Supreme Court — to improve food aid to low-income Americans.

The Legal Foundation of Washington is a not-for-profit organization established in 1985, at the direction of the Washington Supreme Court, to fund legal services and law-related education for low-income people through the Interest on Lawyers/LPO Trust Account (IOLTA) Program.

Show your support for access to justice by purchasing an individual ticket to the luncheon. Please clip and return the coupon below.

Legal Foundation of Washington
February 23, 1999
Goldmark Award Luncheon

❑ Yes, I would like to honor the work of legal services by attending the luncheon. I will bring _____ additional guests. ($30/person enclosed).

❑ My firm would like to be an Equal Justice Supporter ($325). Four members of our firm will attend and six seats will be donated (a charitable contribution of $180).

❑ No, I cannot attend the luncheon, but I would like to show my support with a donation of $______.

NAME(S): ______________________

ORGANIZATION: ______________________

ADDRESS: ______________________

PHONE: ______________________

Make checks payable to: Legal Foundation of Washington, 500 Union Street, Suite 545, Seattle, WA 98101

Form Updates

On November 30, 1998, the Washington Pattern Forms Committee and the Office of the Administrator for the Courts published updates to the following Domestic Relations, Domestic Violence and Antiharassment forms:

Domestic Relations Form:

Chapter 26.09:

DR 01.0100 DR 01.0265 DR 04.0250 DR 07.0100 DR01.0110 DR 04.0170 DR 04.0400 DR 01.0120 DR 04.0180 DR05.0200

Chapter 26.10:

CU 01.0100 CU 03.0200 CU 02.0200 CU 03.0300 CU03.0170

Chapter 26.26:

PS 04.0170 PS 04.0200 PS 04.0180 PS 04.0250

Domestic Violence:

DV 01.0100 DV 02.0200 DV 03.0100 DV 01.0200 DV 2A.0200 DV 03.0200 DV 01.0300 DV 2B.0200

Antiharassment:

UH 01.0400 UH 03.0200 UH 02.0200 UH 04.0500

The Washington Pattern Forms Committee, Juvenile Forms Subcommittee and the Office of the Administrator for the Courts also published a revised set of Juvenile Law Forms. The forms may be ordered by calling the OAC forms line, **360-705-5328**, or writing to P.O. Box 41174, Olympia, WA 98504-1174. The updates are also available on the Internet at: **www.wa.gov/courts/forms**

Tax Section Annual Luncheon

The Tax Section is pleased to announce that its annual luncheon will be held on Wednesday, February 17th from 11:30-1:30pm at the Columbia Tower. This year's keynote speaker will be Seattle attorney Bill Gates, Sr., of Preston Gates & Ellis. Mr. Gates will speak on the impact the high-tech industry has had on Washington, including its employment and tax base. The event is open to all interested persons, while space is available. The $25 registration fee covers the cost of the luncheon. A registration form can be obtained from the current Tax Section newsletter or by contacting Sheri Borgford at 206-727-8239.

USURY RATE

The average coupon equivalent yield from the first auction of 26-week treasury bills in December 1998 is 4.537 percent. The maximum allowable interest rate permissible for January is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988 – June 1998 appear on page 52 of the June 1998 *Bar News*. Information from January 1987 to date appears at www.wsba.org/barnews/usuryrate.html

Lawyers' Fund for Client Protection

The Lawyers' Fund for Client Protection Committee meets quarterly to review applications for gifts from the Fund. Each quarter, we will report on the work of the Committee and Trustees. The Committee is authorized to make gifts to qualified applicants of up to $3,000. On applications for more than $3,000, the Committee makes recommendations to the Board of Governors, who are the Fund's Trustees. At their meeting on November 13, 1998, the Committee took the following action:

Gifts up to $3,000:

- To three clients of a lawyer who was permitted to resign with discipline pending. The lawyer misappropriated funds received in settlement of a personal injury claims (amounts awarded were $2,880, $2,880, and $1,333).
- To three clients who paid fees to a lawyer to commence bankruptcy proceedings. The lawyer, who has stipulated to disbarment, placed his law firm into bankruptcy, and was subsequently prohibited by the bankruptcy court from filing proceedings on behalf of others. The lawyer failed to refund unearned client fees (amounts awarded were $870, $500, and $894).
- To a client of a lawyer now subject to both disciplinary and disability proceedings who failed to refund an unearned fee after abandoning his client's criminal case ($1,000).

Recommendations for gifts of more than $3,000:

- To two clients of a lawyer who was hired for various business matters involving patents and trademarks and related litigation. The lawyer misappropriated funds and misrepresented billing records to his clients (amounts recommended are $13,500 and $3,500).

In addition, the Committee denied three applications as fee disputes; denied one application because there was no evidence of a dishonest taking of funds; declined to reconsider an earlier denial; and deferred action on three applications for further investigation.

The Committee chair is Seattle attorney Barbara Selberg. WSBA General Counsel Robert Welden is staff liaison to the Committee.

Notice of Public Meeting

1999 quarterly meetings of the Board of Directors of Northwest Justice Project, a 501(c)(3) not-for-profit organization which provides civil legal services to eligible low-income clients, will be held on the following dates:

January 23, 1999	April 3, 1999
June 25, 1999	October 16, 1999

Northwest Justice Project is the current recipient of federal funding made available through the Legal Services Corporation and maintains 10 offices throughout the state.

These public meetings generally commence at 9:30 a.m. While they are usually held in Seattle for cost economy reasons, specific meeting sites may vary from meeting to meeting based on space availability or other program purposes. All meetings are open, except that limited portions may be closed, pursuant to a vote of a majority of the Board of Directors, to hold an executive session. In such sessions, the Board reviews, considers and, in some cases, votes upon matters related to: 1) litigation to which the program is or may become a party; or 2) internal personnel, operational, investigative and sensitive labor-relations matters. Any such closed sessions will be as authorized by pertinent laws and regulations and will be duly noted, in summary form, in open session and corresponding minutes. Closed sessions will also be formally certified by the Board Chair or other designated person as authorized. A copy of the certification will be maintained for public inspection at the program's main office located at 401 Second Avenue South, Suite 407, Seattle, Washington 98104, and will be otherwise available upon request.

For meeting-site information, please call Lisa Giuffré, 206-464-1519 or 888-201-1012.

JAN MICHELS HONORED

WSBA Executive Director Jan Michels (who was formerly Director and Superior Court Clerk of the King County Department of Judicial Administration) was presented with the Court Manager of the Year award. Jan shares the honors with retired Tacoma Municipal Court Deputy Administrator Virgil G. Hulsey.

WSBA Credit Union

The Washington State Bar Association Credit Union is now 21 years old. In a time when most banks are controlled by out-of-state interests, the Washington State Bar Association Credit Union is locally controlled by a volunteer Board of Directors from the legal community and is a not-for-profit organization owned and operated by its members. The general purpose of the WSBA CU is to promote thrift and the financial well-being of its members. Anyone in the legal community in Washington is eligible to join.

The WSBA CU has a variety of products and services especially tailored to the legal community. Other services provided are: payroll deduction, direct deposit, debit cards with ATM access, IOLTA accounts, no- annual-fee MasterCard with 12.9% APR, free checking, savings, loans, insurance, and much more.

In a year when most banks pay very little interest on regular savings accounts, the Credit Union has consistently paid dividends in the neighborhood of 4%. Loan rates are normally lower than the competition also. One new feature is the Home Equity Line of Credit Loan, currently at 8.5% APR.

The WSBA Credit Union is experienced in serving members over a wide operating area. Offices are located in Seattle and Redmond but members need not come in to do business. The WSBA CU provides toll-free phone and fax numbers as well as a toll-free 24-hour member audio response system (MARS). Additionally, a lock box has recently been installed at the WSBA offices. Currently there is a free membership offering whereby the Credit Union will open your account with $10 at no expense to you. This promotion expires March 31,1999.

For more information call Glen Jackson 206-623-5023 ext. 234 or 800-247-4773.

Calendar

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

To announce a seminar, please send 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 calendar.

BUSINESS

How to Create, Perfect, Foreclose and Defend Liens
Jan. 14 - Seattle; Jan. 21 - Spokane. 6.5 CLE credits. By WSBA-CLE and Creditor-Debtor Section 800-945-WSBA or 206-443-WSBA.

Alternate Dispute Resolution in the Business Setting
Jan. 29–Seattle. 5.5 CLE credits, including .75 ethics. By WSBA-CLE and Alternate Dispute Resolution Section 800-945-WSBA or 206-443-WSBA.

How to Handle Tax Matters Before the "Reformed" IRS
Feb. 4–Seattle. 6.5 CLE credits. By WSBA-CLE and Taxation Section 800-945-WSBA or 206-443-WSBA.

Northwest Securities Institute
Feb. 19 & 20–Seattle. CLE credits TBA. By WSBA-CLE and Business Law Section 800-945-WSBA or 206-443-WSBA.

Choice of Business Entity
Feb. 25–Seattle; March 4–Spokane. CLE credits TBA. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

Purchase & Sale of Smaller Businesses
March 5–Seattle; March 12–Spokane. CLE credits TBA. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

Counseling the Corporation: A Guide to Success
March 12–Seattle. 6.5 CLE credits pending. By WSBA-CLE and Corporate Law Department 800-945-WSBA or 206-443-WSBA.

COLLECTIONS

Collection Law in WA
Jan. 29–Bellingham; March 18–Seattle. 6.5 CLE credits. By Lorman 715-833-3940.

Complying With the Fair Debit Collection Practices Act in WA
March 16 –Seattle. 6.5 CLE credits. By NBI 715-835-8525.

CONSTRUCTION LAW

WA Construction Law: Preventing the Avoidable
Feb. 10–Seattle. 6.5 CLE credits. By Lorman 715-833-3940.

ELDER LAW

Elder Law Update: Medicaid, Medicare & More
Feb. 11–Seattle; Feb. 12–Spokane. CLE credits TBA. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Washington Unemployment Compensation
Jan. 27–Seattle. CLE credits TBA. By Lorman 715-833-3940.

Employment and Labor Law in WA
Feb. 4–Seattle. CLE credits TBA. By Lorman 715-833-3940.

Employment Law Institute
Mar. 24 & 25–Seattle. CLE credits TBA. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

ENVIRONMENTAL

Environmental and Land Use Law
Feb. 12–Seattle. CLE credits TBA. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

WA Probate: Beyond the Basics
Jan. 7–Seattle; Jan. 8–Spokane. 7.25 CLE credits (incl. 1.25 ethics). By NBI 715-835-8525

Estate Planning for Small to Medium-sized Estates
Feb. 19–SeaTac. 7.25 CLE credits. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

Advanced Will Drafting
March 17–Seattle; March 19–Spokane. CLE credits TBA. By WSBA-CLE and RPPT Section 800-945-WSBA or 206-443-WSBA.

ETHICS

Psychology & the Legal Profession
Jan. 25; Feb. 22. By phone. 2 ethics credits pending. TRT 800-672-6253.

Twin Professional Problems: Substance Abuse & Elimination of Bias
Jan. 27; Feb. 16. By phone. 2 ethics credits pending. By TRT 800-672-6253.

Professionalism and Character: How Intertwined?
Jan. 28; Feb. 23. By phone. 2 ethics credits pending. By TRT 800-672-6253.

Sanctions Competence & Diligence
Jan. 29.; Feb. 15. By phone. 2 ethics credits pending. TRT 800-672-6253.

Ethics and Professionalism in Family Law
March 12–Seattle. 7.5 CLE credits. By American Academy of Matrimonial Lawyers 425-822-1220.

FAMILY LAW

Advanced Will Drafting
March 17–Seattle; March 19–Spokane. CLE credits TBA. By WSBA-CLE and RPPT Section 800-945-WSBA or 206-443-WSBA.

GENERAL

How Attorneys Can Use Knowledge of the Psychological Type to Enhance Their Practical and Management Skills
Jan. 5–Seattle. 2 CLE credits. By Joseph Shaub 206-587-0417.

Financial Strategies for Successful Retirement
Jan. 12, 19, 26 & Feb. 2–Bellevue. 10 CLE credits. By Secure Start Seminars 425-456-0071.

Trying the Wrongful Death Case in WA
Jan. 12–Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-8525.

9th Circuit Law Library: Everything You Wanted to Know About but Didn't Have a Clue About
Jan. 13–Seattle. 2 CLE credits. By WACDL 206-623-1302.

School Law in WA
Jan. 19–Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-8525.

Current Issues in Forensic Practice
Jan. 21–Seattle; Feb. 18–Seattle; March 18–Seattle. 2.0 CLE credits. By Seattle Forensic Institute 206-322-6605.

Annual Intellectual Property Program
March 26–Seattle. 6.5 CLE credits pending. By WSBA-CLE and Intellectual & Industrial Property Section 800-945-WSBA or 206-443-WSBA.

INSURANCE

21st Annual Insurance Law Seminar
Jan. 21–Spokane; Jan. 22–Seattle. 6.25 CLE credits pending. By WSTLA 206-464-1011.

LAND USE

Land Use Law Update in WA
Jan. 27–Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-8525.

LAW OFFICE MANAGEMENT

Law Office Management Institute & Legal EXPO Exhibit Hall
Mar. 24–Seattle. 6.25 CLE credits (incl. 1 ethics) pending. By WSBA-CLE and Law Office Management Section, and Association of Legal Administrators, Puget Sound Chapter 800-945-WSBA or 206-443-WSBA.

LITIGATION

Family Law Litigation Seminar
Jan. 29–Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-7909.

Dealing with Expert Witnesses
Jan. 28–Seattle. 6.25 CLE credits (incl. 1 ethics). By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

Bad Faith Litigation in WA
Feb. 9–Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-8525.

Project Development from A to Z
Feb. 25–Seattle; March 3–Spokane. CLE credits TBA. By WSBA-CLE and RPPT Section 800-945-WSBA or 206-443-WSBA.

MEDICAL

Medicaid & Medicaid Planning in WA
Jan. 21– Seattle. 6.0 CLE credits (incl. 1 ethics). By Medical Educational Services 414-798-5242.

Y2K

Effects of Year 2000 in the Practice of Law
Feb. 2–Seattle. CLE credits TBA. By WSTLA 206-464-1011.

Professionals

Classifieds

FOR SALE

Am. Jur. 2d, complete set with 1998 updates. $950 or best offer. 206-386-7755.

Classic double pedestal frame-and-panel lawyer's desk and credenza; beautiful, richly hued solid Hawaiian koa wood; compartment; custom design. $4500 or best offer for both pieces. Call 206-343-1449 to view.

SPACE AVAILABLE

Columbia Center, available 3/1/99. Two attorney offices, one secretary's space, ample shared file- and workspace, in attractive four-attorney suite. 21st floor, south view; $2400/mo. Call George at 206-624-3718 for more details.

Lynnwood, office space/office share space for one attorney available, with full staff (if needed). Reception, phone system, library, fax and copying. Only your own office furniture is needed. Contact 425-775-4626.

Downtown Seattle office on the 30th floor of the Washington Mutual Building. Includes use of conference room and kitchen. Access to fax, copier, scanner, etc. Available immediately. Call 206-812-8800.

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.

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.

Attorneys' business office space available: Perfect professional and business offices conveniently located at 2120 State Street NE, Olympia. Small economical offices and suites available: $275 and up. Large reception area, conference room, complete law library, adequate parking, and access to copier and facsimile available. Full-time receptionist available for additional charge. For information call David Bateman at 360-491-8669 or Jack Hanemann at 360-357-3501.

Bellevue downtown: Two offices in established all-attorney building. Receptionist, answering, fax, voice mail, library/conference room and parking all included. Furniture available. Some referrals possible. Call Barry J. Hasson 425-454-4901.

Classifieds

Reply to WSBA *Bar News* Box Numbers at:

WSBA *Bar News* Box ____
Bar News Classifieds
2101 4th Avenue, 4th Floor
Seattle, WA 98121-2330

Positions available are also posted by telephone at:
206-727-8261
and online at www.wsba.org

Downtown Seattle office-sharing: $175 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.

Charles R. Meyer, Attorney at Law, is going on the bench effective January 1999. Will lease beautiful office space for up to three attorneys plus staff. Complete turn-key operation available. Call 360-793-1222 for more information. Office is located at 106 4th St., Sultan, WA 98294.

Hoge Building (2nd & Cherry, Seattle). Space for one or two lawyers and support staff in four-lawyer suite with library, fax, etc. 206-624-7460.

Office Sharing: Mercer Island office space—class "A" building—lake view—secretarial available. Call Rob, 206-623-5225.

POSITION WANTED

Seeking in-house position: Attorney with 7 years' experience in private practice and the public 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

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.

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.

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.attorney-jobs.com

Bennett Bigelow & Leedom, PS, a 22-lawyer firm concentrating in health care law, seeks a transaction associate. A minimum of two years' experience, superior academic credentials and excellent writing skills are essential. Experience in tax, health care law and/or antitrust preferred but not essential. Please send résumé, law school transcript, references and writing sample to: Associate Hiring Coordinator, Bennett Bigelow & Leedom, PS, 999 Third Avenue, Suite 2150, Seattle, WA 98104.

Campbell, Dille & Barnett P.L.L.C., seek an attorney to assist in the areas of business, corporate and litigation. Please reply to Hiring Coordinator, Campbell, Dille & Barnett P.L.L.C., P. O. Box 488, Puyallup, WA 98371-0164.

Merrick, Hofstedt & Lindsay, a 23-attorney insurance defense litigation law firm, is accepting applications for an associate position. Applicants must have a minimum of three years' practice, high academic achievement (top 1/3), Washington State Bar membership, excellent references, and the ability to work independently. Salary DOE and other qualifications. Applications must contain: introductory letter, résumé, law school transcript, a legal writing sample, a list of references, and letters of recommendation. Send applications to John Dalton, Merrick Hofstedt & Lindsay, 710 9th Avenue, Seattle, WA 98104. All application materials must be received no later than January 30, 1999.

Forsberg & Umlauf, PS, a downtown Seattle law firm, seeks a lawyer with a minimum of 4 years' experience in personal injury, maritime or insurance coverage work. Our insurance defense practice is well-established and growing. Excellent writing ability, academic credentials and client relationship skills are required. Send résumé and writing samples to: 900 4th Ave., Suite 1700, Seattle, WA 98164.

Lawyers needed full- and part time. A minimum of two years' experience required. AV rated general practice firm. Respond to calls from members of organization regarding a variety of legal questions. Send résumé to Hiring Partner, 2200 6th Ave., #1122, Seattle, WA 98121.

Minzel & Associates is a temporary placement agency for lawyers and paralegals. We are looking for quality lawyers and paralegals who are willing to work on a contract basis for law firms, corporations, solo practitioners, and government agencies. If you are interested, please call 206-328-5100 for an interview.

Quality attorneys, law clerks and paralegals sought to fill temporary and permanent positions in law firms and companies throughout Washington. Contact Legal Ease. LLC 425-822-1157; e-mail legalease@legalease.com; web www.legalease.com

The Office of Insurance Commissioner is seeking an enforcement attorney eager to work on behalf of Washington State consumers. Must possess a Juris Doctorate and membership in the Washington State Bar Association. Requires the ability to develop complex cases and conduct difficult negotiations. Prosecuting experience preferred. Position is located in Olym-

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., February 1 for March 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 pia. Applications will be screened and interviews conducted as applications are received. Applications will be accepted until the position is filled. Submit résumé and three references to Paula Gay, MS: 40257, PO Box 40257, Olympia, WA 98504-0257; ph: 360-438-7660; e-mail: PaulaG@oic.wa.gov; fax: 360-438-7630. EOE.

Spokane intellectual property law firm of 12 attorneys and one patent agent has excellent opportunities for highly motivated attorneys. We have one opening primarily for a combination of litigation and patent prosecution, and one opening primarily for preparation and prosecution. Preferred: EE, physics, or semiconductor-processing background/experience and at least one year of patent law practice. The positions involve all phases of intellectual property. Client contact and responsibility are provided. The firm represents small to prominent multinational Fortune 500 companies. The firm enjoys continuing growth and a very bright future in a beautiful part of the country. Spokane is noted for its outstanding quality of life and a wide range of outdoor activities. Rural living is still available. We enjoy the best of both worlds: (1) a growing, stimulating and first-rate law practice, and (2) a first-class lifestyle without most of the hassles of larger cities and long commutes. Excellent salary and benefits. Reply in confidence to Linda Haft at Wells, St. John, Roberts, Gregory & Matkin, PS, 601 West First Avenue, Spokane, WA 99201-3828; telephone 509-624-4276; fax 509-838-3424.

Established Bellingham and Whatcom County law firm seeking associate to work in the fields of estate planning, tax, corporate, and business law. A minimum of one year's experience is required. Send résumés and references to PO Box 1678, Bellingham, WA 98227-1678.

Sole practitioner in Seattle with busy practice seeks associate with a minimum of one year's experience in probate, guardianship, trust, elder and disability law. Organization, initiative, motivation and computer skills required. Salary negotiable DOE. Send résumé to D. Beal, 219 E. Galer St., Seattle, WA 98102.

Tax Attorney: Landerholm, Memovich, Lansverk & Whitesides, PS, a 22-attorney law firm in Vancouver, WA, seeks a business tax attorney with an LL.M. in taxation for an associate position in the firm's fast growing business practice. Applicants must have a minimum of two years' experience. The attorney's practice will focus on the formation, capitalization and sale of, and tax planning for, closely held corporations, partnerships and limited liability companies and unique state and federal tax issues involving the structuring of cross-border (Washington-Oregon-California) mergers and taxable and tax-free acquisitions. The position involves frequent client contact and responsibility for negotiations and appeals with state departments of revenue and the Internal Revenue Service. Must have strong academic credentials and an ability to manage rapid practice growth in a thriving business practice. Please send résumé, law school transcript and a short writing sample to Executive Director, Landerholm, Memovich, Lansverk & Whitesides, PS, PO Box 1086, Vancouver, WA 98666.

Managing Director position for public defense firm of 100 employees in Seattle, WA. Duties include contracting with local governments to provide public defense services, managing the budget, supervising staff and managing all other aspects of a public defense firm. Minimum qualifications: Graduate of an accredited college or university and law school; 10 years of practice as an attorney at law; 5 years of legal work in criminal law (public defense experience desirable) and 2 years' supervisory/management experience. Salary: $70,000 to $95,000 DOE. Direct résumés to: Associated Counsel for the Accused, attention: Frances Slaughter-White, Board President, 401 Terrace St., Seattle, WA 98104. Résumés must be received by Feb. 15, 1999. ACA is an equal opportunity employer.

Associate position available in small Silverdale business and litigation firm. Applicants should have strong academic credentials with minimum one year's prior experience preferred. Salary DOE. Send résumé to Broughton & Associates, 9057 Washington Avenue NW, Silverdale, WA 98383.

City Attorney, city of Shoreline: new city directly north of Seattle, on Puget Sound. Shoreline has a Council-Manager form of government, with a seven-member council. The city has 97 FTE and is growing. City attorney participates on the city management team and provides legal services on a broad range of municipal issues. Single-attorney department, position also supervises criminal prosecution contract and some outside litigation. At this time, the city does not provide fire services, contracts police services, is not self-insured and has no bargaining units. Position's primary focus is creation of initial City policies and the land use arena, including development of implementing ordinances. Ideal candidate: knowledge of municipal law; experience providing sound, practical advice to enable departments to achieve Council goals; understands Council-Manager form of government; comfortable providing advice in public meeting environment; embraces the City's values; team player; minimum five years' experience as practicing attorney, including experience working with a government agency; member of the Washington State Bar. $78,004-$94,956 (six-step plan) competitive benefits package including opportunity for City deferred compensation contribution, Social Security Replacement program. For application: call/e-mail: 206-546-5043/ mwright@ci.shoreline.wa.us. Deadline January 29. EOE.

Established Bellingham and Whatcom County law firm seeking associate to work principally in the fields of land use, civil litigation, and real estate. A minimum of one year's experience is required. Please send résumé and references to PO Box 1678, Bellingham, WA 98227-1678.

Business Attorney: Landerholm, Memovich, Lansverk & Whitesides, PS, a 22-attorney firm in Vancouver, WA, seeks a business law attorney for an associate position in the firm's fast-growing business practice. Applicants must have a minimum of two year's experience in the areas of general corporate and business matters, with emphasis on business organizations (corporations, limited liability companies and partnerships), business transactions, and commercial matters. Experience in federal and state tax matters and research is preferred, but not required. Must have an ability to manage rapid practice growth in a thriving business practice, possess a superior academic background and excellent writing and interpersonal skills. Please send résumé, law school transcript and a short writing sample to Executive Director, Landerholm, Memovich, Lansverk & Whitesides, PS, PO Box 1086, Vancouver, WA 98666.

Looking for experienced real estate lawyer licensed in Oregon who would like to be of counsel with AV rated general practice firm in Seattle. Part time. Send information to D. Engel, 2200 6th Ave. #1122, Seattle, WA 98121.

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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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.

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

Independent jewelry appraiser, portable gem laboratory to resolve estate, probate, or divorce valuations. Nine years' experience. In your office or your client's home. Available as expert witness. John Vivian, GG, NJA, Washington Gemological Laboratory. 306-459-1441.

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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.

Begin the New Year with a contract attorney! I perform legal research and writing for Washington lawyers, using LEXIS computerized research and the UW Law Library. Will draft trial briefs and motions; review and organize documents, and help you prepare for trial. Elizabeth Dash Bottman, 6031 50th Ave. N.E., Seattle, WA, 98115. Telephone: 206-526-5777. E-mail: lizbottman@sprintmail.com

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Italy: *Tuscany*: classic 18th C 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. 14th C 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.

Seeking lawyers who reviewed Herschell Boyd Medical Practice. During 1990-92, Bellevue ophthalmologist Dr. Herschell Boyd sought to sell his medical practice, the "Boyd Eye Clinic," located in an office building next to Overlake Hospital. Several prospective purchasers, some represented by counsel, made inquiries. If you or a lawyer you know made an inquiry, please contact Christopher Pence, Pence & Dawson, 1000 Second Ave., Suite 3620, Seattle, WA 98104, 206-624-5000, fax 206-382-1105, e-mail pence@pencedawson. com

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BY SUBJECT

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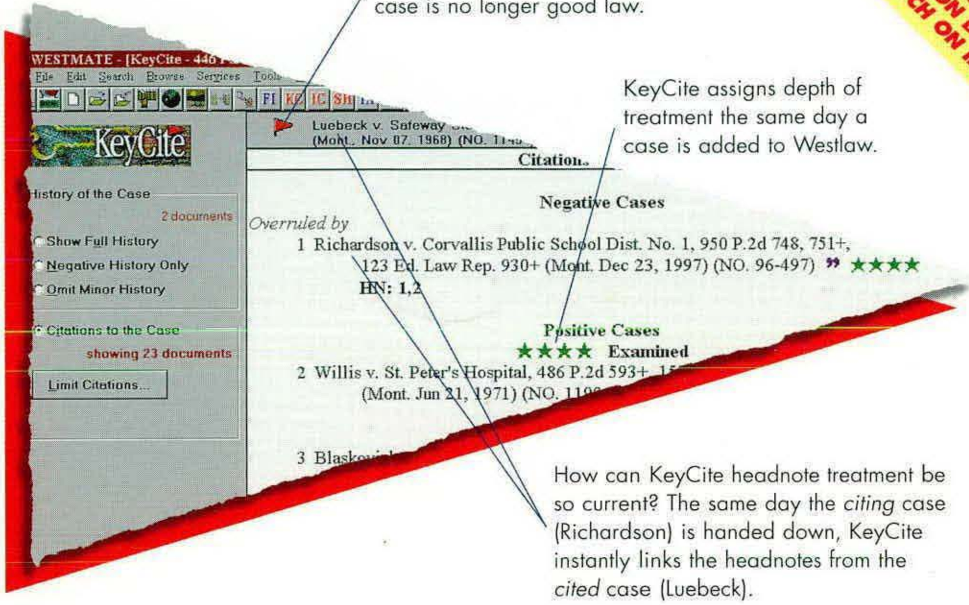

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