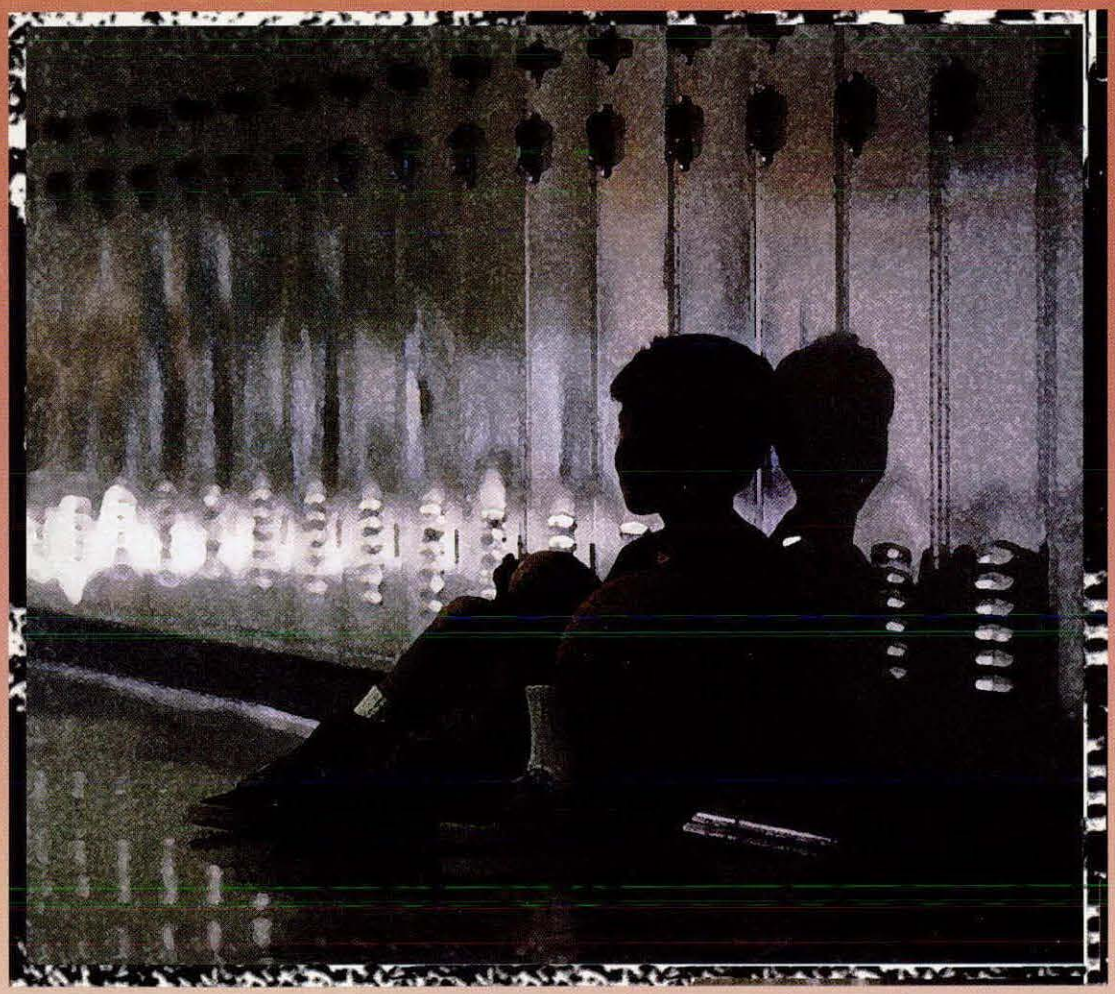
Vol. 53 No. 4

Five Dollars

Washington State BAR NEWS

The Official Publication of the Washington State Bar

APRIL 1999



THE BECCA BILL:

Is the Cure Worse than the Disease?

We may have grown, but we're not too big for our britches.

LEXIS®-NEXIS®
A member of the Reed Elsevier plc group

At CD Law, our business approach may be more casual than most, but one thing we always take seriously is our commitment to our customers. Which is why we're pleased to announce our recent alignment with LEXIS-NEXIS.

Joining the LEXIS-NEXIS family of legal information companies enables us to offer our customers unique enhancements to our CD-ROM and Web services – which already provide the most current and comprehensive electronic Washington law library available.

These exciting new offerings will extend our services to include: Federal Court Decisions, including Ninth Circuit Court of Appeals; The SHEPARD'S® Citations Service; The United States Code Service; U.S. Supreme Court Reports, Lawyers' Edition, and other extremely useful databases.

While the scope of our business may be changing, the way we conduct it won't. We will maintain the same friendly staff and personal service that our customers have come to expect and value. Even our name remains the same. Along, of course, with our dress code.

For more information or your FREE 30-day trial, including on-site training and installation, call (206) 623-1688.

CD LAW

Your search is over.

(206) 623-1688 • Internet: www.cdlaw.com

Do You Know Why Washington Lawyers Choose Hall-Conway-Jackson, Inc. for Professional Liability Insurance?

A variety of limits of liability available, up to $20 million for qualifying firms.

Multiple Extended Reporting Period options, including unlimited. Also free death or disability extended reporting periods.

Full prior acts coverage for qualifying firms/lawyers.

Coverage provided for lawyers acting in the capacity of an Arbitrator, Mediator or Notary Public.

Court reimbursement expenses of $500 per day, up to $5,000 maximum per claim for attendance at a trial at Westport's request. The deductible is waived for this provision.

Reimbursement up to $7,500 per policy period for expenses incurred as a result of disciplinary proceedings. The deductible is also waived for this provision.

Claims made and reported form with a free 60 day mini-trial.

Qualifying firms may elect to have limited claims expenses paid in addition to the limit of liability.

Coregis' professional insurance programs are now part of Westport Insurance Corporation (a GE Services Company), rated A++ by A.M. Best and AAA by Standard and Poor's - their highest rating.

We welcome broker inquiries. Ask your broker to contact us.

For additional information, call Pat Stewart at:

HALL-CONWAY-JACKSON, INC.
INSURANCE BROKERS/
PROGRAM ADMINISTRATORS
Formerly Quinan-Pickering, Inc.
Insuring Washington Lawyers Since 1960

9709 Third Ave. N.E., Ste. 502
P.O. Box 75978
Seattle, Washington 98125
E-mail: kdougherty@hallcj.com
Tel (206) 527-2444
Fax (206) 527-4280
(800) 877-8024

Westport

Westport Insurance Corporation
A GE Capital Services Company
Incorporating Coregis Lawyer Programs
www.westportins.com

choice of law

Annotated Revised Code of Washington and Washington Law on Disc™

(including Washington statutes and state case law)

Whether you prefer your legal research in print or on screen, we offer you:

- **The most law for your money—complete coverage of statutes at an affordable price—plus court rules and case law on CD-ROM**
- **Comprehensive annotations written by lawyers for lawyers provide expert analysis**
- **Timely updates, including quarterly CD-ROM releases, ensure information is reliable and pertinent**
- **Easy-to-use formats show you legislative history at a glance**
- **Free Online Connection™ to LEXIS® state case law library for CD-ROM subscribers delivers the most current data available**

LAW on DISC 20% OFF until May 31, 1999

To learn more call 800-562-1215
or see www.lexislawpublishing.com

Please mention 8BM when calling

LEXIS®
LAW PUBLISHING

Washington State
BAR NEWS
APRIL 1999

Articles

p. 19

Columns

p. 27

Departments

p.34

Sherrie Bennett Editor 206-283-4015
Judith M. Berrett Production Supervisor 206-727-8212; judithb@wsba.org
Amy Hines Managing Editor 206-727-8214; amyh@wsba.org
Jack Young Advertising Manager 206-727-8260; jacky@wsba.org
Erik Schwab *Bar News* Online 206-733-5932; eriks@wsba.org
Amy O'Donnell Professionals, Classifieds and Subscriptions 206-727-8213; amyo@wsba.org
Communications Department e-mail: comm@wsba.org

Submission Guidelines

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

A NEW DEFINITION OF LEGAL AID.

Ever since we opened our doors in 1988, Pacific Northwest Bank has been offering legal aid to the attorneys and law firms of Western Washington. We have a quick, hassle-free approach to setup and disbursement of IOLTA and Client Trust Accounts via the telephone. We have custom-tailored revolving credit lines with subledgers that allow attorneys and law firms to segregate and track costs associated with major cases. And we provide the convenience of a courier service. But most importantly, we understand how to help you.

Seattle	Bellevue	Lynnwood	Kent
3rd and Seneca	NE 8th and 112th NE	64th and 196th St. SW	Meeker and Washington
(206) 624-0600	(425) 646-0900	(425) 712-0600	(253) 813-0100

Pacific Northwest Bank

MEMBER FDIC

A LITTLE SMALLER. A LITTLE SMARTER.®

THE MISSION OF THE WASHINGTON STATE BAR ASSOCIATION IS TO PROMOTE JUSTICE AND SERVE ITS MEMBERS AND THE PUBLIC.

Published by

WASHINGTON STATE BAR ASSOCIATION
2101 Fourth Avenue
Fourth Floor
Seattle, WA 98121-2330

M. Janice Michels
Executive Director

Judith M. Berrett
Director of Communications

Printed by Valco Graphics

Washington State Bar News (ISSN 886-5213) is published monthly by the Washington State Bar Association, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330, and mailed periodicals postage paid in Seattle, WA. $12.67 of a regular member's dues is used for a one-year subscription. The annual subscription rate for inactive members is $15. Nonmember subscription rate is $24 a year. Washington residents add 8.6% sales tax.

POSTMASTER: Send changes of address to:
WASHINGTON STATE BAR NEWS
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330

Printed on recycled paper

ADVERTISING

Display: Contact Jack Young at 206-727-8260 or jacky@wsba.org.

Announcement: WSBA members only. Contact Jack Young at 206-727-8260 or jacky@wsba.org.

Professional: Boxed ads preceding classifieds. **Advance payment required.** WSBA members only. $40/inch. Contact Amy O'Donnell at 206-727-8213 or amyo@wsba.org.

Deadline: copy received (not postmarked) by first of each month for issue following. No cancellations after deadline. Submit check payment (to WSBA) and typed copy to: *Bar News*, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330. No phone orders, please.

Classified: **Advance payment required.** See classified pages for rates and submission guidelines.

WSBA BOARD OF GOVERNORS

M. Wayne Blair, *President*

Richard C. Eymann, *President-elect*
Walter Krueger, *First District*
James E. Deno, *Second District*
Terrance J. Lee, *Third District*
Stephen T. Osborne, *Fourth District*
John T. Powers, Jr., *Fifth District*
Donald N. Powell, *Sixth District*
Lindsay T. Thompson, *Seventh District*
Marijean E. Moschetto, *Eighth District*
Daryl L. Graves, *Ninth District*
J. Richard Manning, *King County*
Mary Alice Theiler, *King County*

EDITORIAL ADVISORY BOARD

Tap Menard, *Chair*

Bruce Clark, *Sixth District*
Suzan Clark, *Third District*
James Dickmeyer, *Seventh District*
Jenny Durkan, *Seventh District*
Jessica Eaves, *Seventh District*
Judith Endejan, *Seventh District*
Geoff Hymans, *Sixth District*
Peter Karademos, *Fifth District*
Jerry Kimball, *Seventh District*
Constance Lind, *Seventh District*
Evan Loeffler, *Seventh District*
Eric Nordlof, *Eighth District*
Thomas Oldfield, *Sixth District*
Erin Overbey, *Seventh District*
Milt Smith, *First District*
Steve Smith, *First District*
Andrew Wender, *Second District*
Lara Zimmermann, *Seventh District*

WSBA CONTACTS

WSBA SERVICE CENTER
800-945-WSBA / 206-443-WSBA / questions@wsba.org

- Address changes
- Current WSBA CLE seminars and CLE products *(information or seminar registration)*
- MCLE credits and course accreditation
- Licensing
- Office of Disciplinary Counsel *(complaints about lawyers)*
- Order placement for all WSBA products *(inquiries about pending orders* 206-733-5918*)*

WSBA fax 206-727-8320
Website & Bar News online www.wsba.org
Admissions 206-727-8209
Ethics line *(for lawyers only)* 206-727-8284
Jobline *(recording)* 206-727-8261
Lawyer Services *(for lawyers only)* 206-727-8268

- Voluntary fee arbitration
- Mediation
- Lawyers' Assistance Program
- Law Office Management Assistance Program

Union Dues Better Deal?

Editor:

Jan Michels commented in her February "Executive's Report" that our bar dues are "nowhere near trade-union dues." It's an interesting comparison. I have two family members in a local trade union, and their dues are indeed more than triple my own, although their professional earning potential is less than mine. On the other hand: Apprenticeship lasts five years. During that time, they work five days a week and go to school three nights. They're covered by union benefits (including full medical coverage), don't pay to go to school, and earn an increasing percentage of journey wages each year. They graduate without student debt and with five years of credits into the pension program.

Their classes are held in a nice building that the union owns. After obtaining journey status, they have 24 hours of continuing-education classes a year to remain on the A+ list. The classes are held at night and are free, except for some materials. If they are laid off, they put their name on the list and are sent out on another job without further effort on their part.

The union has a contract with union contractors. If the contractors fudge the terms of the agreement, the union goes to bat for the affected workers. Benefits are handled through the union and are entirely portable; changing jobs does not result in lost benefits or new waiting periods for coverage.

So who has the better dues deal? Your call.

Rebecca C. Earnest
Seattle

Bar Association Holds Members in Disdain?

Editor:

In her column in the February *Bar News*, Jan Michels laments the perception that the Bar Association is not seen as helpful by many attorneys and is seen by some, at least, as an "oppressor." However, despite her talk about changes the Bar has made, such as making certain functions self-supporting and opening up the Bar political process, the charges accurately reflect the direction the Bar Association is taking.

Essentially, the Bar is apparently no longer willing to view lawyers as mature and responsible professionals. The evidence? It abounds. A few examples:

1. Several years ago the Bar supported the addition of an ethics requirement to the basic CLE requirement. The CLE requirement itself is an assumption that lawyers are so irresponsible that, left to act on their own, they cannot be trusted to remain current in the law. The addition of an ethics requirement adds insult by assuming that first, we aren't smart or responsible enough to know how much ethics education we need, and second, without constant exposure to ethics teaching we will presumptively fall into sin and error. This is not an indication of respect for the members of the Bar.

2. In the same issue as Ms. Michels' column is a letter urging the withdrawal of support for proposed changes to RPC 8.4(g) and (h), which would make these rules even more restrictive of what lawyers may and may not say and even how lawyers may act toward some persons as we go about our work. The Bar obviously

RCW & WAC on CD for 1998

As published by the Statute Law Committee, Office of the Code Reviser

Four versions to choose from

All versions contain pattern forms by the Administrator for the Courts

The WAC is current through September 2, 1998
The RCW current through the 1998 Legislative Session
Wn.2d Supreme Court Decisions
Volumes 1 -135 (1939 - 8/10/98)
Washington State Court of Appeals
Volumes 1 -90 (1969 - 8/10/98)

Each CD is licensed for 10 concurrent users.
Licenses may be purchased for additional users.
Passwords needed only for network licenses over 10 users.

Prepayment is Required

$50 ☐ **RCW**
$100 ☐ **RCW** with Court Decisions
$100 ☐ **WAC/RCW**
$150 ☐ **WAC/RCW** with Court Decisions

Please add 8% sales tax on in-state orders

Amount Enclosed

Mark your choice and return this form along with your check to:

Office of the Code Reviser
PO Box 40552
Olympia, WA 98504-0552

Name _____

Address _____

City _____ **St** **Zip**

believes we are inherently evil people who, without the corrective threat of disbarment, will say or think nasty things, contrary to our First Amendment obligations only to say or think ideas approved by the powers that be. This is supposed to be "helpful" to lawyers, Ms. Michels?

3. There is President Blair's now-infamous column in which, using his soapbox paid for by the members of the Bar, he exhorted us to oppose I-200, as though we lacked the wisdom or responsibility to make up our own minds on this issue.

4. Then, of course, we have the proposed RPC 1.8(k), which would peer into our bedrooms to detect sexual indiscretions. What I find most frightening is the statement of Chief Disciplinary Counsel Barrie Althoff quoted in, if I recall correctly, *Washington Journal*, as justifying the proposed rule on the grounds that there is no right for lawyers to be "sexual predators." Apparently our professional association's attitude is that we are all potential predators who without threat of discipline by the Bar would use our offices to prey on sexually vulnerable clients. No hint here that maybe we are professionals who can make responsible decisions about who we should sleep with.

These are only a few instances showing the disdain in which the Bar holds its members. If our own professional association has such negative views of its members, is it any wonder that the public does not look favorably on our profession? And can we believe that an Association which views us in such a negative light can be counted on to, as Ms. Michels says lawyers want their Association to do, "help improve the public image and respect of lawyers"?

Of course, there is a "helpful" side to the Bar. What Bar services are most important to members in their daily lives in the law? For me, the three primary services of actual use are *Resources*, CLE and certain section publications. Until recently, *Resources* was distributed as a benefit of paying Bar dues. No longer. Now we must pay for it separately. CLE? The mandate is out that it must be self-supporting. Sections? They must not only be self-supporting, but must contribute to the general Association overhead. I have to pay for all these services *in addition to* my dues. Put another way, I would get these services even if the Bar dues were reduced to $1. The primary services I use are *not* supported by the dues I pay.

What I want for my money, and I think I am not alone, is an Association which treats me as a responsible professional at least some part of whose dues should be used to help me do a better job of earning my living and assisting my clients. But what *do* I get for my dues? Not what I want. I get *Bar News* so I can pay for self-serving columns by various Bar officials. I get the opportunity to be taxed to pay back amounts which an occasional dishonest lawyer may steal. I get to pay for fellow lawyers to go to meetings and make decisions to inflict yet more obligations on me, impose additional restrictions on my freedoms, and take various political positions in my name without my consent. And, of course, I get to fund a disciplinary office led by a man who apparently views me as a sexual predator who will lay waste to my clients' vulnerable

bodies if he isn't given the power to stop me. And Ms. Michels is concerned about why I don't view all this as helpful and relevant to my needs.

Well, Ms. Michels, there is the "straightforward, honest response" you asked for. Forgive me if I doubt that anything will change for the better in my lifetime.

Christopher Hodgkin
Friday Harbor

Reply to Sayre Response

Editor:

I am writing to correct a gross distortion of my previous letter [*Bar News*, November 1998] by Richard Sayre in the February 1999 issue. Mr. Sayre insinuates that I intentionally hid my identity from readers in criticizing Medicaid planning and the WSBA Board of Governor's decision to support it. In fact, my November 1998 letter to the *Bar News* was sent on Center for Long-Term Care Financing letterhead and was signed with my title. Apparently, the *Bar News* does not publish such identifying information. This might explain why Mr. Sayre's February 1999 letter reveals only his name and hometown and makes no mention that he is a Medicaid planner.

With respect to the content of Mr. Sayre's letter, I see no point in taking up readers' time refuting every one of Mr. Sayre's ad hominem attacks on the Center for Long-Term Care Financing. I simply invite readers to visit our web site at http://www.centerltc.com or to call me at 206-447-1340 if they are interested in long-term care financing issues.

David M. Rosenfeld
Seattle

Notice of Nonpayment

Editor:

What is the matter with my greedy bar association employees?

2/23/99 received letter re: $10 payment (their mistake) postage 33¢

2/24/99 sent check for $10+ postage

2/27/99 received "Notice of Nonpayment" certified/return postage $2.98

Why was $3.31, plus labor, spent to collect $10?

David A. Myers
Guadalupe, Arizona

NOTICE OF APOLOGY

I want to offer my sincere apology to all members who mistakenly were sent a "Notice of Nonpayment." It was a human error and should not have happened. Let me tell you what occurred.

License fees are due February 1 every year. The WSBA Bylaws extend members a one-month grace period, during which time there is no penalty for late payment. Effective March 1, a 20% late penalty is assessed, and effective April 1, there is a 50% penalty. Those who have not paid their dues by May 1 are suspended from the practice of law by the state Supreme Court.

In order to notify the members who may have inadvertently neglected to pay their license fees, the WSBA, pursuant to the bylaws, sends a certified mail notice in late February, before any penalties have accrued, to those whose dues have not been paid. Because many miss the importance of this notice, "Notice of Nonpayment" is printed on the outside of the notice. (The Board of Governors will discuss at its March meeting whether this "hot" message should be on the envelope.)

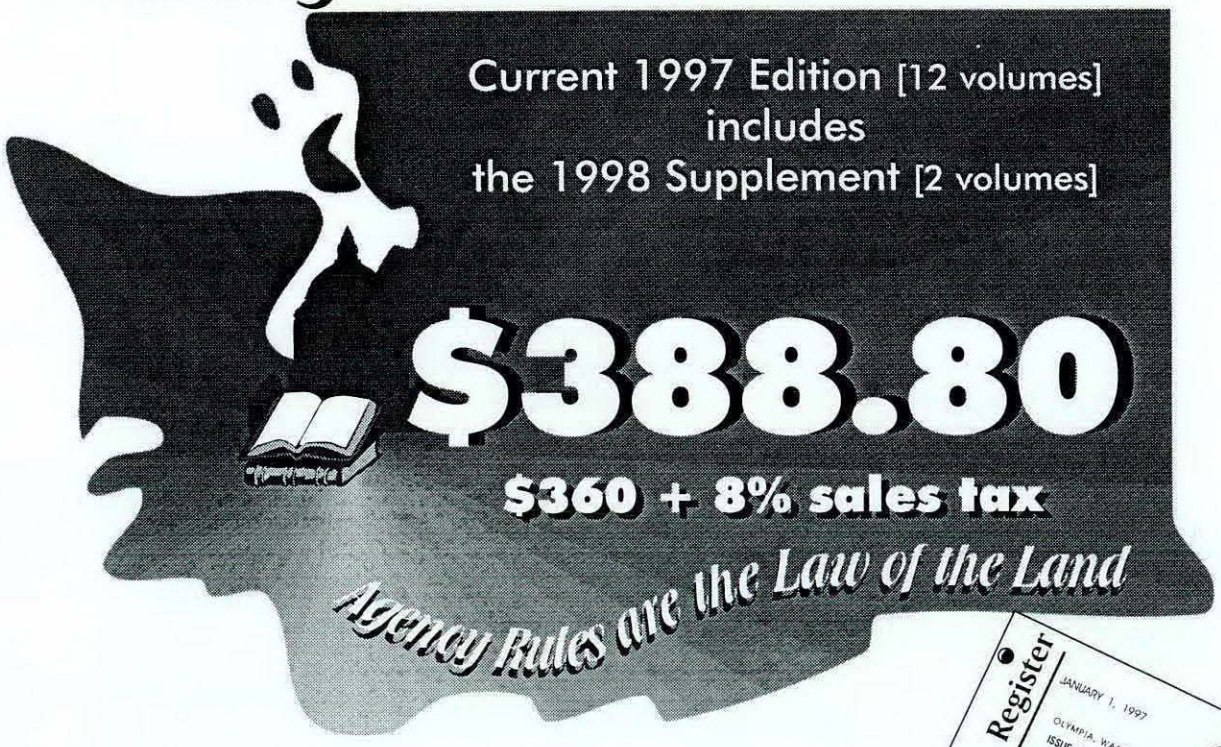
Due to a printing error on some of this year's license forms, some members paid their dues but missed the $10 Lawyers' Fund for Client Protection assessment. Compounding the problem, we mistakenly sent late notices to some of these members.

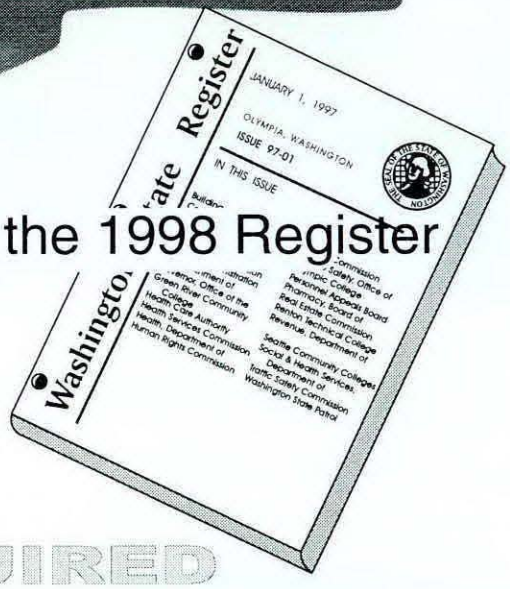
I sincerely apologize to our members who received the late notice in error. We should have caught the mistake, but we didn't. I deeply regret any embarrassment it has caused. While we cannot undo the damage that has been done, we can, and will, take steps to try to ensure this does not happen again.

Bob Welden
WSBA General Counsel

Readers are invited to submit letters of reasonable length to the editor. They should be typed on letterhead, signed and, if possible, also provided on disk in any conventional format. Letters may also be sent via e-mail to comm@wsba.org. Due date is the 15th of the month for the second issue following. The editor reserves the right to select excerpts for publication or edit them as may be appropriate. Signatures in excess of three names will be printed only in exceptional circumstances, at the sole discretion of the editor.

Official
Washington Administrative Code





If you do not already subscribe to the 1998 Register you can add it to your WAC order for $210.60 *($195+ 8%tax)*

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

PREPAYMENT REQUIRED

Please send ___sets of the 1997 WAC, including the 1998 Supplement at a cost of $388.80 ($360 + 8% tax) per set.

Price to include the 1998 supplement

I would like ____ subscriptions to the 1998 Washington State Register at $210.60 ($195 + 8% tax) per subscription.

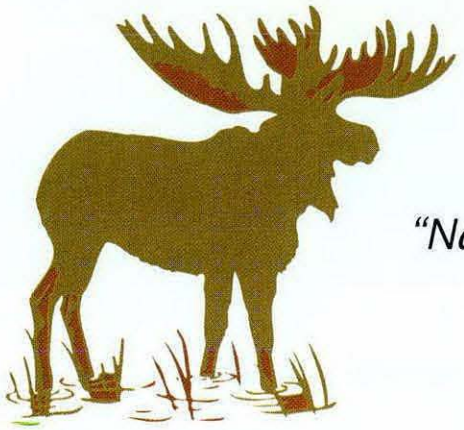
State agencies and out-of state subscribers are not required to pay sales tax

Ship To: _____ Attn: _____

Address _____ Mail Stop _____

We cannot ship to PO Boxes

City _____ St ____ Zip _____



Improve Your Accounts Receivable With a *"Name the Moose (Elk) Head"* Contest

by Greg Lawless
Guest Editor

Our law office recently discovered a method to dramatically reduce accounts receivable using the classic technique of a *"Name the Moose (Elk) Head"* contest. For those lawyers saying, "Of course, we already did that," there's no need to read further. But for those of you unfamiliar with this method, read on.

It all started innocently enough. A paralegal in our office hung a "kitty quilt" on an unadorned wall, declaring it to be the cutest thing she had ever seen. The kitty quilt remained on the wall for several months until one day the paralegal overheard one of the partners in our firm suggest that the kitty quilt on the wall was the most awful piece of fluff he had ever seen. This same partner (who shall remain nameless) offered the helpful suggestion that the kitty quilt (sort of a pink "foo-foo" thing with kitties playing with string and other stupid stuff) could still be useful if used as an oil rag for his vintage Mustang, only he was afraid of insulting his car. One of the associates in the firm, who likewise will remain nameless, voiced similar helpful suggestions. Together, this partner and the associate suggested that anything, even something like a dead animal head, would be far better than the disgusting kitty quilt.

A well-respected elder law attorney sent in the name "Cubby and Annette" because, as he wrote "they were the cutest mooses." Naturally that entry was disqualified, because Annette was not a moose.

Several months later my birthday arrived, as it often does, on March 30th. I had given the usual requests to my sick and demented staff — "No black balloons, no black crepe paper, no hiring embarrassing dancers, etc." I forgot to say, "No animal heads." Imagine my delight when I entered the office and saw, fastened to the wall, an elk head. Standing underneath the elk head were my wife and partner, Janine, and our staff. "Do you like the moose?" they chorused.

Not wishing to hurt their feelings, and noticing that it did look a darned sight better than the quilt, I did not mention to them the subtle differences between a moose and an elk, and I gushed with enthusiasm over this wonderful birthday gift.

A battle of wills ensued. I would not admit that the moose (elk) head was anything other than beautiful. As my clients and I walked toward my office, their gaze would fix on the moose (elk) head — much like Scrooge viewing Marley's ghost. I tried to dismiss it, claiming I hadn't noticed it before, and insisting it must belong to the previous tenants, but everyone saw through my clever ruse.

Finally a PR idea worthy of Wall Street came to me. I decided to have a *"Name the Moose (Elk) Head"* contest!

Following are the contest rules as given to our clients:

1. Your entry must accompany your payment on your bill. Clients who have not paid their bill in full may not enter the contest without the express written consent of one of the partners. We probably won't give consent, so I wouldn't even bother to ask if I were you.

2. No previously trademarked moose names will be allowed (so don't even try "Bullwinkle," because it won't work).

3. If you suggest the name "Greg" or "Gregory," your attorney's fees will be doubled. However, it is OK to suggest "Lisa," "Pat," "Janine" or "Julie," because they started this in the first place.

The winner of this contest will be awarded (at the discretion of the Lawless Partnership) one of the following prizes:

1. The Queen Mary
2. Europe
3. A moose (elk) head
4. Elizabeth Taylor or Jack LaLanne

I suspected that no one would enter the contest, because if they did, they ran the risk of winning. Imagine my shock when entries started flowing in, always accompanied by checks paying their accounts in full!

Many of our clients spent considerable time coming up with suitable moose (elk) head names, causing us to worry about them. Creativity such as theirs should be recognized not just by their therapists, but by a learned publication such as *Bar News*. Here are some of the entries we received:

A well-respected elder law attorney sent in the name "Cubby and Annette" because, as he wrote "they were the cutest mooses." Naturally that entry was disqualified, because Annette was not a moose.

A prominent physician wrote, "How about 'Tort?' If it's a Scottish moose, it could be 'Tortie,' a Mexican moose 'Tor-

tilla,' a bad moose 'Tortlet,'" and, he suggested, "if it's a dead moose, 'Tortmort.'" We had to disqualify that entry as being out of touch with reality. *If* it's dead? A stuffed moose (elk) head! Obviously he had spent a few too many minutes on the Disney ride "Bear Country USA."

A particularly bitter entry was "My Ex." We were not sure if the Ex or the moose was being insulted, but we knew someone was.

A promising entry —"Rumpole"— was suggested by one of our clients, but the entry was rejected because the contestant insisted that if given Europe as a prize, he would require that he not have to join the Common Market. We didn't want to get into the middle of that old debate and thus rejected the entry.

"Elmoo B. Bodiless, Attorney on the Wall" and "Mustang 'Smooth as Elk' Sally" very nearly won the contest, but just didn't seem to fit this particular moose (elk).

Things Get Ugly

Our entire office met, sorted through the entries, and declared a winner. We also selected the appropriate prize (and I know this will come as a shock): the moose (elk) head. We decided that the best way to award the prize was simply to show up at the client's office, without an appointment or hint that we were coming, and deliver the head. Our concern, of course, was that the client, so overwhelmed with joy, would not keep the moose (elk), believing the prize to be overly generous. Having decided on a winner, our associate, David Parker, and I, filled with the joy Santa must feel on Christmas morning, put the top down on my Mustang, placed the moose (elk) head in the back seat, and drove to the client's office. Sure, a few people stared, since they are not used to a moose (elk) glaring at them from the back seat, but it turned out to be a good warmup for what was to come.

The client's office is near Pike Place Market, and the nearest parking is, I would guess, 43 miles away. So we parked the Mustang (probably in Everett) and began the long journey to their office, carrying the moose (elk) head.

We tried to be inconspicuous by wearing sunglasses, but it didn't seem to work. After 20 or 30 miles we grew accustomed to the sarcastic comments. "That's one way to get ahead" seemed to be the most popular barb. David kept asking if this was in his job description. I assured him it was.

Just when we were approaching the home stretch, no more than a mile or two from our destination, we ran into:

The Animal Rights Activist

"I can't believe you would walk the streets of Seattle with a moose head," she snarled.

"It's an elk," I pointed out, hoping she was *only* a member of the Save the Moose League. "I can't believe it, either."

"Elk, moose, who can tell the difference," she hissed.

"Funny you should say that," I commented. "You see, this was a birthday present..." I started to explain.

"Moose tastes gamier than elk," David blurted, not helping the cause at all. I later found out that the elk was, in fact, shedding on David at that moment, leaving elk dust all over him, which could have explained his lapse of sanity.

The woman again glared at us and stomped off. Her miscalculation was that she was going in the same direction we were, giving the impression that she was part of the entourage. She was obviously not as accustomed to sarcastic comments as we were, judging by the several shades of red she turned as we progressed down the street.

When we finally reached our destination, we couldn't find the stairs up to our client's office. Lugging the moose (elk), we finally asked directions, but couldn't get a straight answer from anybody. They probably didn't trust the sunglasses. After an eternity, we found the hidden stairway to our client's office.

I had wanted to make a favorable impression because, although I have represented this excellent business for years, I had never met my clients in person. I am sure they were impressed when we entered, dripping with sweat, filthy with moose dust and hair, holding a huge dead animal head, announcing, "Hi, we're your lawyers."

But it was all worth it, because of:

Joy and Bliss

Never have I seen such happiness and joy in people's eyes as when we delivered that moose (elk) body part. To say they were overwhelmed would not be an exaggeration. Speechless, wide-eyed, and unsuspecting. And I know your clients will respond the same way, too.

In fact, overcome by this glorious award, my clients forgot to express themselves in words. Using just a little "author's license" and knowing full well by their body language and gestures what they meant to say, I will try to reproduce this wondrous event.

Greg: "Despite my sweaty and disgusting appearance, I am in fact a beloved messenger. I have come to announce that you have won the Lawless Partnership *'Name the Moose (Elk) Head'* Contest, and this moose (elk) noggin is forever yours."

Rebecca, nearly swooning with joy, didn't speak, but I knew she was thinking: "Oh joy and bliss! Ever since I was a little girl I have wanted an moose (elk) head, especially one with the antlers removed so there are two holes in the top."

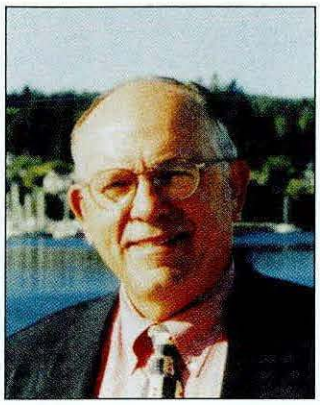
Tim would have responded, but for the torrent of emotions overcoming him: "Yes, oh yes, I have lived a long and productive life (mostly), and I have had many good things in this life, but nothing can compare to this, an award of a dead moose (elk). Are they really cross-eyed in nature?"

I must confess we all got a little misty-eyed at this point in the ceremony. Luckily the sweat and elk dandruff that covered David and me helped hide this breach of etiquette, but in some ways I'm glad we could weep when happiness abounded all around us.

Perhaps even more touching was the generosity we witnessed between Tim and Rebecca, each insisting the skull would go in the other's office.

And then there was the search through the office, trying to find out who entered the contest. That noble person, not wanting all the glory, remained anonymous.

Yes, it was hard leaving that office in downtown Seattle, but as I said to David, "It is a far, far better thing that you did today than you have ever done before. It is a far, far better place he went than he has ever been before." Having boosted our collections by 20 percent, given our clients reason for joy and celebration, and touched and enriched so many lives, we then bid Fluffy farewell.



Is Reciprocal Admission of Lawyers a Good Idea?

by M. Wayne Blair
President

NOTICE OF APOLOGY

As a preliminary matter, I must apologize to the approximately 600 attorneys who erroneously received a Washington State Bar Association mailing advising you that you were delinquent in your license-fee payment. The original license fee notice was confusing due to an error which placed the amount of the license fee in the wrong place, making it easy to miss the "+ $10.00 LFCP." As a result, many attorneys paid $10 less than the full fee.

The more egregious part of the mailing, however, was the bold printing on the envelope, which advised you (and all who saw the envelope) of your "Notice of Nonpayment." A number of you were embarrassed by such notice — and understandably angry for the error. Again, I apologize for this error and offer a brief explanation for the envelope's exterior declaration.

The statements are mailed in early December, and are due February 1. If the statement is paid by March 1, you can avoid a 20% late payment fee. As a courtesy, the WSBA staff sends a reminder notice in mid-February to those members who have not yet paid. These notices are sent via certified mail, "Return Receipt Requested." Though WSBA staff continues to debate the matter, it has also always put on the face of the reminder envelope "Notice of Nonpayment." While a few members object to the display of the nonpayment notice on the envelope, most appreciate it, since the notice is a "grabber" which minimizes the chance that the envelope will be overlooked or ignored, as the stakes for nonpayment are high. If payment is not made by April 1, the next notice is a "Notice of Suspension" — also denoted on the face of the envelope.

Unfortunately, we are not able to identify all who have erroneously received such "Notice of Nonpayment." To those of you who have complained or called it to our attention, we have sent a letter of apology in an envelope prominently marked on the outside "Notice of Apology," as suggested by Bob Welden, General Counsel. We will do better.

Is the reciprocal admission of lawyers, without taking the Washington Bar Examination, a good idea? Is it an idea whose time has finally come to this state? At the WSBA website (www.wsba.org) and in the March issue of *Bar News* (page 56), you will find a proposed amendment sent to the Washington Supreme Court recommending a new Admission to Practice Rule authorizing reciprocity. The Supreme Court has published the rule and is seeking comment by April 30, 1999. The Board of Governors and the Supreme Court invite your input on this controversial rule.

What the Rule Provides

This proposed rule, designated as APR 17, provides a procedure for the reciprocal admission of lawyers without the requirement that those lawyers pass the Washington Bar Examination. In essence, the rule provides that lawyers from other states, territories or the District of Columbia, will be admitted to practice law in Washington without the requirement of the Washington Bar Examination, if the licensing procedure for lawyers in that state, territory or the District of Columbia allows for the admission of licensed Washington lawyers under substantially similar conditions to those set forth in APR 17.

In order to qualify, a lawyer must present satisfactory proof of both current good standing and admission to the practice of law in another state, territory or the District of Columbia. In addition, an applicant must meet the "good moral character and fitness" requirement as set forth in APR 3(a). Under APR 17, the Board of Governors would approve or disapprove reciprocal applications for admission.

Lawyer applicants for admission from states which require passing the Multi-state Professional Responsibility Exam (MPRE), or which require some period of active practice of law before applying, would be required to pass the professional responsibility portion of the Washington Bar Examination, or meet a similar practice requirement. The applicant would also be required to pay the same fee charged a lawyer applicant currently required to take the Washington Bar Examination. This fee would include the fee paid to the National Conference of Bar Examiners to conduct a character and fitness background check on the applicant.

The primary benefit of APR 17 is to allow Washington lawyers to apply for reciprocal admission to those states that authorize reciprocity.

Background

Between 1935 and 1947, Washington provided for admission by motion of attorneys admitted in other jurisdictions who met certain qualifications. In 1947, that requirement was replaced with a separate attorneys' examination consisting of one of the three days of the state bar examination. In 1977, when the Board of Governors adopted a requirement that the bar exam include a mandatory session on the then Code of Professional Responsibility (now Rules of Professional Conduct), the Board abolished the attorneys' exam.

In 1983, the Board of Governors was asked to consider adoption of a recommendation from the ABA Young Lawyers Division, which proposed a rule to provide for admission without taking the bar examination for attorneys who had been admitted in another state for "not fewer than three years." This proposal was referred to a WSBA task force on continuing professional qualifications chaired by James Danielson. The task force recommended against adoption of a reciprocity rule for the reason that it would "undermine the programs of the WSBA that seek to improve lawyer competence."

In 1996, a member of the WSBA once again requested that the Board of Governors review the issue of reciprocal admission to the bar in Washington in the interest of WSBA members who might then qualify for reciprocal admission in other states, specifically Alaska.

In March, 1997, the Board of Governors appointed a special committee to again study whether the Board of Governors should recommend to the Supreme Court that Washington establish some form of reciprocal admission qualifications. Participating on the committee were Mike Larson, chair; Barbara Harris; Bryan Lane; Frank Slak, Jr.; Vicki Norris; and General Counsel Robert Welden. The committee recommended adoption of the rule.

The Board of Governors approved the recommendation of this rule to the Supreme Court at its meeting in September 1998. The Supreme Court has now published the rule for comment.

Currently, 25 states, including territories of the United States and the District of Columbia, have some form of qualification for admission to the bar without taking the state bar examination. Of those states, 11 require some form of reciprocity. All of these states require that the lawyer applicant have some period of active practice experience, such as five of the seven years immediately preceding application for admission.

Eleven states admit lawyers upon motion and payment of the appropriate fee. Five states admit lawyers on motion, but also require taking and passing the MPRE. Nine states require some form of reciprocity, and usually the MPRE. Our neighbor states of California, Oregon and Idaho do not recognize any reciprocity. Ten jurisdictions have some form of "attorneys' bar exam." These exams generally include a shortened version of the state bar exam and some, or all, of the MPRE. Since 1990, the number of lawyer applicants taking and passing the full Washington Bar Examination are:

1990: 310 **1991:** 324
1992: 273 **1993:** 342
1994: 348 **1995:** 291
1996: 137
(data from winter exam only);
1997: 155
(data from the summer exam only);
1998: 216
(data from winter exam only).

Those who favor adoption of the reciprocity rule argue that the practice of law is increasingly national and international, and that regulation of the practice of law must respond in a reasonable way to this changing practice. They argue that lawyers do and will continue to move from state to state more often than before and that such relocation should be easier to do. They see reciprocity as an advantage to citizens or businesses that desire to employ lawyers who practice in other states.

Opponents of the rule, while they recognize that the practice of law is changing, argue that the change only weakens the admission standards in Washington and erodes the protections now afforded in each state. Reciprocity is not, in their view, "a good thing," because new admittees should be familiar with Washington law and rules. Many would say there are too many lawyers in this state already, and we should not be encouraging even more.

The Supreme Court has asked for comments by April 30, 1999. Please send to the Supreme Court and me any comments you may have on this proposed rule. Is it an idea whose time has come, or passed? What do you think?

Supreme Court Clerk Temple of Justice
PO Box 40929
Olympia, WA 98504-0929

M. Wayne Blair, President
Washington State Bar Association
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330

Lawyering in the 21st Century:
Skating to Where the Puck Will Be

by Jan Michels
Executive Director

A world-famous hockey player credited his hockey success to his ability to know where the puck was going to be. Out on the ice, his constant job was to survey all the action in an instant and, during that split second, make a wise decision about where to go next.

When it comes to advances in technology, there's a little more breathing room than there is on the rink...although it may not be as much as we like to believe. Technological change happens remarkably fast, forcing us more and more to alter the way we live and work, and to make choices and decisions that we may not feel we had time to consider. The pace can feel overwhelming.

Technological change happens remarkably fast, forcing us more and more to alter the way we live and work, and to make choices and decisions that we may not feel we had time to consider.

Though I'm not a real technophile, I do keep my antennae up about where technology is going and how its evolution will affect the practice of law. In the future, the competitive advantage will be in the immediacy of response, strong client-service orientation, and the availability/usability of information. Here, drawing on the thoughts of Michio Kaku (*Visions: How Science Will Revolutionize the 21st Century*) as well as less scientific cyber-authors such as William Gibson and Maria Doria Russell, I isolate some factors which seem sure to affect the practice of law.

Integrated and Voice-Controlled Technology

Today's technology will look and feel primitive in less than two years. We're heading to full integration of e-mail, the World Wide Web, television, voice and video; and we're heading away from the need for a keyboard. From a single workstation we will call up, listen to, watch, see, interact with, direct, sort, create and disseminate data. Voice recognition software is currently nearly 90% accurate, and sheer demand will inch it toward 99.9% in short order. These changes will likely mean that lawyers will have one fully integrated workstation (or more) at home for business, avocational and family activities. This phenomenon will cause a shift in where and how "work" gets done.

Information Filtering and "Pushing"

Though global bandwidth (the size of the "hose" through which data can flow) is expanding rapidly, the bandwidth between our eyes and our brain is fixed. We need to manage what we put through this cranial bandwidth to make sure it is what we need to accomplish our purposes. Managing the deluge of information available to us requires electronic filtering and organizing. Instead of surfing the Web for relevant information, we will have customized data "spiders" that will cruise the Web at thousands of bits a second and stack up, behind our access point for our later consumption, only that information we choose to ingest. This will require deliberate and careful judgment about what information we want and need, and careful programming of data-spider delivery systems.

Bio-Molecular Management

Science is shifting from learning about the natural order to managing and manipulating it. With our scientific ability to manipulate DNA codes, develop new non-naturally occurring chemical compounds which result in new materials and substances, and imitate thinking with artificial intelligence, will come the need to forge new law and precedent.

Beyond the Time-and-Space Paradigm

It used to be that certain information, court records for example, was only in one place for one-at-a-time use during set hours. Now much information exists on the Internet for shared simultaneous use, anywhere. This alteration means that travel times, parking and business-hour constraints will disappear. When everything is available at all times, off-hour practice, cross-country transactions and international consulting will invade the "last frontier"— the hours between 2:00 a.m. and 7:00 a.m.

Virtual Offices, Courtrooms and Meetings

With the support of high-speed, high-resolution, secure tech-

nology, event participants no longer need to be there to *be there.* Meetings, depositions, conferences and even an entire legal practice and court proceedings can occur in "virtual reality" (the appearance of the tactile world but without the reality of physical presence). Virtual appearances will be holographic and very convincing. The economic pressure to take advantage of this technology will demand its use. Technical and legal practice issues will be resolved.

Conclusion

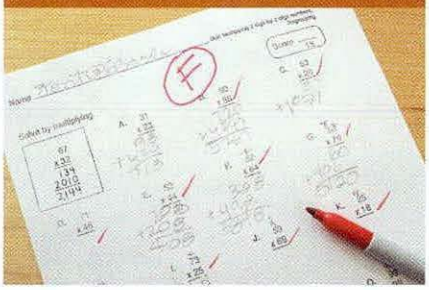
Psychologists tell us that stress builds when we feel powerless over events that affect us. That familiar *swamped* feeling is the result of too many stimuli, coming too fast and allowing too little control. The trends noted above seem certain to contribute to our increasingly frenzied pace. They cannot be stopped. Rather, our future success will be a function of our ability to learn about them, accommodate their impact, and "skate to where the puck will be."

By Catherine Chaney & Anne Kysar

THE BECCA BILL:
Is the Cure Worse than the Disease?

BECCA HEDMAN'S tragic story provided the political impetus to pass sweeping legislation that gives the juvenile court the power to jail children who have not been convicted of a crime.[1] Becca was subject to abuse at the hands of her biological parents and her adoptive brother. She suffered from addiction and even lived on the streets after running away from home. When Becca was only 13 she was murdered by a man who had paid her for sex.[2] The state legislature responded to this tragedy by enacting the "Becca Bill" in July 1995.[3] The intent of the bill was to "empower parents" by giving them power to deal with their runaway, disobedient children or truant children by having them locked up in juvenile detention.[4] The bill provides juvenile court judges and commissioners with the power to jail "At-Risk Youth," "Children in Need of Services," and truant children for "civil contempt" if they violate a court order.[5] An examination of the bill and its implementation show that the cure provided by the "Becca Bill" may not adequately address the problems that these children face. Indeed, in some instances the solution created by the "Becca Bill" may exacerbate these problems.

A "truant child" is defined as a child who has had unexcused absences in a school year.



The Petition

THE STATUTE ALLOWS a parent to petition juvenile court to have his or her child declared an "At-Risk Youth" (ARY) or a "Child in Need of Services" (CHINS). Another part of the Becca Bill authorizes a school district to petition juvenile court to have a student declared a truant. Because these proceedings are ostensibly civil, children are not afforded the due process protections that apply in criminal proceedings.

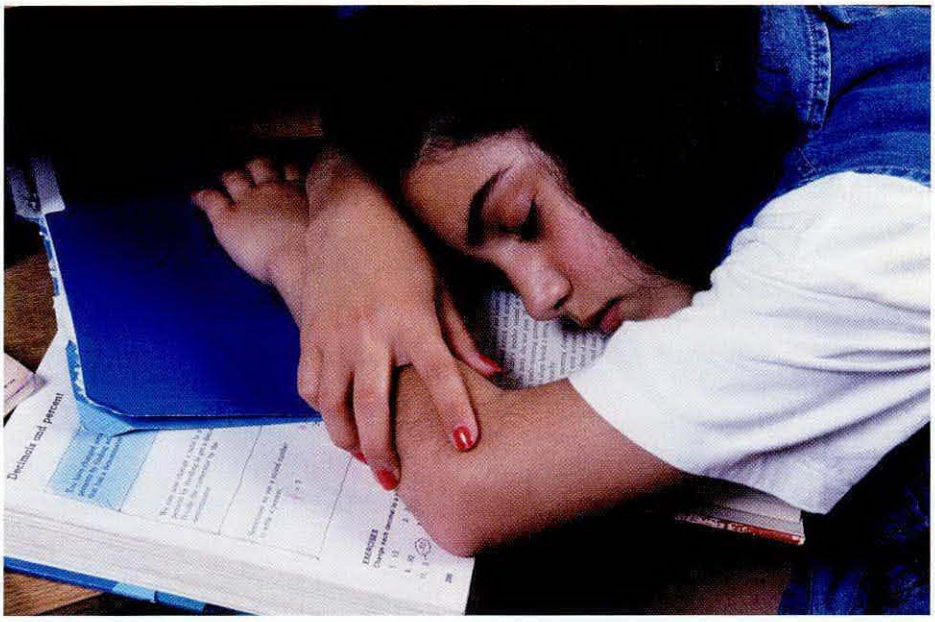
A court must grant an "At-Risk Youth" petition if the allegations in the petition are established by a preponderance of the evidence.[6] The legislature defined an "at-risk youth" as a runaway, a child who is beyond parental control, or a child who has a substance abuse problem.[7] In practice, courts rarely deny ARY petitions (or CHINS or truancy petitions, for that matter). For example, if a child is engaging in behaviors such as staying out after curfew or spending time with friends the parent disapproves of or consuming alcohol without parental permission, a court may grant an ARY petition on the basis that the child is "beyond parental control." Before an ARY petition is granted, the law requires that parents attempt some alternative to court intervention or show "good cause why such alternatives have not been attempted."[8] In practice, courts construe this requirement loosely: a counseling appointment will generally satisfy the requirement.

The legislature defined a "child in need of services" as a child who is beyond parental control or a runaway and is in need of services.[9] When a CHINS petition is granted, the child may be placed outside of the home by the Department of Social and Family Services. While a child or a parent can file this petition, the court may not grant a child's request to be placed out of the home unless the child proves by "clear, cogent, and convincing evidence" that placement outside the home is in the best interests of the family and the child, that the child has tried to resolve the problem, and that the parents are unavailable or the parent's actions cause an imminent threat to the child.[10] Again, in practice, a parent's petition to have his or her child declared a CHINS is rarely denied while a child's petition is more likely to be denied.

A "TRUANT CHILD" is defined as a child who has had unexcused absences in a school year. Additionally, the statute requires that the school take steps to reduce or eliminate the child's absences from school.[11] The school district or the parent may bring a truancy petition. A child appears at a truancy fact-finding hearing without the benefit of counsel under the statute. As a result, the school district is rarely tested on its statutory obligation of taking steps to reduce or eliminate a child's absences from school. In most cases, the school district reports that it cannot carry out this task because the student does not attend school regularly, or the school submits that they have carried out this statutory requirement by scheduling a conference with the child and his or her parent.

In one case, a juvenile court commissioner found a 12-year-

old girl truant even though the girl and her family are homeless and live in the family car. The child had difficulty sleeping and had trouble getting up for school in the morning. The court found that the school had met its statutory burden to take steps to reduce or eliminate this child's absences by scheduling a meeting with her at school registration.



The Court's Disposition Order

ONCE A COURT GRANTS an "At-Risk Youth" or CHINS petition, the court assumes broad authority in writing "conditions of supervision" for the child. The statute authorizes a court to order a child to attend school, counseling, substance abuse treatment or "any other condition the court deems an appropriate condition of supervision."[12] In practice, the "conditions of supervision" are long lists of rules for the child to follow. The orders "often end up being extensive lists of what the parents want from the child .... The focus is more on ordering the child to follow the rules than on providing services to remedy the problem."[13] The court typically orders that a child do the following: attend school regularly with no unexcused absences, tardies or behavior problems; obtain a drug and alcohol evaluation and follow treatment recommendations; obtain a mental health evaluation; submit to random urinalysis; neither use nor possess non-prescribed drugs or alcohol; obey a curfew; enroll in and attend individual and family counseling; reside with parents or in another court-approved placement; have no contact with people the parent disapproves of; refrain from physical or verbal abuse; and refrain from the use of profanity. In some instances the court literally micromanages the child's day. In one case, the commissioner ordered a child to be in his room and in bed by 9 p.m. or risk incarceration.

The statute provides that the court "may order the parent to participate in counseling services or any other services for the child requiring parental participa-

tion."[14] Parents are rarely ordered to do more than attend family counseling (and sometimes the court does not require this), enroll the child in school, and refrain from physically or verbally abusing the child. Perhaps because the statute requires the parents to pay for services,[15] the court is usually reluctant to order the parent to attend parenting classes. Thus a commissioner refused to order a father to attend anger management classes even though he admitted to getting so angry at his child that he knew he frightened the child and he had indicated his willingness to attend the classes.

IN TRUANCY PROCEEDINGS, the court may order a child to attend school or drug and alcohol treatment.[16] While the statute provides that the court may punish a child or parent who fails to comply with the court order (evidence of which the school district must present),[17] the statute does not give the court authority to order the school to provide services to the child. Instead, the statute authorizes the court to order the child to attend the same or a different school, or alternative school program.[18] Thus, if a school has suspended a child, the court can order the child to attend school but cannot order the school to reinstate the child.

Some ARY, CHINS and truant children receive no services even when they are court-ordered to participate in them, as the statute does not entitle children or parents to any services.[19] While the court may order psychological assessments, drug and alcohol treatment or other services, the court cannot provide these services to a child. Thus, the child is dependent on the parent to pay for and arrange services. If a parent is indigent or unable to access services, the child may not receive the help he or she needs. If resources are available, the state may provide a family with up to 15 free hours of Family Reconciliation Services counseling. This is a very valuable resource according to many families, and is sometimes effective in helping families work through problems.

Contempt Provisions

IF A CHILD VIOLATES a court order, the court can jail the child for contempt. In truancies, as well as ARYs and CHINS, the court may jail the child for up to seven days for failing to follow the court order.[20] Neither RCW 13.32A.250(1) nor RCW 28A.225.090(2) provides for the standard of proof, but both simply use the language "failure to comply with court order." The statute does not explicitly provide that the school should bring the contempt motion, but the practice is that the school does so. In ARY and CHINS cases, the statute provides that "a parent, a child" (among other parties)[21] may bring a motion for contempt for failure to comply with the terms of the court order.[22]

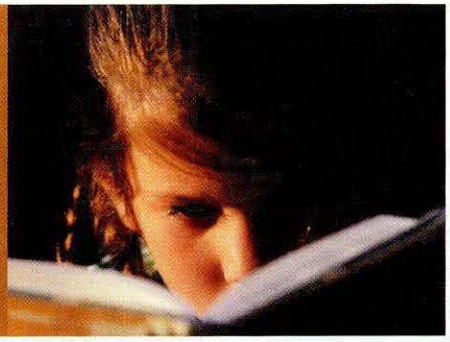
Although the language of the statute clearly limits the incarceration of a child to seven days, it is the practice of some juvenile court commissioners to jail children "indefinitely" until the child "convinces the court" that he or she will comply with the court order. Because the "conditions of supervision" are broad and often include extensive rules for a child to follow, a child may be jailed frequently and for minor infractions.[23] For example, children have been jailed for swearing at their parents or being late for curfew.

Although the statute authorizes the court to hold a parent in contempt for

failure to follow the court order, parents are rarely held in contempt.[24] Children often are reluctant to ask that their parent be held in contempt or even to provide negative information to the court about their parents. The ARY and CHINS proceedings have been established to "empower parents." As a result, the process disempowers children, sometimes even providing a means for their further victimization. A child who knows that his or her parent may jail him or her for violation of a rule is especially reluctant to disclose information of abuse because the child fears retribution from the parent. For example, a child who was jailed for running away from home in an ARY matter confided in her attorney that her parent was physically abusive — beating both her and her mother. This child refused, however, to allow her attorney to provide the court with this information or to file a contempt motion because she was distrustful of a court that had previously jailed her for running away from home.

IN A TRUANCY CASE, only after a child was jailed for failing to comply with the order to attend school did she reveal to her attorney that her mother was battered by the mother's boyfriend. The boyfriend, who apparently had beaten the mother so severely that her eyes were swollen shut for a week, had attended the school truancy conference at which school personnel wondered why the child was reportedly staying out so late at night that she could not wake up in time to take the hour-long bus ride across town to get to school. This child naturally enough felt unable to tell anyone at the conference that she was not comfortable staying home because of her mother's live-in abusive boyfriend.

Many of the children who are in dire need of help have been sexually and/or physically abused.... Children who run away from home are often trying to escape this abuse.



Although the statute states that children and parents should be treated equally for the purposes of contempt, parents are rarely held in contempt. In the rare instance that a parent is held in contempt, the parent is asked to pay a small fine. In the authors' experience, the court has never jailed the parent for contempt in one of these cases.

Problems Children Face

ALTHOUGH SOME CHILDREN who are subject to ARY, CHINS and truancy orders may simply be engaging in expected and obnoxious teenage behaviors because they are struggling to find their identity as individuals, other children in this group are in need of help because of inadequate parenting and unhealthy family dynamics.[25] Many of the children who are in dire need of help have been sexually and/or physically abused. Indeed, "young people who are in the juvenile justice system, in runaway or homeless shelters, or in foster care all report having experienced extremely high rates of sexual or physical abuse during their childhood years."[26] Children who run away from home are often trying to escape this abuse.[27]

A survey reported in 1994 by Seattle's Coalition for Kids and Families (now Youthcare) showed that 35 percent of runaways in King County reported that they ran from physical abuse and would return home if the abuse stopped. Twenty-six percent of the children in the survey reported that their parents had kicked them out. Twenty-five percent reported sexual abuse either by a parent or by someone else. According to Dr. Robert Dysher, former director of Adolescent Medicine at the University of Washington, "I've been working with street kids for 30 years, and I have seen very, very few of these kids who come from really good homes with care and affection run away... the[se]

are homes and kids who've grown up in situations which most of us would feel were absolutely intolerable."[28]

In addition to abuse, inadequate parenting is the cause of many problems that affect these youth. The ARY or CHINS cases in which parents allege that their children are "[beyond parental control] often reflect unreasonable rules and demands made by parents who themselves need counseling more than the youngsters...[and] [e]ven more reflect inadequate skills in parenting."[29] Indeed, studies indicate that youth who are engaged in risky behaviors such as skipping school, substance abuse, or other acting-out behaviors often have parents who lack nurturance, attention, supervision, understanding and caring.[30]

IN ONE CASE, a young girl who is the subject of an ARY petition returned to her mother's home one year ago after spending most of her life in foster care. This child's mother is a recovering alcoholic who abused and neglected the child for most of her life. The child suffers from the effects of fetal alcohol syndrome as a result of her mother's drinking. The mother continues to abuse the child by calling her names, hitting her and kicking her. The child now is faced with incarceration for running away from home. The problems of parental abuse and inadequate parenting also affect truant children in some instances. Additionally, many of these children do not attend school because school is not meeting their needs. "Few youths are habitually truant just for the fun of it...[t]hey are truant because they can no longer endure the frustration, the criticism, the humiliation of sitting day after day in classes where they can't possibly succeed, can't understand what is being discussed and probably can't even read the assignment."[31]

Incarceration Increases Children's Problems

THE PROBLEMS OF ARY, CHINS and truant children are often exacerbated by incarceration. "The child who repeatedly runs away from an unhappy home situation, though having committed no offense, is all too easily sent to jail by a frustrated judge who has no other resources at hand...the very policies meant for the protection of these children sometimes hurt these children."[32]

First, ARY, CHINS and truant children are jailed alongside children who have committed offenses (the equivalent of crimes in the adult world) or who are awaiting trial for alleged offenses. Most runaways and truant children do not commit crimes.[33] While some parents and school officials think that the experience of jailing their children with criminal children will "scare them straight," incarceration often exacerbates the problems children face rather than alleviates them.[34] ARY, CHINS and truant children who are incarcerated form relationships with offender youth and sometimes learn patterns of criminal behavior while in jail.[35] For example, one 13-year-old girl who was jailed for running away from home met her boyfriend in detention, a 16-year-old boy who was awaiting trial for a felony charge.[36]

Second, while incarcerated, ARY, CHINS and truant children may not have access to education. When ARY, CHINS and truant children in King County are jailed, they first go into an intake unit and are not sent to classes. Children frequently miss one or two days of school when they

are incarcerated. Even if these children eventually leave the intake unit and receive access to education during their incarceration, their special-education needs are usually not met. Generally, a child's special-education records are not received by detention staff before they are released.

Third, incarceration is often stigmatizing and negatively affects a child's view of him- or herself. "[B]eing treated like a prisoner reinforces a child's negative self-image. Even after release, a juvenile may be labeled as a criminal in his [or her] community as a result of his [or her] jailing, a stigma which can continue for a long period."[37] For a child who has already suffered from abuse, this stigmatization can be especially debilitating.

Solutions

THE "BECCA BILL" has not accomplished the goals that it set out to achieve. In our experience, giving parents the ability to jail their children sometimes increases family disharmony and problems for children. As a result, our community should develop workable solutions to meet the needs of these children and their families.

First, children and families should be entitled to receive services to address the problems that the family faces. If families cannot afford these services, the state should provide these services without financial barriers. When a good, safe home is not available, children should be provided with a long-term placement that meets their needs. The Hope Act, currently in the state legislature, would provide children with many of these needed services. Jim Theofelis, an advocate for homeless youth who helped draft the bill, says the Hope Act could be the "service provision to the Becca Bill."[38] It would help prevent children from going to the streets by providing them with the services they need to stay at home, such as social workers to intervene early once children run away. If children do not have a safe home, however, the Act helps children plan for their future by creating long-term housing. To stay in the housing, teens must work with a counselor to develop life skills such as money management, employment and health care.[39] According to Theofelis, "The Hope Act strives to tell each of these young people... that no matter how angry, scared and isolated they may feel, there is an opportunity for health, healing and self-responsibility."[40]

When a good, safe home is not available, children should be provided with a long-term placement that meets their needs. The Hope Act, currently in the state legislature, would provide children with many of these needed services.

Second, the incarceration of ARY, CHINS and truant children for contempt should be ended.[41] Jail should not be used as a form of behavior modification. Instead, services which address the cause of a child's behavior should be provided to

children and families. If courts continue to jail ARY, CHINS and truant children, these children should never be jailed with offender youth. Instead, these children should have access to safe, supportive environments, such as independent living programs, where they can receive the help they need.

Finally, the focus should be on early prevention of abuse and neglect. Early violence prevention programs, prenatal care and health care are necessary to create healthy, well-adjusted teenagers. The more than 16 million dollars used to subject children to the court system would be better spent on preventative programs which protect children from abuse and provide parents with skills to raise healthy children.[42]

Catherine Chaney, J.D., George Washington University, National Law Center, 1991, is in private practice in Seattle. She was employed at the Seattle–King County Public Defender Association in Seattle almost seven years, during which she represented children in ARY, CHINS and truancy matters for nine months. Anne Kysar, J.D., New York University School of Law, 1997, is a Soros Justice Fellow at the Public Defender Association. As part of Ms. Kysar's fellowship, she represents children in ARY, CHINS and truancy matters. The views expressed in this article do not necessarily represent the views of the Seattle-King County Public Defender Office.

NOTES

1 *See* Dateline: Profile: Born to Run; Parents in Washington Seek Law to Keep Children From Running Away (NBC television broadcast, June 23, 1995).

2 *See* Ivey, Alison G. *Washington's Becca Bill: The Costs of Empowering Children*, 20 Seattle U.L. Rev. 125, 127 (1996).

3 *See* Family Reconciliation Act, RCW 13.32A (1998).

4 *See* RCW 13.32A.010 (1998) ("The legislature intends to provide appropriate residential services, including secure facilities, to protect, stabilize, and treat children with serious problems. The legislature further intends to empower parents by providing them with the assistance they require to raise their children").

5 *See* RCW 13.32A.250 (1998) ("the court may impose a fine of up to one hundred dollars and confinement for up to seven days, or both for contempt under this section"). *See also* 1998 amendments to the "Becca Bill," Section 35 ("The legislature finds that an essential component of the child in need of services, dependency, and truancy laws is the use of juvenile detention").

6 RCW 13.32A.194(1).

7 RCW 13.32A.030(2) ("At-Risk youth means a juvenile: (a) Who is absent from home for at least seventy-two consecutive hours without consent of his or her parent; (b) Who is beyond the control of his or her parent such that the child's behavior endangers the health, safety, or welfare of the child or any other person; or (c) Who has a substance abuse problem for which there are not pending criminal charges related to the substance abuse").

8 RCW 13.32A.191(d).

9 RCW 13.32A.030(4) "'Child in need of services' means a juvenile: (a) Who is beyond the control of his or her parents such that the child's behavior endangers the health, safety, or welfare of the child or other person; (b) Who has been reported to law enforcement as absent without consent for at least twenty-four consecutive hours from the parent's home, a crisis residential center, an out-of-home placement, or a court-ordered placement on two or more separate occasions; and (i) Has exhibited a serious substance abuse problem; or (ii) Has exhibited behaviors that create a serious risk of harm to the health, safety, or welfare of the child or any other person; or (c)(i) Who is in need of necessary services, including food, shelter, health care, clothing, educational, or services designed to maintain or reunite the family; (ii) Who lacks access, or has declined, to utilize these services; and (iii) Whose parents have evidenced continuing but unsuccessful efforts to maintain the family structure or are unable or unwilling to continue efforts to maintain the family structure").

10 RCW 13.32A.179(3).

11 RCW 28A.225.035 (1).

12 RCW 13.32A.196.

13 Ivey at 145.

14 RCW 13.32A.196 (4).

15 RCW 13.32A.196(4) ("The parent shall be financially responsible for costs related to the court-ordered plan; however, this requirement shall not affect the eligibility of the parent or child for public assistance or

other benefits to which the parent or child may otherwise be entitled").
16 RCW 28A.225.090.
17 RCW 28A.225.090(2).
18 RCW 28A.225.090(1).
19 RCW 13.32A.300.
20 RCW 28A.225.090 ("if the child fails to comply with the court order, the court may order the child to be punished by detention or may impose alternatives to detention such as community service); RCW 28A.225.090(2); RCW 13.32A.250 ("failure by a party to comply with an order entered under this chapter is a civil contempt of court as provided in RCW 7.21.030 (2) (e), subject to the limitations of subsection (3) of this section [seven day limitation]"). *But see Welfare of K.L.*, 87 Wn. App. 574, 942 P.2d 1052 (1997); Interest of A.D.F., 88 Wn. App. 21, 25, 943 P.2d 689 (1997).
21 RCW 13.32A.250(5).
22 RCW 13.32A.250(1).
23 *Seattle Post-Intelligencer*, Sept. 3, 1998, A1 ("Last year, judges sent as many as 2000 runaways and truants to juvenile detention centers compared with just a handful before the Becca laws were approved.")
24 RCW 13.32A.250 (1) ("except as otherwise provided in this section, the court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section").
25 In rare cases, a child's mental illness which may be organic is the cause of the child's acting-out behavior.
26 Joy G. Dryfoos, *Safe Passage: Making It Through Adolescence in a Risky Society* 37 (Oxford University Press 1998).
27 Eggers, Tiffany Zwicker, *The "Becca Bill" would not have Saved Becca: Washington State's Treatment of Young Female Offenders*, 16 Law & Ineq. 219 (1998).
28 Weekday on KUOW, Radio Show, Winter 1998 (on file with Anne Kysar at the Public Defender Association).
29 Baker, Falcon, "Punishing the Victim: Status Offenders in the Juvenile Court," in Saving Our Kids from Delinquency, Drugs, and Despair, 81, 85 (Harper Collins Publishers 1991).
30 Dryfoos, 37.
31 Baker, 81, 85.
32 Keve, Paul W., *Crime Control & Justice in America*, 120 (American Library Association 1995).
33 Study by Korbin and Klein, published by Coalition for Kids and Families (now Youth Care) (1994). (Less than a fourth of status offenders [runaways] committed a delinquent act within a year after they ran away.)
34 Indeed, there is much evidence to suggest that shock programs aimed at "scaring kids straight" are a "media-generated phenomenon" that "may exacerbate the problem." Gary F. Jensen & Dean G. Rojek, Delinquency and Youth Crime, 473-475 (Waveland Press 1992).
35 Keeping these children in isolation is not an appropriate alternative. "Sometimes, in an attempt to protect a child, local officials will isolate the child from contact with others. Because juveniles are highly vulnerable to emotional pressure, isolation...can have a long-term negative impact on the individual child's mental health. Schwartz, Ira M., *(In)Justice for Juveniles*, 66 (Lexington Books 1989).
36 Because the statutory scheme for offender children takes into account the seriousness of the child's alleged offense as well as the number of prior offenses, many offender children who find themselves in detention have been accused of or are awaiting disposition for serious felony offenses.
37 Schwartz, Ira M., *(In)Justice For Juveniles*, 66 (Lexington Books 1989) (quoting Charles B. Renfrew, the former deputy attorney general of the United States).
38 Telephone interview with Jim Theofelis, February 9, 1999.
39 *Id.*
40 *Seattle Post-Intelligencer*, Wednesday, February 10, 1999, at B1 and B3.
41 Our court system is overburdened by criminal cases. We are building new jails and prisons, but still do not have sufficient space to hold all of the inmates. The Becca Bill is contributing to these problems by encouraging parents and schools to have "problem" children jailed. The law gives parents and schools the illusion that jail is a place to put children for a "timeout." Parents and school personnel see the children brought to the courtroom with shackles around their ankles and wearing jumpsuits; they do not see the windowless concrete cells with metal slabs in the place of beds. They do not see the lockups behind court which often smell of urine and display graffiti on the concrete walls where children often wait for hours before and after a court hearing.
42 See "'Becca Law Mandates are Fully Funded," *Seattle Times*, December 1, 1998 (editorial by Mike Carrell and Tom Huff stating that "From July 1, 1995, through July 1, 1999, covering two budget cycles since Becca went into effect, the Legislature, as required by law, appropriated $16.319 million to state and local governments to cover the costs of these changes in policy ... Counties are slated to receive an additional $12 million in the year 2000, more than $14 million in 2001, and those allotments are expected to increase 5-6 percent a year").

A Client's Perspective on *"Legal Divorce"*

by JOSEPH SHAUB

"EVERY PERSON I KNOW who has been through a divorce hates lawyers." It was an offhand comment by a therapist friend of mine, but I couldn't get it out of my head — because it reflects a deep, and broadly held, frustration with the management of legal divorce and its practitioners among the legal lay public. This wasn't the first time I had heard these sentiments expressed.

For the past few years, I have given a talk entitled "Family Law for the Mental Health Professional." Its purpose is to educate therapists about law and demystify the process and its practitioners. In their feedback, these counselors have registered common criticisms of the legal profession. Often, they reflect a failure to understand our training, goals and ethical constraints. Yet, more frequently, they reveal the consequences of an "over-focus" by lawyers on a limited set of concerns, leaving other vital interests ignored or even damaged in the process.

Once we "zoom out" and gain a broader view of divorce, it becomes easier for us to understand that lawyers are only one part of a wildly complex set of interactions, concerns and decisions. Even the most experienced among us tend to lose this perspective. The comments I hear from therapists and their clients regarding attorneys can be distilled down to the following observations, which may serve to widen our perspective in assisting those we serve.

A Limited Part of a Larger Process

FAMILY LAW ATTORNEYS see divorce as a problem which they are uniquely qualified to solve, tending to treat it as an isolated event. While that may be true for the attorney who obtains the decree and supporting orders, and then moves on to the next case, for each divorcing individual, it is *a process.*

Divorce is a long climb back from despair and personal chaos. A study many years ago attempted to quantify the severity of various psychosocial stressors people experience in their lives, from devastating illness to speeding tickets. The researchers found that the greatest stressor was the death of a spouse or child. The second greatest was divorce. The remaining life events fell away sharply in their intensity.

In divorce, regardless of whether you leave or you are the one who is left — and most studies conclude that scarcely any divorce is a truly mutual decision — each person has a unique and difficult struggle.

Divorce involves myriad deep psychological anchors which are violently dragged up from their mooring. Is there a person who did not embrace some image or ideal of how they wanted their future partnership to look? The *depth* with which we touch each other in our intimate lives is a product of these very early dreams and the *legal* aspects of the dissolution (the *dissolving*) of these visions are but a blip on the screen (a most expensive blip to be sure, but a blip nonetheless).

Paul Bohannon identified "Six Stations of Divorce" — the emotional, legal, economic, coparental, community and psychic divorces (loosely arriving in that order).[1] When the lawyers have achieved their final judgments and move on to the next case, the divorcing parties are locked together for years afterward. They still will be talking to their families and friends about their "ex"; they still will be able to push one another's buttons; they will struggle with self-doubt (usually unexpressed), often descending into alcohol, work, sex, rage or other addictions; they will wonder if they are attractive, sexual or self-sufficient.

In divorce, regardless of whether you leave or you are the one who is left — and most studies conclude that scarcely any divorce is a truly mutual decision — each person has a unique and difficult struggle. One person usually gives up on the marriage before the other. Bruce Fisher, in his exceptional guide to post-divorce recovery entitled *Rebuilding*, calls the two roles the "Dumper" and the "Dumpee." The Dumpee, of course, is left to bear the greater brunt of the emotional trauma brought on by the divorce. There is great, often tragic, pain. There is deep, often volcanic, rage. Observers of the process counsel that many years may pass before the Dumpee can move on (experience "divorce recovery"). The person who decides to leave is saddled with enormous, often debilitating, guilt. "I'm a terrible person." "I have destroyed my family." Of course, to get the Dumpee to appreciate the pain of the Dumper is one mammoth (and often futile) task. People approach this crisis with varying degrees of integrity. Yet, to automatically brand one person as a victim and the other as a perpetrator is both misguided and destructive.

Whether one is the Dumper or Dumpee, it takes years to sort out a new life. If the partners never had kids and can just break off any future contact, they can go about their wound-licking and life reconstruction in isolation. But if they have children, they are locked together and each has an interest in the other's recovery. In a fundamental sense, they cannot be adversaries.

Abigail Trafford describes the six-month period after separation as a "savage emotional journey" and she terms it (and her book) *Crazy Time.*[2] Some observers have even opined that it may even take half the length of the marriage to reconstruct a new life. The most common estimate given, however, is two years.

Lawyers would be well served by embracing the knowledge that the interests, values and concerns which they represent

are only a very small part of the kaleidoscope of challenges which their clients face. They disregard these other elements — and the impact their work has upon them — at the peril of their clients' long-term best interests.

Lawyers are Trained to Make a Bad Situation Worse

WHEN I SHARE this one with therapists I usually get a big laugh — it lets them express their distrust for lawyers and their lack of understanding of what drives us.

The legal divorce is extremely complex and the time has long since passed when only the least qualified practitioners would become matrimonial attorneys, for want of another specialty that would have them. As a matter of purely legal analysis, the characterization and division of community estates which might consist of a successful start-up company, private disability insurance payments, stock options or intellectual property interests present the kinds of challenges that lawyers can sink their teeth into. The analysis, negotiation and litigation skills required for the effective practice of family law are considerable. Additionally, knowledge of running a successful business, taxation, real estate, property valuation and an array of other intellectually challenging areas is also required. Yet, while this necessitates a variety of knowledge and skills, there is an over-focus and serious limitation of perspective. This is exacerbated by the very foundation of our professional lives — our legal education and training.

We learn the law by studying the adversarial system through casebooks. The litigators among us are bred in a system in which winning is the highest value. You can settle, but it still had better be a "win." Yet litigating divorce is like pouring gasoline on a fire. The divorce litigator fans the embers of distrust white-hot by speaking in language of entitlement, locks their client into intransigence when they readily agree to castigate the other party and sows the seeds of prolonged bitterness by failing to inquire what the other side needs in order to accept the resolution and work with the former spouse in the coming years.

The lawyer is trained to look at the other person's position critically, in an effort to undercut the adversary's argument

We learn the law by studying the adversarial system through casebooks. The litigators among us are bred in a system in which winning is the highest value. You can settle, but it still had better be a "win."

— to *prevail.* The mistakes by the other party — their foolishness, vindictiveness, acting out through confusion or fear — bring on your judgment. He or she is a "jerk" or "crazy." You write incendiary letters to satisfy your angry client. You're tough, because, after all, you are a lawyer, not a therapist. Then, when the rawest of wounds are inflicted, you make sure your client *has a therapist* to handle the fallout and you move on to the next case.

UCLA law professor and legal ethicist Carrie Menkel-Meadow expressed a broadly-felt concern for this attitude when she wrote:

> *...I wish to confront — the way our legal system asks us to wage war, without seeing the person on the other side. For lawyer's work, like soldier's work, has been justified by its role morality. We permit these specific actors to engage in behaviors that we would ordinarily condemn because their roles, performed within a morally defensible situation, war or litigation, require it. We might examine how the imagery of war, scarcity, and zero-sum assumptions is also the imagery of our legal system.*
>
> *Beyond the complaints and debates about the treatment opposing lawyers afford each other and each others' clients is the deeper problem of trying to understand what the actors on the other side are trying to accomplish with their lawsuits or legal matter as an expression of their humanity...[I]n litigation, finding out what the other side really wants, as opposed to making general assumptions about the other side, could facilitate more effective dispute resolution, as well as transaction planning.*[3]

While the provision requiring "zealous representation" has been stricken from the Canons of Ethics, the attitude born of law school education and professional training cannot be so easily eliminated. No other professional trait, however, causes more damage to clients or greater alienation from those in the attorney's personal orbit.

Judges Do Not Dispense Justice

THERAPISTS GET a big kick out of this one, too. But it's true — to the chagrin and disappointment of the judges themselves. The so-called "litigation explosion" which has reached down into every trial court in the country was described this way by Chicago Law School Professor Mary Ann Glendon in her recent book, *A Nation Under Lawyers*:

> *"While ambitious judicial review was enjoying an Indian Summer in the nation's high courts, the daily work of every federal and state judge in the land was being transformed by a changing and rapidly expanding caseload. By the 1980s, the situation had reached crisis proportions. Some court systems were in gridlock. The causes included the increasing resort to litigation by previously court-shy businesses; the war on drugs; the green light the courts had given to rights-based claims; a host of other new judge-made and statutory causes of action; the creation of new crimes; and mass tort actions such as the asbestos and Dalkon shield litigation.... Today's judges are so busy that, as one federal district judge has remarked, even Learned Hand could no longer be Learned Hand."*[4]

Against this backdrop, we are faced with clients who want "justice." They want their story heard. They want vindication.

In perhaps the best available discussion of the practice of family law, Austin Sarat and William Felstiner's *Divorce Lawyers and Their Clients — Power & Meaning in the Legal Process* — the authors observe that, "Even in the era of no-fault, divorcing parties come to lawyers with a story to tell, a story of who did what to whom, a story of right and wrong, a story of guilt and innocence."[5]

The truth, of course, is that virtually no client will achieve this judicial *imprimatur.* They want to tell their story, but they will probably never be sworn as a

witness (unless it is at their deposition — certainly *not* a forum for them to tell their story in its most favorable light). They want the judge to see that they are right — but seldom will the court make a decision based upon only one party's view of the marriage and its end.

Stephen Adams is the foremost family law educator in California (and, perhaps, the country). He lectured a hall full of divorce lawyers one day years ago about the practicalities of running a matrimonial practice. He told how he instructed his clients to go down to court a week before their hearing was scheduled to "get comfortable with the courtroom." What he intended was that each person, their sense of righteousness and hunger for vindication gripped tightly as they entered the courthouse, would watch the judge "slash, burn and plunder" the litigants' positions, deny them any opportunity to speak, and make unfathomable decisions. This is how "justice" is experienced by today's family law litigant — particularly in this age of no-fault. They will not get their "day in court" and they often will not believe justice has been done.

As Sarat and Felstiner also observed, lawyers often describe the legal process as plagued by the very absence of order and fairness that clients thought they would get from a judge. As they note:

> *Lawyers attempt to draw rigid boundaries demarcating the legal as the domain of reason and instrumental logic and the social as the domain of emotion and intuition. Attempting to distinguish the legal from the social excludes much that is of concern to clients...As lawyers describe the legal process itself, a process in which personal idiosyncrasy is as important as rules and reason, in which confusion and disorder are as prevalent as clarity and order, in which the search for advantage overcomes the impulse toward fairness, the factors claimed by the ideology of separate spheres to be outside the law seem quite vividly alive on the inside...For clients, this is a difficult and disappointing message. They come to the divorce lawyer's office believing in the efficacy of rights in the legal system only to encounter a process that not only is "inconsistent," but cannot be counted on to protect fundamental rights or deal in a principled way with the important matters that come before it.*[6]

Thus, while the reality may be debatable, judges are certainly not perceived by the parties to a divorce as dispensing reasoned justice, crushing their most fondly held expectations.

Anxiety and Projection

A FUNDAMENTAL psychological defense when we are under a great deal of stress is projection. Philip Guerin, Jr. and his associates in their excellent work, *The Evaluation and Treatment of Marital Conflict*, describe projection in this way,

> *In reaction to emotional pain or upset, we all have an automatic emotional reflex that places the cause of that pain or upset outside ourselves. The more intense this projection becomes, the more it produces an experience of victimization and a tendency to hold others responsible for the way we feel and act. It demands that others change, instead of allowing us to take responsibility for our own behavior and emotional reactions. The opposite of*

projection is self-focus, the ability to see one's own part in an emotional process.[7]

It is here that the adversarial training and orientation of lawyers is most apt to cause trouble. It is axiomatic that the greater an individual's level of anxiety, the more intense will be their defensive responses. A characteristically distrustful person will bloom full-on paranoid under intense stress. A dependent personality will dissolve into nonfunctionality as the legal divorce gears up. The natural tendency to project when angry will explode during divorce. Speaking with lawyers; paying lawyers; negotiating the loss of possessions; being deposed; going to court — all of which comprise the daily tasks of lawyers — spike a litigant's anxiety. If the attorney joins with his/her client in round condemnation of the other party, then they have permitted themselves to be exploited as an instrument of the client's projection.

Yet, woe to the lawyer who dares to suggest that the opposing party feels he or she got a bad deal, or feels "screwed" by the process. Thus, the very information which must be imparted to a divorce litigant, in order to normalize their experience and get them to move on, is withheld by the attorneys, fearing a massive crisis in confidence by their client.

Client Maintenance and Control Are Competing Goals

DIVORCE LITIGANTS often get decidedly mixed messages from their attorneys. It is no wonder that many come away from the process feeling used. In its simplest terms, the lawyer tells the client how good their case is in order to cement the relationship, and then tells them what's wrong with the case in order to move the client toward settlement. In reality, this practice can be quite subtle, and this subtlety leads to the justification or denial of the practice itself.

This tension was described by Craig McEwen and colleagues in a 1994 article in *Law and Society Review* entitled "Lawyers, Mediation and the Management of Divorce Practice":

> *[A]ttorneys must constantly demonstrate their identification with a client's interests and needs. Lawyers thus may build client trust by accepting and supporting a client's world-view. At the same time, however, lawyers must try to act as objective and skeptical advisors. The skeptic's role often means telling clients things they do not want to hear and urging compromise, thus placing in jeopardy the clients' trust in them as vigorous allies.*[8]

The language which prevails at the outset of a case is replete with references to entitlement. Knowing that there are many practitioners who would gladly offer their services in the community, a lawyer does not want to dishearten the potential client by highlighting the weaknesses of the case.

Sarat and Felstiner made the following observation:

> *Throughout their meetings with their lawyers, clients keep the question of marriage failure very much alive in their minds. They talk about the marriage in terms of guilt (their spouse's) and innocence (their own)...Even though law reform makes such questions legally irrelevant and gives lawyers an excuse to ignore or evade client characterizations, clients continue to think in fault terms and to attribute blame to their spouse...They contest the boundaries of law and seek to open it up to a broader range of concerns...Lawyers resist by avoiding discussion of who did what to whom during the marriage...(They) join with, and validate, the clients' vocabulary of blame only when necessary to reassure wavering clients of the correctness of their decision to secure a divorce.*[9]

Then, as the case progresses (and the fees are billed) the weaknesses of the client's position presses more and more to the forefront. Their enthusiasm is confronted by the attorney's advice to wane and, as Sarat and Felstiner note:

> *[a] costly, slow, and painful process might be justifiable if it were fair, reliably protected important individual rights, or responded to important human concerns. Law talk is, however, full of doubts about whether the legal process even aims at meeting those goals.*[10]

Small wonder that the client emerges from the process feeling emotionally shredded.

Conclusion

"ZEALOUS ADVOCACY" has been stripped from our canons of ethics. The alternative dispute resolution movement is gaining more adherents. Advocates of "unbundling" of legal services are currying greater interest among us. There is a dawning understanding that the injuries inflicted by the litigation process, and the vaunted "adversarial system of justice," outweigh their benefits — *especially* in the eyes of the lay public, whom we serve. While these limitations are most painfully experienced by our divorcing clients, they are felt in virtually every area of legal practice. It's time we responded and fundamentally reconsidered our role in helping our clients resolve the often painful conflicts of divorce.

Joseph Shaub is a family law attorney and mediator, as well as a certified marriage and family therapist. He is an instructor at the University of Washington Law School in Interviewing and Counseling for Lawyers and at Antioch University/Seattle in Family Systems Theory, Ethics and Mediation. He can be reached by e-mail at jshaub@juno.com.

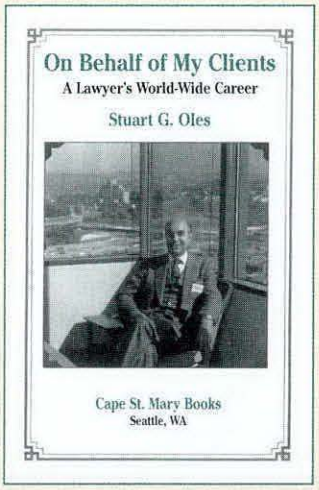
NOTES

1 Kaslow, F., "The Psychological Dimension of Divorce Mediation," in *Divorce Mediation, Theory and Practice* (Folberg, J. and Milne, Ann, eds.), 1988, Guilford Press.
2 Trafford, A., *Crazy Time*, Harper Perennial, 1992.
3 *Is Altruism Possible in Lawyering?* 8 Ga.St.U. Law Review, 385 (1992)
4 Glendon, M.A., *A Nation Under Lawyers — How the Crisis in the Legal Profession is Transforming American Society*, Harvard U. Press, 1994, p. 143.
5 Sarat, A. and Felstiner, W., *Divorce Lawyers and Their Clients — Power & Meaning in the Legal Process*, Oxford U. Press, 1995, p. 27.
6 Sarat and Felstiner, *id.*, p. 93.
7 Guerin, P, Fay, L., Burden, S. and Kautto, J.G., *The Evaluation and Treatment of Marital Conflict — A Four Stage Approach*, Basic Books, 1987, p. 129.
8 McEwen, C, Maiman, R. and Mather, L., *Lawyers, Mediation, and the Management of Divorce Practice*, 28 Law & Society Rev., 149.
9 Sarat and Felstiner, *supra, note* 5, p. 137.
10 Sarat and Felstiner, *id.*, p. 105.

The Memoirs of Stu Oles:
a Review of On Behalf of My Clients

by James F. Nagle

On Behalf of My Clients:
A Lawyer's World-Wide Career
by Stuart G. Oles
Cape St. Mary Books, 1998
250 pages
Paperback, $14.95



Let me announce my conflicts of interest right away. I like and respect Stu Oles. Not only that, but I am a partner in the law firm of which he is a retired senior (and named) partner, although he and I never really practiced law together. I joined the firm in September 1990, and he retired from the firm and the practice of law a few months later. (I like to think there was no connection, but who knows?)

The book is Stuart's memoirs of his personal and professional life spanning the 40+ years from the end of World War II to 1990.

Memoirs can be an awful lot like a multi-page Christmas letter, filled with bragging about yourself, your kids, etc. All memoirs are like that, but three things save this book from being tedious. First, as many who know Oles will attest, he is a natural raconteur. His eye for detail makes a good story worth telling, in either oral or written form. I received my copy of the book on a Friday afternoon. It's a 250-page paperback, so I planned on reading it on airplane flights. But I made the mistake of reading the preface and introduction on the ferry ride home that night and I was hooked. I finished it that weekend.

The second reason the book is eminently readable is that Oles is so succinct in his storytelling. He does not dwell on each and every case, going for pages and pages of "and then I asked this question." He hits what he believes are the highlights and moves on. For example, he discusses one case in 3-1/2 pages. In fact, one of my criticisms of the book is that for some of the cases, I would have preferred a lengthier discussion.

Third, Stu Oles has led an interesting life. These memoirs trace the growth of the legal business, not only in Seattle and Washington State, but also in Alaska as it made the transition from a territorial frontier to our 49th state. The book is sprinkled with the names of people, projects and events which have made the Northwest colorful. His portrayals of the characters (in every sense of the word) dotting the Alaskan system of justice are especially good.

Oles' legal career was interesting because it was so varied, not only in subject matter, but also in location, ranging from the Northwest to Puerto Rico, Europe and Manila. He is best known as a construction lawyer, and indeed is a legend in that field. I can't go to a national conference without someone asking me to give regards to Stu. The cases he handled involved some of the largest projects in the Northwest: the Kingdome, the Floating Bridge disasters, Gorge High Dam and many others. But he handled far more than just construction matters. He was heavily involved in Teamster cases in the 1950s, when suing the Teamsters could be both professionally and personally life-threatening. He also recalls his days as Chief Civil Deputy Prosecutor of King County, including the memorable time that, gun in hand, he raided a slot machine establishment only to find that the only patron was a superior court judge.

I emphasize that these are memoirs. Anyone reading a biography or history of a certain period would expect it to be balanced, objective and comprehensive. Memoirs are not. They are, virtually by definition, personal, subjective and selective. I am sure not all will agree with his portrayal of individuals and events, especially trials. Oles was an extremely zealous advocate. (He acknowledges that one large client, a California corporation, asked him to handle a matter in Arizona when the corporation's personnel heard the government's officials refer to Oles as the "biggest SOB" they had had to deal with in years.) That zealous, hard-nosed advocacy carries over in the book. While Oles does discuss some of his losses, almost invariably the losses are attributed to the stupidity of the trial judge or being "hometowned" in that particular jurisdiction. But even with that subjectivity, the book is well worth reading.

This is not a history book, but Oles' recitations of his career, starting from his days as a King County Prosecutor through his involvement in some of the Northwest's major trials, including the Grant County grand jury escapade, provide the reader with many insights into Northwest history.

This is also not a law book. As I

recall, only one is case cited in the book. (I wish there were more; Oles was involved in many of the landmark cases in construction law, and I would have loved to read some more details.) But there are plenty of pithy observations that involve trial practice or the practice of law in general that simply are not taught in law school. Oles portrays a practice of law that is slowly dying, where an individual could truly be a big-name trial lawyer and also a general practitioner who would serve as guardian or trustee for elderly clients and their children.

The book also illustrates some of the unfortunate aspects of the practice of law. In one incident, Oles reports how he had to pay a $5,000 consulting fee to one Seattle lawyer in order to get a meeting with the state's governor. Another incident involving the governor of another state should disabuse anyone of the notion that governors don't have the ability to affect the decision of an appellate court.

Oles does sprinkle a lot of names throughout the book: Governors Dan Evans and Al Rosellini, Senators Robert Taft and Barry Goldwater, John Ehrlichman, Richard Nixon. Lest you think this is just a book of name-dropping, let me balance that perception by also noting that Oles devotes more pages to Rusty, the truck driver from Arizona, than all of the aforementioned big names combined.

The most enjoyable aspects of the book are Oles' descriptions of his ability to juggle an extensive and literally worldwide law practice with what seems to be an almost full-time involvement in civic affairs and a host of other endeavors, especially church activities. (Indeed, his other book is the collection of sermons he has given over the years.) His law practice propelled him to be active for many years in State GOP politics, often chairing the State GOP convention and even being touted as a candidate for governor. He did all this while raising a family.

Most memorable is not his discussion of legal arguments, his argument before the United States Supreme Court, or his confrontations with Bobby Kennedy and Pierre Salinger regarding the Teamster fights in the 1950s. It is that as a young partner on vacation with his family, the firm's senior partner, a legendary autocrat, called him and wanted him to return for some matter. Oles refused, believing that the time spent with his family was not only important for his family, but also for his own mental health.

At numerous Bar Association meetings we have had discussions dealing with the quality of life for lawyers today. Our focus normally turns to three different scenarios (and often one individual can have two or three). First is the individual who is burning out and wants to leave the legal profession and go into something (anything!) other than the law. Second is the individual who focuses all of his or her energy on the law to the detriment of family — often going through two or three marriages. Third is the individual who so loves the law or so needs it that he or she simply has no other outside interests and is unable or unwilling to retire.

Oles clearly does not fit into any one of those molds, and as a result should be a model, not only for lawyers but all professionals. He has been married to the same woman for almost 50 years and has raised three sons, all of whom are well established and have good relationships with their father. Oles is now enjoying his retirement — reading, playing tennis, and raising cattle — at his homes on Lopez Island, in Hawaii and in Seattle.

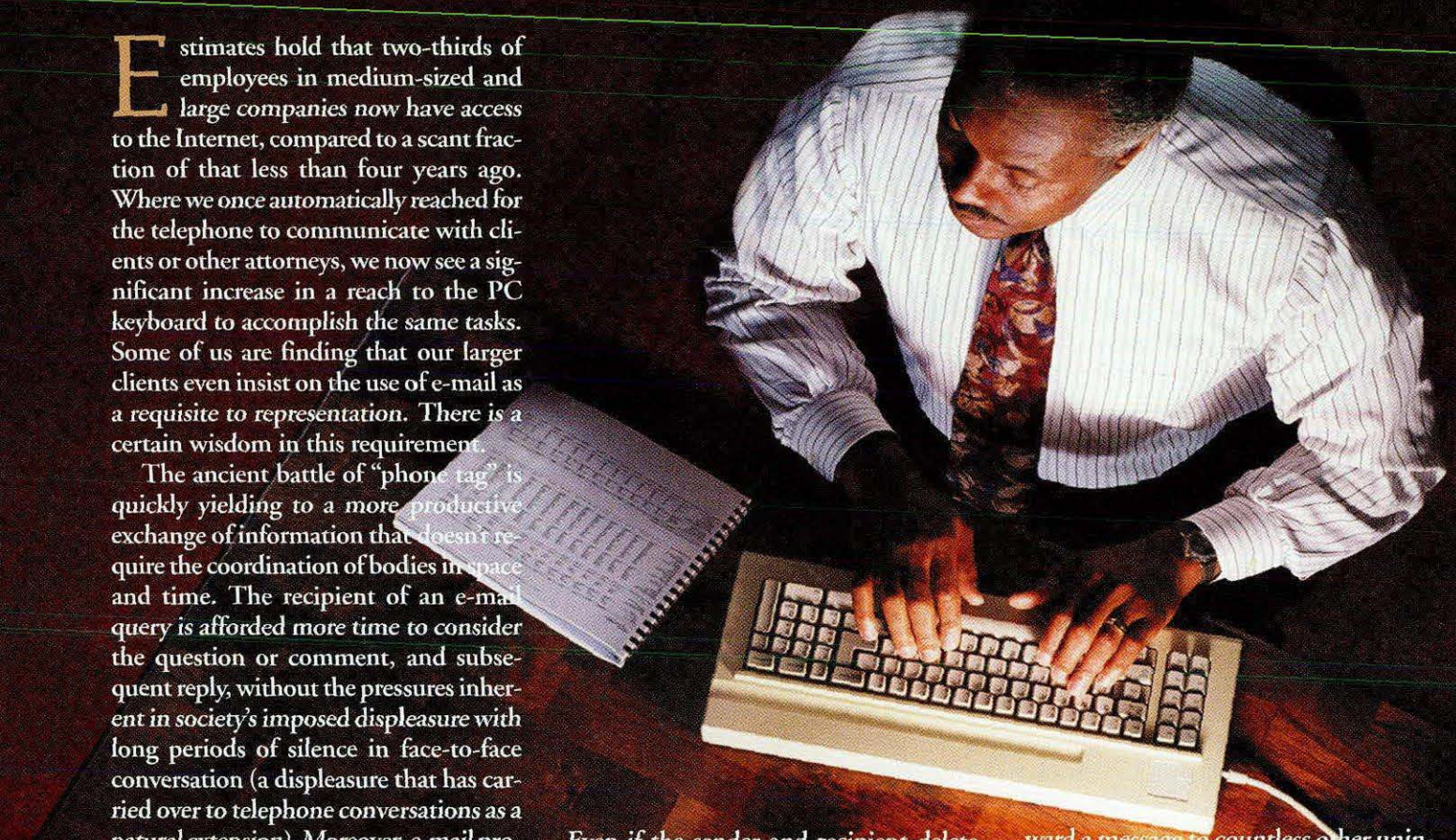
Whether you like Stu Oles or not, whether you like his politics or not (he is a conservative Republican), whether you agree with his recollections of cases and other events, you have to admit he had his priorities straight. The book attests to that, and for that reason alone is well worth reading.

PART 1 of 2

by Rob Apgood
roba@sidlon.com

E-MAIL: Privacy in the Workplace

(and Other Fictions)



Estimates hold that two-thirds of employees in medium-sized and large companies now have access to the Internet, compared to a scant fraction of that less than four years ago. Where we once automatically reached for the telephone to communicate with clients or other attorneys, we now see a significant increase in a reach to the PC keyboard to accomplish the same tasks. Some of us are finding that our larger clients even insist on the use of e-mail as a requisite to representation. There is a certain wisdom in this requirement.

The ancient battle of "phone tag" is quickly yielding to a more productive exchange of information that doesn't require the coordination of bodies in space and time. The recipient of an e-mail query is afforded more time to consider the question or comment, and subsequent reply, without the pressures inherent in society's imposed displeasure with long periods of silence in face-to-face conversation (a displeasure that has carried over to telephone conversations as a natural extension). Moreover, e-mail provides us with the capability to have discussions with multiple participants, all receiving identical comments and responses, on a spontaneous basis and absent the frustrations of coordinating a "meeting." All these benefits, however, carry inherent liabilities. When we hang up the phone, or walk away from a meeting, unless the conversation has been otherwise recorded, or notes taken, specifics of the exchange are available only as subjective recollections of the individuals involved. E-mail, as many litigation defendants have so ruefully discovered, is typically saved and subsequently accessible by those not a party to the "conversation" (frequently, much to the chagrin of the sender and recipient). Even if the sender and recipient delete the messages, some are discovering that their employers are following the increasing trend of copying all e-mail to and from their companies while it is "in transit" through the companies' e-mail servers. The problems arising from e-mail use are abundant. The medium tends to be so informal that users are inclined to write messages without the careful thought and wording that typically goes into a more formal letter. Often, people are more apt to say things they didn't really mean to say, or at least in the manner in which they said it. In litigation, as we have so recently seen, it is the content of e-mail messages that tend to provide the most incriminating admissions. In addition, the recipient can easily forward a message to countless other unintended recipients, or to a more public forum, not uncommonly by mistake. A good rule of thumb is that e-mail has a long life.

In addition to using the Internet and the World Wide Web for work-related purposes, employees are naturally taking advantage of these services for personal uses such as playing games, accessing popular websites for sports scores, ordering goods online, and sending and receiving personal e-mail messages. Not surprisingly, many issues have arisen involving this personal use. Employers are now struggling with how much, if any, personal use of the Internet and e-mail to allow in the workplace. Some have clearly defined policies that strictly for-

bid it, while others allow such use "after hours" or on the employees' own time, such as breaks and meal periods. Some block access to certain web sites (e.g., pornography and gambling sites), while others do not. While few legal issues have been raised about *what* is accessible by employees, issues are arising about *how* employers monitor access and use by employees, if and when they do. These dilemmas get particularly thorny with telecommuting employees who save the company the costs associated with maintaining offices, but use company-provided computers in their homes. As the use of the Internet and e-mail increases in the workplace, we are seeing related disputes regarding privacy and freedom of speech.

There has already been a notable quantity of litigation involving e-mail. Because of e-mail, employers have been sued by their employees for defamation, harassment, and invasion of privacy. Conversely, employers have sued employees for their posting of derogatory comments about the company on their personal websites, and to enjoin them from sending bulk e-mail to other company employees. The most often cited case to address directly the question of whether an employer's monitoring of employee's e-mail is a violation of that employee's right of privacy is *Smyth v. Pillsbury Co.*,[1] the first decision to hold that a private, at-will employee has no right of privacy as to the content of his or her e-mail when it is sent over the employer's e-mail system. While many argue that the *Smyth* decision is wrong,[2] *Smyth* has persisted in substance, if not in form.[3]

The proponents of e-mail privacy appear to be making gains in their position. Arguably, the Electronic Communications Privacy Act of 1986 (ECPA)[4] provides the primary legal basis for e-mail's status. ECPA makes it illegal to intercept, copy, alter or disseminate an electronic transmission, further providing that no otherwise privileged document will lose that privilege simply because it is transmitted in electronic form.[5] ECPA amended the Wiretap Act, which already had provisions criminalizing the interception and dissemination of telephone and aural communications. ECPA, the proponents argue, brings e-mail within the confidentiality rule and intercepting it is criminal. Such a dire consequence implies that such communications are to be viewed as, and remain, private. This argument is not without merit. Where employee e-mail is discoverable in criminal litigation, the "business records" provision of the Evidence Rules arguably excludes non-business communications (i.e., personal e-mail).

Nevertheless, estimates hold that 25-30% of all employers monitor and record employee e-mail. The ECPA notwithstanding, when the dust settles, the remaining rule will probably support their right to do so, similar to many employers' current practice of having their mailroom employees open all traditional mail received at the business offices. The ECPA does, however, undoubtedly regulate what the employer may *do* with employee mail once it has been opened and possibly reviewed. Publishing copies of an employee's personal communications to the other

Sites of Interest

- Privacy Rights Clearinghouse: http://www.privacyrights.org
- Law Library Resource Exchange: http://www.llrx.com
- Law Review Articles: http://www.findlaw.com/lawreviews
- Y2K Information and Suits: http://www.2000law.com
- Bad Judges and What to Do About Them: http://www.primenet.com/~nolawyer/index.html
- Legal & Litigation Support Service Provider Directory: http://www.litnet.com

employees of the company, or the public at large, will probably subject an employer to liability for invasion of privacy.

Although *Smyth* and similar cases define the scope of access to employee e-mail communications *by the employer*, what hasn't yet been squarely addressed are the rights of a *public* employee. The federal Freedom of Information Act, and Washington's own Public Disclosure Act,[6] provide vehicles for citizens to access the "business records" of their elected officials and their staffs, but clearly limit that access to writings containing information relating to the conduct of government, or the performance of any governmental or proprietary function.[7] Certainly, an *elected* official's business correspondence should be subject to scrutiny by his or her constituents. This is also the case for the business correspondence of the official's staff. But, where do we (or can we) draw the line? As a private individual, I cannot be compelled to produce any records, business or private, to another party without the legal force of a subpoena. When I am so compelled, in the case of particularly sensitive personal information, I can petition the court to order the information sealed or have it otherwise be subjected to a protective order to ensure that it doesn't become part of a pleading or (horrors!) get published in the local newspaper. Likewise, "public" employees should be entitled to rely on their similar right to privacy in the workplace. Existing law[8] clearly exempts from disclosure "personal information in files maintained for employees, appointees, or elected officials of any public agency to the extent that the disclosure would violate their right to privacy." Where this protection has traditionally been afforded to public officials when access has been requested to their personnel files,[9] it is a small and logically consistent step to provide that protection to *any* private communication to the public employee.[10]

While the courts struggle to catch up with the questions raised by new technology, their inherently slower pace is further hindered by the mystique that typically surrounds that technology. Sadly, the *Smyth* court and those of its ilk appear to be bedazzled by the technology at the expense of a clear view of the factual problems presented to them. Drop the "e-" from "e-mail" and a rich body of legal precedent from which to draw unveils itself. The "problems" really aren't *new*.

> *"For the Fourth Amendment protects people, not places. What a person knowingly exposes to the public, even in his own home or office, is not a subject of Fourth Amendment protection....But what he seeks to preserve as private, even in an area accessible to the public, may be constitutionally protected."*
>
> *Katz v. United States*, 389 U.S. 347 (1967).

My thanks to Mary Schultz at Mary E. Schultz & Associates, PS, Spokane, for her thoughts and contributions to this discussion.

Next month, I'll discuss attorney-attorney and attorney-client privacy and privilege concerns in the use of e-mail and the Internet.

NOTES

1 914 F.Supp. 97 (E.D. Pa. 1996). *See also Bohach v. City of Reno*, 932 F.Supp. 1232, 1234-35 (D. Nev. 1996) (no right of privacy in messages sent to police department's computerized paging system).

2 *Windows Nine-to-Five: Smyth v. Pillsbury and the Scope of an Employee's Right of Privacy in Employer Communications*, 2 Va. J.L. & Tech. 4 (Fall 1997), http://scs.student.virginia.edu/~vjolt/graphics/vol2/vol2_art4.html (the *Smyth* court erroneously focused on whether the employer's e-mail system could objectively be considered secure or private, and did not focus on whether the employee held a subject expectation of privacy in his communication).

3 *Flanagan v. Epson America, Inc.*, (Cal. Super. Ct. Jan. 4, 1991); *Shoars v. Epson America, Inc.* (Cal. Ct. App. April 14, 1994), http://www.law.seattleu.edu/chonm/Cases/shoars.html.

4 Pub. L. 99-508, 100 Stat. 1848 (codified as amended in various sections of 18 U.S.C.).

5 18 U.S.C. § 2517(4).

6 RCW 42.17.260(1).

7 RCW 42.17.020(36).

8 RCW 42.17.310(1)(b).

9 *See e.g., Dawson v. Daly*, 120 Wn.2d 782, 845 P.2d 995 (1993).

10 A position arguably shared by the Washington State Supreme Court in *Hearst Corporation v. Hoppe*, 90 Wn.2d 123, 580 P.2d 246 (1978).

Beyond the Words:

Understanding What Your Client is Really Saying Makes for Successful Lawyering

by Steven Keeva

If lawyers were a species unto themselves — and many people are convinced they are — some of their skills would be studied as near-miracles of adaptation.

Think for a moment about a lawyer's ability to listen. Like a falcon that scours the ground from dizzying heights, spots something moving and instantly determines its mealworthiness, a lawyer scans the environment for information, captures it, analyzes it and uses it to build a case to solve the problem at hand.

Unfortunately, while this process is going on inside the lawyer's head, the client may be sitting across the desk feeling lost.

She doesn't know whether she's been seen. She isn't sure whether she has recounted everything relevant. And worse, she's wondering whether she and her lawyer are occupying the same psychic space. Or even the same planet.

Law practice is all about words, whether they are used to persuade or explain. For a variety of reasons — most unintentional — words often end up, instead, keeping lawyers and clients at a distance. When that happens, something essential is lost: the lawyer's opportunity to experience the satisfaction that comes from connecting with — and helping — another human being.

Lawyers who make it a point to really listen understand that too much talking and not enough listening throws things off balance. They realize that listening is how they bring a client's world into their own. When more of that world gets in, their chances of being successful counselors and advocates increase.

Listening this way also happens to be good business. In a profession in which most practitioners are pretty strong technically, being a good listener can be a way to distinguish yourself.

To put it into the law office context, if a client needs to be heard, merely listening to the words while tuning out the person behind the problem will rarely do the trick.

The Need to Be Heard

Intuition tells us that having the feeling of being heard is an important component of happiness. If you need proof, science can provide it.

In one of the better-known studies, James J. Lynch, author of *The Language of the Heart: The Body's Response to Human Dialogue*, found that when we listen to people, their blood pressure goes down. Lynch understood this when he noticed that crying babies' blood pressure continued to rise the longer they cried.

"I realized that's exactly what the adult patients [do], but their cries are inward," he says. "And I began to understand that listening to people lowers their blood pressure because we hear their cries."

The importance of listening to those cries is something James Nelson, a former chief judge of the Los Angeles Municipal Court, learned about his first day on the bench, in Small Claims Court.

"I had a case in which a lady had sued a dry cleaner for damaging her clothing," he recalls. "Well, when she got through presenting her case, I wasn't even clear about whether or not she was even suing the right dry cleaner. She just didn't seem to have a case.

"So as soon as she was done, I said the judgment was for the defendant. At that point, the dry cleaner almost attacked me. I thought he was going to jump over the bench and grab me, so I said, 'Sir, sir, I just ruled in your favor. The case is over.' But he was furious. He said, 'I wanted to tell you about what this woman did!' And at that moment I realized that most people would rather be heard than win. There is some kind of spiritual principle involved in hearing people."

Maybe the principle is that although adjudication may cure a legal problem, healing requires that the parties feel they have actually been heard. To put it into the law office context, if a client needs to be heard, merely listening to the words while tuning out the person behind the problem will rarely do the trick.

How Busy Lawyers Listen

If there were such a thing as a distraction index, it would probably be off the charts these days, reflecting overscheduled days and constant demands that have to be met this instant.

It happens to everyone, so it isn't fair to single out lawyers for failing to be good listeners. They are probably no worse at it than other professionals. After all, their work requires that they listen, and listen well — at least up to a point.

Merrilyn Astin Tarlton, a law-firm management consultant who also teaches at the University of Denver College of Law, says, "Lawyers constantly listen and analyze what they're hearing, but only until they get to the point where they think to themselves, 'Ah, I know the answer.' Then they don't hear what comes next."

Tarlton says certain unique factors in

lawyers' training and legal culture make it especially hard for them to listen beyond that moment. First, they are trained in law school and in practice that people come to them for one thing: to get answers. Given that, "It's easy to get into a pattern where you want to know the answer really fast," says Tarlton.

Add to that the fact that the Socratic method used in law schools conveys a simple message: He who knows the answer gets the prize — and, Tarlton says, it is no wonder that lawyers tend to listen with a narrow focus on getting the right answer. There appears to be little incentive to listen any deeper or longer than necessary to do that.

But is there? It depends on how you perceive your role as a lawyer. "I believe that when a client goes to see a lawyer, he or she wants more than just a legal fix," says David Hall, assistant provost of Boston's Northeastern University and former dean of the law school there.

"When I go to the store to buy a loaf of bread, I want to be treated a certain way by the cashier, and when he doesn't look me in the eye and say hello, or acknowledge my presence, I feel diminished by the experience. And I'm not coming to him in crisis, hurting over something that has gone wrong in my life, the way I would with a lawyer."

Surveys have repeatedly shown that clients look for more than technical proficiency from a lawyer. They want to know that the lawyer hears and cares about their problems. In fact, a great many lawyer disciplinary actions can be traced to a failure to listen. After all, when clients complain that their lawyers refuse to return phone calls, aren't they really saying that they don't feel heard?

What to Listen For

When it comes to working with clients, really listening means much more than accepting a list of facts at face value, finding a recognizable pattern, and plugging it into a standard solution. It also means:

- **Listening through role-playing.** Clients often behave according to some notion of how a client is supposed to behave. If you can detect this, and realize that such suppositions become filters — allowing only certain things to be expressed and others withheld — you have a chance to get at underlying facts and feelings that might bear on the case.
- **Listening for a better way to do things.** If you stop as soon as you've got the answer, you may be closing yourself off to better options. Perhaps the client has a way to resolve the problem that is outside your experience but may be effective. Don't ignore the client's wisdom in your rush to get the right answer.
- **Listening to your intuition.** The legal culture doesn't exactly embrace this source of knowledge, but that doesn't mean your hunches and inklings shouldn't be respected and explored. If your gut tells you something is wrong with the picture, listen and check it out.
- **Listening for clients' listening problems.** Clients who don't listen can be maddening. They fail to give useful feedback and they waste time. Being aware of this problem early in the relationship gives you the opportunity to deal with it — directly and with tact — before it leads to abject frustration.

In an interesting twist on this suggestion, Tarlton, the Denver consultant, describes an extremely bright client of hers, a managing partner she admires and with whom she often works.

"But sometimes he just stops listening. I can see him go away. So periodically I'll have to say, 'I know you're finished listening to me, but I have information I need to convey and I need you to listen.'" He does, and, says Tarlton, he loves it when she calls his attention to it. Keep in mind that encouraging clients to become better listeners can pay off. Their experience causes them to pick up on different nuances than you do, nuances you might miss that could prove decisive.

One rule to remember when your goal is to listen deeply is that judgment is deadly. No one wants to be judged while revealing personal information, so it is essential to offer the speaker a sympathetic, nonjudgmental ear.

The trick is to be aware of any tendency to judge the speaker's ideas, use of language, appearance, or anything else. If you find yourself judging, don't berate yourself, simply acknowledge (to yourself) that you're doing it and let go of the judgment so that you can turn your attention to the speaker and the message.

It Takes Time

Merit Bennett, author of *Law and the Heart* and a partner at the law firm of Tinkler & Bennett in Santa Fe, New Mexico, says he encourages clients to "talk

HEARING AIDS FOR LAWYERS

In any conversation, there are ways to be a better listener. Here are a few:

- **Stop talking. It's much easier to receive information when you're not also transmitting it.**
- **Allow the room to be silent. When you resist the tempation to fill the silence, you make room for what often turn out to be significant revelations.**
- **Limit distractions. Block incoming phone calls, move to a quieter room, or put a "Do Not Disturb" sign on your office door.**

- **Listen with the intention of understanding, instead of replying.**
- **Be aware of the message your body and your face are sending to the speaker.**
- **Listen for meaning in a variety of cues — not only in words, but also in the way the speaker says them, in body language, and in what he or she is not saying.**
- **Tell yourself that nothing else matters at the moment but what the speaker is trying to say to you.**

themselves out."

"I will let them talk and I'll ask questions to help them get what they came to say out," he says. "But I'll also allow them to explore how they feel about what they just said."

That, Bennett says, is where the gold is.

"They come in with facts and ideas and behavior and all the rest, and after it's all on the table, it's easy for me to play the lawyer and figure out what the legal issue is, analyze it, come up with a course of action and so on. But what happens behind that — and usually it's in a place the client has not gone — is how they feel about it, about the conduct of the other party, about what happened to them, and about what kind of an outcome would give them a good feeling.

"Once you go there, it's like you've opened up the door and the answer just comes," Bennett says. "It comes right out of the client's mouth. Suddenly you see what the real issue is. It's usually not what they came in with. Usually it's about hurt, and I get them to talk about why they are hurt, how to get at it and how to heal it. Suddenly it resolves itself at a whole other level."

Bennett has learned it can be dangerous to push a client toward a result without listening to all the subtleties of what is being said. "If you do push too quickly into the case, and you fail to get to the feelings and the underlying issues, the case will often fall apart down the line," he says. "It may happen when the other side makes a motion for summary judgment, and it's because you didn't go far enough — you didn't listen well enough at the outset. I'm really careful with this, and I guess it comes from the fact that in my younger days I was burned too many times by jumping on people's horses, then getting too far out on the prairie and finding myself surrounded."

There is significant danger, Bennett says, in simply accepting what the client initially tells you, which ordinarily is limited to what supports his or her position and justifies a desire to get back at the other guy. "When you don't explore the underlying feelings, you often don't reach the underlying facts. So getting to that level — by really listening well — is another way to make sure you develop the factual scenario so that nothing unforeseen happens."

Listening well takes effort. But according to psychologist Lynch, it is also deeply satisfying and relaxing. His research shows that not only does listening to people lower their blood pressure, it also lowers the listener's.

There is something about forging the kind of basic human connection that good listening makes possible that calms and comforts everyone. Any fears that it will deplete your energy available for the rest of your law practice — if you're listening openly — are misplaced.

Steven Keeva is a senior editor of the ABA Journal. His e-mail address is skeeva@staff.abanet.org.

This article was originally printed in the *ABA Journal*, January 1999. Reprinted by permission of the *ABA Journal*.

Changing Venues

Honors and Awards

Gillian Dutton, director of the Refugee & Immigrant Assistance project and staff attorney for the Northwest Justice Project, received the 13th annual **Goldmark Award** from the Legal Foundation of Washington. Dutton was honored for her commitment to increasing access to justice for low-income Washington state residents.

The Foundation, which was established in 1985 to fund legal services and law-related education through the IOLTA program, elected new officers **Dwight S. Williams**, president; **Alicia L. Lowe**, vice-president; **Gregory J. Tripp**, treasurer; and **Jan Eric Peterson**, secretary.

Legal Foundation board members Dwight Williams and Alicia Lowe with Goldmark Award recipient Gillian Dutton (center).

Musical Partners

With the shocking news that Bogle & Gates PLLC, one of this state's largest law firms, has dissolved, come the first of many announcements as to the future whereabouts of the firm's considerable number of attorneys. Dorsey & Whitney LLP, one of the 40 largest law firms in the United States, is expanding into the Pacific Northwest with the addition of former Bogle partners **Christopher J. Barry**, **Michael Jay Brown**, **Randal R. Jones** and **Scot J. Johnston** in the firm's international and domestic corporate finance and securities department. Also joining Dorsey & Whitney as partners in the complex tax and transactional law area are **Robert D. Kaplan**, **W. Scott Wert**, **John D. Hollinrake, Jr.** and **Kyle B. Lukins.**

Not to be outdone, the Seattle firm of Preston Gates & Ellis LLP has announced the addition of 14 former Bogle lawyers. New partners in the labor and employment law department include **Douglas G. Mooney**, **Peter M. Anderson**, **David A. Bateman**, **Rebecca Dean**, **Lynn Edelstein Du Bey**, and **Patrick M. Madden**. New associates in the labor and employment law area include **Marjorie R. Culver**, **Jeffrey C. Johnson**, **Karen H. Simmonds**, **Stephanie Wright Pickett** and **Jennifer Lane Crowder**. New bankruptcy area partners include **Kimberly W. Osenbaugh** and **Mark Charles Paben**. **Kathryn M. Sheehan**, who has extensive litigation experience, will also be joining the firm as an associate.

Movers and Shakers

Chase Hayes Arpin & Smythe PS, formerly known as Chase, Hayes & Kalamon PS, has merged with the Spokane firm of Paine, Hamblen, Coffin, Brooke & Miller LLP. The new firm will be known as Paine, Hamblen, Coffin, Brooke & Miller LLP.

Stephen M. Evans has become a partner at Graybeal Jackson Haley LLP. New associates include **Richard O. Gray, Jr.**, who will continue his 25-year practice in patent portfolio development and litigation, and **Bryan A. Santarelli**, whose practice includes domestic and foreign representation in licensing; trademark; and electrical, electronic semiconductor, computer and mechanical patent matters.

Four attorneys have been named as members in the Seattle firm of Williams, Kastner & Gibbs PLLC. **Kimberly D. Baker**, rejoining the firm after practicing in Seattle for 14 years, focuses on defense litigation in the areas of medical malpractice, hospital credentialing and investigations conducted by the Medical Quality Assurance Commission. **Judith A. Endejan** practices in the telecommunications area, as well as being a labor and employment litigator. **Rick S. Carlson**'s practice emphasizes corporate finance in the areas of securities, mergers and acquisitions, commercial finance, asset securitization and bankruptcy. **Darren A. Feider** represents both private and public employers

Kimberly D. Baker

Judith A. Endejan

Rick S. Carlson

Darren A. Feider

in matters involving wrongful discharge and discrimination, unpaid wage actions and labor disputes.

Ryan, Swanson & Cleveland, PLLC has announced that **Craig B. Wright** has become a partner of the firm. Wright focuses his practice primarily on technology-based and emerging business clients. Of Counsel additions to the firm include **Kennard M. Goodman** (complex commercial disputes and insurance coverage), **Hunington Sachs** (corporate, securities, intellectual property and entertainment law), and **Paul Soreff** (a member of the Kentucky Bar Association), who has extensive experience in all aspects of immigration law. **Maureen D. Burke**, whose practice includes employment law, construction, commercial litigation and products liability, joins the firm as an associate.

Michael W. Droke has become a shareholder in the Seattle office of Littler Mendelson. Droke's practice focuses on employment relations law.

Dennis de Guzman has firmly planted himself with the Seattle intellectual property firm of Seed and Berry LLP. Prior to practicing law, he worked as an electrical engineer with Puget Sound area utility and telecommunications companies. The firm also has a new executive director, **Dick Rue**, a former senior partner of Ernst & Young in Los Angeles.

James R. Sweetser has opened his own office in Spokane, where he will practice personal injury, employment discrimination and criminal defense law.

Seattle's Heller Ehrman White & McAuliffe firm has a new managing partner, **Mark S. Parris. Bruce M. Pym**, who has served as managing partner for the last five years, is excited about getting back to the full-time practice of law.

Beth Bielefield has become an associate with the law firm of John S. Karpinski in Vancouver.

The Oseran, Hahn, Van Valin & Watts, PS firm in Bellevue has announced that **David M. Tall**, whose practice emphasizes commercial and civil litigation, personal injury, real estate, employment and business law, has become a principal shareholder in the firm. **Michel P. Stern**, practicing in the areas of estate planning; business matters; and real estate acquisition, development and financing, has joined the firm Of Counsel. New associate **Thomas M. Hansen** will practice in the real estate, business law, personal injury and general civil litigation areas.

Dennis J. McGlothin, formerly of Florida, has become a senior associate with the Seattle firm of Smith Smart PLLC. While he is acclimating himself to Northwest weather, he will concentrate his practice in the area of commercial civil litigation.

In Memoriam

Frank Eberharter, a King County Superior Court judge for many years, passed away February 9, 1999 at the age of 84. He was a former member of the WSBA's Board of Governors, a Washington state delegate to the American Bar Association and a trustee for the Seattle–King County Municipal League.

Paul M. Feinsod, 43, passed away suddenly while on vacation with his family on February 14, 1999. A Washington State Board of Industrial Insurance Appeals judge, he was a member of the King County Board of Ethics, an instructor at several Seattle colleges, and helped found the King County Dispute Resolution Center.

Richard S. L. Roddis, former dean of the University of Washington Law School during the 1970s, passed away on February 16, 1999 at the age of 68. He was a former advisor to the Economic Regulation Advisory Committee of the U.S. Department of Transportation and assisted the Washington State Medical Association in forming a medical malpractice insurer.

Ken Weber, a prominent Vancouver attorney who literally wrote the book on Washington family law, passed away January 30, 1999 of an apparent heart attack. An adjunct professor at Northwestern School of Law at Lewis & Clark College since 1972, he wrote three authoritative reference books on family law and was often asked to write briefs on family law issues for Washington appellate courts. He was an active member and past president of the Clark County Bar Association. He is survived by his wife and six children.

Your Best Defense Against Professional Liability . . . The Washington State Bar Association-Sponsored Program.

For top-quality insurance coverage at affordable premiums, choose The Washington State Bar Association-sponsored Lawyers' Professional Liability Insurance Program.

Program features include ...

- Annual Aggregate Deductible
- Defense in Addition to Liability Limits
- First Dollar Defense for Qualifying Firms
- Mutual Selection of Defense Counsel
- Unlimited Tail Coverage Available

For more information, contact Account Executive Pam Blake in Seattle at 206-224-7411

OR
CALL TOLL FREE
1-800-366-7411

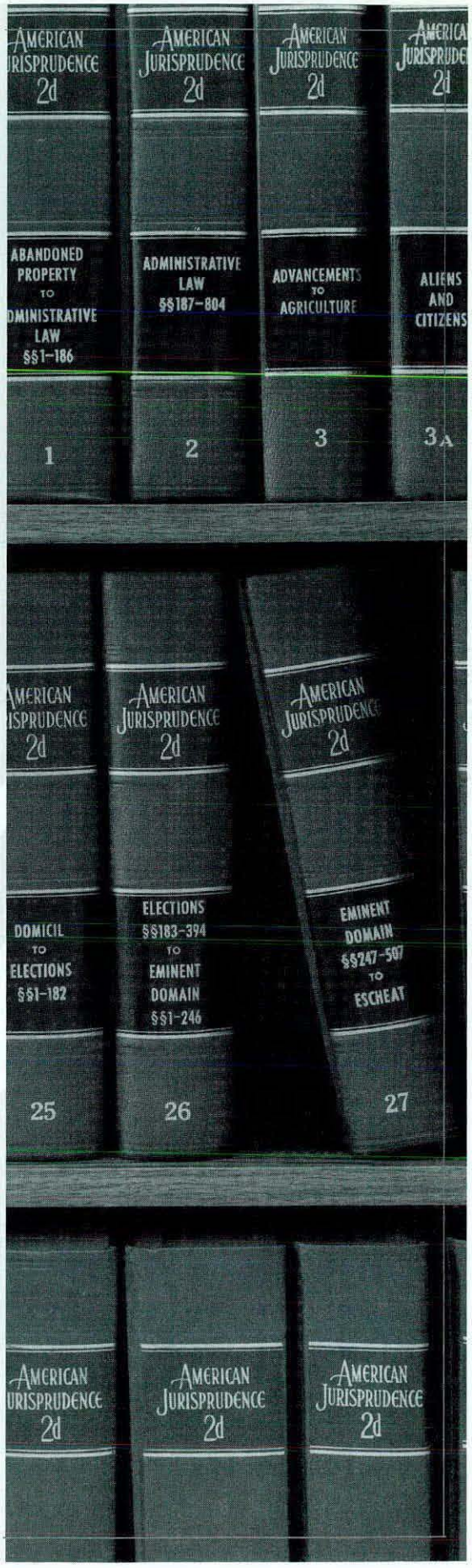
Protecting Those Who Represent Others

Sponsored by:

The Washington State Bar Association

Administered by:

KIRKE VAN ORSDEL
a division of Seabury & Smith, Inc.



Ethical Problems in Document Production

by Barrie Althoff
WSBA Chief Disciplinary Counsel

Discovery and related pretrial procedures are seen by many as the most used, and abused, part of litigation. Designed to simplify and clarify issues and remove the former ambush aspects of trial, some lawyers instead abuse them to intentionally burden or frustrate the other side. A previous article by the author ("Discovery Practices and Problems," *Washington State Bar News*, March 1999, p. 45) summarized a recent national survey of the nature, extent, cost and problems of discovery in federal civil cases. This article looks at some ethical problems associated with document production under Washington's Rules of Professional Conduct (RPCs). A subsequent article will look at some ethical problems associated with deposition conduct, including questions of incivility.

The ethical duties of a lawyer in discovery arise from both ethical rules generally applicable to all lawyers, regardless of whether the lawyer is acting as a counselor or as an advocate, and ethical rules specifically applicable to a lawyer's conduct as an advocate. After listing and briefly discussing some of the general rules, this article looks at several ethical rules specifically applicable to a lawyer as an advocate requesting documents or responding to document requests.

Some General Duties

In conducting discovery, a lawyer must satisfy the general ethical requirements applicable to all lawyers regardless of the nature of their practice. The most basic of these include being competent (RPC 1.1) and diligent (RPC 1.3), not charging more than a reasonable fee (RPC 1.5), safeguarding client confidences and secrets (RPC 1.6), avoiding conflicts (RPC 1.7 *et seq.*), and not being so closely identified with the client as to fail to give the client independent professional judgment and candid advice (RPC 2.1).

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

Discovery gives rise to almost limitless opportunities for lawyers billing their clients on an hourly basis to overwork cases and increase billings.

The requirement of RPC 1.1 that a lawyer provide competent representation to a client requires the lawyer to have the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. In the context of document production, competence includes a mastery of the facts and documents of the case to the extent then known; a thorough knowledge of ethical, discovery, evidence and other applicable court rules and laws; an adequate knowledge of the specific subject matter and industry of the litigation (supplemented as appropriate by the use of consultants and experts) so that the lawyer knows what documents the opposing party is likely or required to maintain and which to seek; a well thought-out and executed plan of discovery; and adequate resources (expertise, financial, personnel and so on) to handle the expected magnitude and duration of the discovery and litigation. Lawyers often fail to demonstrate competence in document production and discovery by simply failing to adequately prepare for and conduct discovery; by not making diligent use of document production, interrogatories and depositions; and by simply procrastinating so that discovery deadlines expire without the lawyer having completed discovery. The national survey referenced above found that defense counsel were more likely to question the competence of plaintiffs' counsel than the reverse, but did not hazard a reason for this variance or determine that there was in fact any variation in actual competence.

RPC 1.5 requires a lawyer's fee to be reasonable. Discovery gives rise to almost limitless opportunities for lawyers billing their clients on an hourly basis to overwork cases and increase billings. The national survey found that where attorneys billed on an hourly basis, the total time of disposition of the cases took longer. This may suggest that some lawyers prolong or overwork cases in discovery in their own interests rather than their clients' interests. Recent Washington lawyer discipline cases wherein lawyers were found to have unreasonably billed, lied to, and cheated their litigation clients include *In re Wade R. Dann*, 136 Wn.2d 67 (1998), and *In re Stephen C. Haskell*, 136 Wn.2d. 300 (1998), with both lawyers being suspended from practice.

Some Specific Discovery Problems

Many of the ethics rules specifically applicable to lawyers as advocates are set out in the nine rules of Title Three of the RPCs. Some of these relate to all phases of litigation, while others focus specifically on discovery or trial. A number of the rules overlap one another. Of particular importance in the area of discovery are RPC 3.1 (prohibiting frivolous litigation and defenses); RPC 3.2 (requiring the lawyer to expedite the litigation); RPC 3.3 (requiring candor toward the tribunal); and RPC 3.4 (requiring fairness to the opposing party and counsel).

Lack of Diligence, Intentional Delays

A lawyer has a general ethical duty under RPC 1.3 to act with reasonable diligence

and promptness in representing a client. While use of many pretrial procedures, including document production and interrogatories, may prolong litigation, a lawyer also has a specific ethical duty as an advocate under RPC 3.2 "to make reasonable efforts to expedite litigation consistent with the interests of the client." The RPC 3.2 qualification of "consistent with the interests of the client" does not authorize a lawyer to intentionally delay proceedings at the behest of, or for the sake of, the client.

When a lawyer knows that a client is expecting assistance not permitted by the RPCs or by other law, such as the unjustified intentional delay of proceedings, RPC 1.2(e) requires the lawyer to consult with the client and explain the limitations of what the lawyer can do for the client. While the client determines the objectives of the legal representation, under RPC 1.2 the lawyer determines the means by which the objectives are to be met. A client's interest, for example, in causing the opposing party significant extra costs by unduly delaying or hindering discovery is not a legitimate client interest that would justify a lawyer seeking to delay discovery.

RPC 3.2 is modeled on Rule 3.2 of the ABA Model Rules of Professional Conduct. The comment to the model rule states that "[d]elay should not be indulged merely for the convenience of the advocates, or for the purpose of frustrating an opposing party's attempt to obtain rightful redress or repose. It is not a justification that similar conduct is often tolerated by the bench and bar." The comment goes on to note that "[t]he question is whether a competent lawyer acting in good faith would regard the course of action as having some substantial purpose other than delay. Realizing financial or other benefit from otherwise improper delay in litigation is not a legitimate interest of the client."

Frivolous Proceedings/Requests/Defenses

RPC 3.1, captioned "Meritorious Claims and Contentions," provides in part that a lawyer "shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous...." The general prohibition of RPC 3.1 against frivolous proceedings and defenses is more specifically applied to discovery in RPC 3.4(d). That rule specifically prohibits the abovementioned types of document production abuse by providing: "A lawyer shall not...(d) [i]n pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party."

Putting aside the issue of whether the underlying litigation (or the defense thereof) is itself frivolous, most lawyers likely have encountered interrogatories or document requests so broadly written as to in effect seek to freely roam throughout the opposing party's files, often attempting to overburden the opposing party. Likewise, many a lawyer likely has encountered wholly frivolous excuses for not producing documentation which have no purpose other than to obstruct access to information, with responses to document requests or interrogatories being filled with a litany of stock excuses for not providing requested information.

Abuse of discovery by a recipient can include either not responding to a request for information or documents, or making unreasonable excuses for not doing so. In *Roland v. Salem Contract Carriers*, 811 F.2d 1175 (7th Cir. 1987), the court dismissed a case where a lawyer failed to respond to interrogatories and orders by the court to reply, and provided incomplete and evasive responses. The lawyer in *Jones's Case*, 628 A.2d 254 (NH 1993), was disbarred for misrepresenting to the court and opponent that neither he nor his client had a particular document when in fact he had the document.

Obstructing Access/Concealing Documents

Frivolous objections to discovery are usually made either to prevent the opposing side from gaining access to relevant documents or information, or to delay that access as long as possible and make it as expensive as possible for the opposing party. These goals are accomplished more

directly by destroying or altering documents or falsifying evidence. RPCs 3.4(a) and (b) specifically prohibit this type of misconduct, whether done directly or indirectly, and prohibit a lawyer from counseling or assisting another person to engage in such misconduct. RPCs 3.4(a) and (b) read as follows:

> *A lawyer shall not:*
> *(a) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value. A lawyer shall not counsel or assist another person to do any such act;*
> *(b) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law....*

RPC 3.4(a) applies generally to the entire process of discovery. Its intent is to encourage the free exchange of information subject to a party's right to object. Although RPC 3.4(a) prohibits the "unlawful" alteration, destruction or concealment of documents, it does not prohibit the alteration or destruction of documents pursuant to the reasonable and normal course of a party's usual records-management and records-destruction policies, where the party had no reason to believe the documents would be subject to discovery.

Practical Enforcement Problems

The difficulty in applying civil sanctions for violations of civil or evidentiary rules or disciplinary sanctions for violations of ethical rules in the context of discovery abuses is that the stakes are often very high; discovery rules and related discipline rules are often matters of judgment and good faith which are very expensive to litigate; and courts themselves appear reluctant to impose sanctions, doing so only in egregious cases. Even when sanctions are ordered, they may not be pursued if the case finally reaches a settlement mode. Enforcement and sanction issues collateral to the main litigation are usually not of interest to clients, who may well be reluctant to pay for the often significant amount of legal resources needed to try to prove discovery violations.

Examples of Abuse

Document production is an area ripe for abuse, in part because it is difficult and expensive to prove and the rewards for abuse can be high, from delay at the expense of the opposing party, to harassment of the opposing party, to winning the lawsuit if materially damaging evidence is kept from coming to light. The national survey noted that document production, while not the most expensive discovery device, is the area of discovery in which the most problems are likely to arise.

Among the important cases arising in Washington which exemplify discovery abuse problems, although none arose specifically under the RPCs, are *Physicians Insurance Exchange v. Fisons Corp.*, 122 Wn.299, 858 P.2d 1054 (1993); *Staggs v. Subaru* (U.S.D.C., W.D. WA., May 23, 1995 unreported oral decision); *In re Firestorm 1991*, 129 Wn.2d 130 (1996); and more recently, *Johnson v. Mermis*, 91 Wn.App. 127 (Div. I, 1998).

The problems usually arise from the use of discovery as a tactical weapon rather than a tool to "expose the facts and illuminate the issues." Advisory committee note to Amendments to the Federal Rules of Civil Procedure, 97 F.R.D. 166, 216-19 (1983), quoted in *Fisons*, 122 Wn.2d 299, 341 (1993). Where discovery is used as a tactical weapon, there is a high probability of violating the RPCs, particularly where the lawyer abandons his or her independence as required by RPC 2.1 and becomes in effect a mere tool of his or her client.

Among the common abuses in document production is stonewalling — refusing to produce properly requested and discoverable materials, a refusal usually camouflaged with all types of objections. The extreme of this abuse is the destruction of evidence — something usually very difficult to prove. The conduct usually results in time-consuming and costly motions to compel, thus further delaying and increasing the cost of discovery. Another abuse is somewhat the opposite: instead of giving nothing, the offending party dumps everything, without order or logic, hoping the valuable documents are lost in the trash.

A common abuse by recipients of dis-

covery is nonresponsive responses, with frequent sprinklings of objections that queries are over-broad, burdensome, etc. Related to this are partial answers preceded by various objections so that it is unclear whether the answer is complete or not, or which objection is responsible for limiting the response. In *Staggs*, the court observed (at page 26) that "There was this curious objection, some of which were not proper objections, none of which were specific or clear, followed by an answer that was an incomplete answer that in my view could only be calculated to throw the plaintiffs off the trail of something."

In *Fisons*, two "smoking gun" documents were withheld in discovery. Very late in the case one of the documents was anonymously delivered to the other side, and sanctions and further discovery were then sought. The trial court denied sanctions, even though the interrogatories and requests for production should have led to the discovery of the two documents. Further court-ordered discovery led to delivery of the second smoking-gun document, along with nearly 10,000 other relevant documents.

On appeal, the Washington Supreme Court held that CR 26(g) sanctions should be imposed, noting that conduct under that rule was "to be measured against the spirit and purpose of the rules, not against the standard of practice of the local bar." 122 Wn.2d 299, 345. The court noted that "[f]air and reasoned resistance to discovery is not sanctionable. Rather it is the misleading nature of the...responses that is contrary to the purposes of discovery and which is most damaging to the fairness of the litigation process." (122 Wn.2d 299, 347). The court went on to characterize the responses to interrogatories as "evasive or misleading."

The court had little patience with the claim of the attorneys that "they were just doing their job, that is, they were vigorously representing their client. The conflict here is between the attorney's duty to represent their client's interest and the attorney's duty as an officer of the court to use, but not abuse, the judicial process." The court went on, at pages 354-5 of the *Fisons* opinion, to place the lawyer's litigation duty to his or her client in the greater context of duties to the legal system by quoting approvingly, "[V]igorous advocacy is not contingent on lawyers being free to pursue litigation tactics that they cannot justify as legitimate. The lawyer's duty to place his client's interest ahead of all others presupposes that the lawyer will live with the rules that govern the system... [cites omitted]."

The conflict here is between the attorney's duty to represent their client's interest and the attorney's duty as an officer of the court to use, but not abuse, the judicial process."

The *Staggs* case, like *Fisons,* involved discovery abuses and withholding material documents. After noting various excuses for nondiscovery, the court noted that "[t]elling your opponent what you have is not the same as giving what you have to them. Many discovery abuses in this case could have been avoided by the simple device of saying, 'This is what we have, but you're not entitled to it for these reasons,' so there is no mystery about what is there and the issue can be joined over whether it's discoverable and not over whether it exists." (page 10). The court also rejected the attorneys' claims that the documents sought were not within the scope of proper discovery by noting that the court had specifically ruled that they were in fact within that scope (page 11).

In *In re Firestorm 1991*, the court held that the *ex parte* interview by plaintiffs' lawyers of an expert witness for a potentially adverse party violated CR 26 and was sanctionable. The expert had contacted the lawyers and volunteered what he said was valuable information which he claimed he feared would be sealed. The court concluded that the lower court sanction of disqualification was too severe, however, and that it did not meet the sanctions guidelines for discovery abuse enunciated by *Fisons* (at 122 Wn.2d, 299, 355-6). Under those guidelines, the court should impose the least severe sanction that would be adequate to serve the purpose of the particular sanction. Additionally, the sanction should not be so minimal as to undermine the purpose of discovery, and the sanction should ensure that the wrongdoer does not profit from the wrong.

In *Johnson*, the Court of Appeals found that a lawyer improperly instructed his client not to answer deposition questions, improperly conferred with his client between questions and answers, improperly objected to questions with boilerplate objections without being specific, and improperly withheld relevant documents. The court rejected the attor-ney's defense that questions asked were not relevant, stating that "[a] defendant or his counsel cannot unilaterally determine the relevancy of evidence during discovery nor unilaterally limit the scope of the deposition. Counsel must instruct witnesses to answer all questions directly and without evasion to the extent of their testimonial privilege, unless properly instructed not to answer."

After the trial court had imposed sanctions for the repeated abuses, the appellate court affirmed, and imposed sanctions for the frivolous appeal. Referring to *Fisons*, the appellate court paraphrased Fisons' observation that a "spirit of cooperation and forthrightness during the discovery process is mandatory for the efficient functioning of modern trials."

Conclusion

Document production, while not the most expensive discovery device, is the area of discovery wherein the most problems are likely to arise. So long as lawyers are permitted to use discovery in general and document production in particular as a tactical weapon rather than a tool to "expose the facts and illuminate the issues," discovery abuse will continue to be a problem. The ethical mandate of the RPCs to lawyers to use discovery as intended is clear. If lawyers want to regain pride in their profession and themselves, respecting and adhering to the ethical rules in discovery is a necessary first step.

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.

Disbarred

Robert Dollinger (WSBA No. 16597, admitted November 18, 1986), of Wenatchee, has been disbarred following a hearing, by order of the Supreme Court filed January 22, 1999. The discipline is based upon his repeated deposits of client and firm funds into his personal accounts, and failure to maintain any records regarding these transactions.

From 1987 through 1992, Mr. Dollinger was employed by a Wenatchee law firm and was not authorized to "moonlight." Mr. Dollinger collected a check for an advance fee deposit from a firm client. He cashed this check without the firm's or the client's knowledge and converted the funds for his own use. In another matter, Mr. Dollinger requested two checks from the firm's accountant. Mr. Dollinger used these funds to pay for personal travel expenses for himself and his wife. When a partner in the firm questioned these expenses, Mr. Dollinger stated that the funds were used for firm business. The firm terminated Mr. Dollinger's employment.

From May 7, 1992 through June 30, 1995, Mr. Dollinger was employed by another Wenatchee firm. This law firm also did not authorize "moonlighting." In several instances, Mr. Dollinger failed to deposit client funds into the firm trust account. In one instance, Mr. Dollinger had a client's settlement check sent to his home. Mr. Dollinger deposited part of the settlement into his personal checking account and the rest into his personal savings account. Mr. Dollinger then requested that the firm accountant write off the client's fees and expenses. In another instance, Mr. Dollinger deposited a client's $7,500 settlement check into his personal account. He then purchased a $5,345.40 cashier's check made payable to the client. He also requested that the firm accountant write off the fees and expenses in this matter. He did not maintain any records of this transaction. In a third instance, Mr. Dollinger represented four clients in a personal injury matter. He received four settlement checks, but only disclosed the existence of one. He deposited the first settlement check into the firm trust account. Mr. Dollinger deposited the remaining three settlement checks into his personal account and wrote the clients personal checks for a portion of the original amount. Again, Mr. Dollinger requested that the firm accountant write off the client's fees and expenses. He maintained no records of these transactions.

In several other matters, Mr. Dollinger deposited client settlement funds into his personal account and wrote personal checks to the clients. In another instance, the firm learned that Mr. Dollinger was representing a client. When a partner questioned Mr. Dollinger, he denied any knowledge of the client. Eventually, Mr. Dollinger admitted that he represented this client, but explained that he did not tell the firm because he was not charging a fee. He then wrote a letter stating that he intended to collect a one-third fee. In another instance, Mr. Dollinger told his firm that he would be arguing a case in Yakima all day. In fact, he participated in the argument by telephone while flying from Wenatchee to Phoenix. Mr. Dollinger billed the client for a seven-hour argument, when the actual argument took much less time. Mr. Dollinger told a firm partner that he would "catch up" later in the month. The firm did not send this bill to the client.

By repeatedly failing to deposit client funds into the trust account and maintain records of transactions with client funds, Mr. Dollinger violated RPCs 1.14(a) and (b)(3). By depositing client funds into his personal accounts, Mr. Dollinger violated RPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation. By lying about attending the Yakima argument personally and about the amount of time spent at this argument, Mr. Dollinger violated RPCs 4.1(a) prohibiting making a false statement of material fact or law to a third person; and RPC 8.4(c). The hearing officer found that Mr. Dollinger's guilty plea to a first-degree theft charge involving these same facts indicated that Mr. Dollinger's actions were intentional.

Sachia Stonefeld represented the Bar Association. Leland Ripley represented Mr. Dollinger. The hearing officer was Robert Redman.

Suspended

Robert J. Lincoln (WSBA No. 15170, admitted August 5, 1985), of King County, has been suspended for 12 months pursuant to a stipulation approved by the Disciplinary Board on January 15, 1999 and by the Supreme Court on February 9, 1999. The suspension is based on multiple acts of misconduct.

First Matter. Mr. Lincoln represented a father in a residential placement dispute in Chelan County Superior Court. Prior to the trial, the client's mother, Mrs. S, was involved in an altercation with the children's mother. Based on this altercation, Mr. Lincoln filed a motion to have the children reside primarily with the father. In support of this motion, Mr. Lincoln submitted Mrs. S's declaration. Mr. Lincoln signed Mrs. S's name to this declaration and placed his initials next to the signature. Mr. Lincoln believed that his initials were legible. Neither opposing counsel nor the judge recognized Mr. Lincoln's initials. Mr. Lincoln did not tell opposing counsel or the judge that he signed the declaration. Mrs. S stated that she did not know that Mr. Lincoln was signing the declaration for her. Although Mr. Lincoln believed that the declaration was accurate, Mrs. S stated that it had some inaccuracies. During the trial, Mrs. S testified that she did not sign the declaration. Mr. Lincoln then explained to the Court that he signed the declaration.

By filing with the court a declaration containing negligently false statements, and signing his name on behalf of a witness without bringing this fact to the Court's and opposing counsel's attention, Mr. Lincoln violated RPC 3.3, prohibiting making a false statement of fact to a tribunal.

Second Matter. In April 1995, Mr. Lincoln agreed to represent a client in a dis-

solution. The client paid Mr. Lincoln $500. Mr. Lincoln's fee agreement stated that $500 was the fee for an uncontested dissolution proceeding. The fee agreement also stated that the fee for a contested case was $3,000, and that it became due immediately. The following handwritten definition of "contested" was included in the fee agreement: "any disagreement or dispute in which the attorney must intervene, mediate or defend, including the intentional act of one spouse to avoid service of process, or any other lack of cooperation, delay, or failure to promptly produce records or documents, or the hiring of an attorney by the other spouse. The word "contested" also includes the client's behavior in which the client fails to heed the advice of the attorney, compounds problems, or makes the attorney's efforts more complex or difficult."

The client decided to serve the pleadings on her husband to save the cost of a process server. She left the pleadings and some of her husband's belongings with a Navy officer, with instructions to deliver the items to her husband. The client also paid Mr. Lincoln a $120 filing fee, which he did not deposit to his trust account. Shortly after this, the client instructed Mr. Lincoln not to proceed with the dissolution and to return all of her fees and costs. Originally, Mr. Lincoln wrote to the client, stating that he would not return any of her money, including the unused filing fee. Mr. Lincoln wrote that the client's husband had evaded service and, therefore, she owed him the $3,000 contested fee, less the amounts she had already paid. The client filed suit in small claims court. The Court found that all of the fees and costs, including the unused filing fee, were reasonable and allowed Mr. Lincoln to retain the client's funds. Mr. Lincoln returned the unused filing fee despite the court order.

By failing to place the client's advance costs into his trust account and by applying these funds to his fees, Mr. Lincoln's conduct violated RPC 1.14, requiring that advances for costs be deposited into the trust account and that the lawyer preserve the identity of client funds.

Third Matter. Mr. Lincoln agreed to represent the husband in a dissolution action. Mr. Lincoln used the same fee agreement with the $3,000 contested fee clause, but this agreement also set an hourly rate of $125. The client paid $2,500 in fees, in installments, and also exchanged a jewelry box for $500. Mr. Lincoln prepared the petition and summons in late September 1994 and signed the pleadings in mid-October. The petition was filed on November 17, 1994. After many phone calls to Mr. Lincoln, some answered and some not, the client sent Mr. Lincoln a certified letter asking about the status of his case. Mr. Lincoln did not respond to the client's letter. On December 14, 1994, at a temporary orders hearing, the court awarded $1,000 per month to the wife in child support and maintenance payments, retroactive to November 1, 1994. At this hearing, the court did not have the client's financial information, because Mr. Lincoln had misfiled this information and had not delivered working copies to the court. Although the client told Mr. Lincoln he could not afford these payments, Mr. Lincoln took no steps to reduce them. The Office of Support Enforcement began garnishing the client's wages, and eventually he was forced to give up his apartment and move in with friends. In February 1995, the client retained a new lawyer, who successfully reduced the support and maintenance payments.

Mr. Lincoln's failure to act diligently violated RPC 1.3, requiring lawyers to diligently represent their clients. By failing to answer his client's questions regarding the status of his case, Mr. Lincoln violated RPC 1.4, requiring that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with the client's reasonable requests for information. By using a fee agreement allowing Mr. Lincoln to unilaterally determine whether fees would be increased, Mr. Lincoln violated RPC 1.5, requiring reasonable fees.

Fourth Matter. Mr. Lincoln agreed to represent the husband in a dissolution action. He met with the client and his parents. Mr. Lincoln told the client that his fee would be $3,000. This fee would cover legal service up to one year, excluding trial. The client paid Mr. Lincoln $650 in cash, and the parents wrote two checks for $1,175 each, postdating the second. The fee agreement was similar to the one used in the other matters and included the statement "client agrees to pay all expenses including any balance due before entitled to client file." On May 17, 1996, the client and his parents attended a court hearing in the dissolution case. Apparently, the opposing counsel prepared the order and Mr. Lincoln did not explain the order to the client's and parents' satisfaction. Over the next two weeks, the client became dissatisfied with Mr. Lincoln's services, terminated Mr. Lincoln, and requested a refund of unearned fees. The client's mother stopped payment on the postdated check, without notice to Mr. Lincoln. Mr. Lincoln wrote to the mother in an attempt to collect the additional $1,175. His letter stated that he had the option of taking legal action to collect the check, but he did not follow through.

By failing to adequately explain the court order, Mr. Lincoln violated RPC 1.4, requiring a lawyer to explain a client's matter to the extent reasonably necessary to permit the client to make informed decisions. By failing to place disputed fees in his trust account, Mr. Lincoln violated RPC 1.14(b)(2), requiring lawyers to place funds belonging in part to the lawyer and in part to the client in the lawyer's trust account, and to take prompt steps to resolve the dispute. By using a fee agreement allowing Mr. Lincoln to unilaterally determine whether fees would be increased, Mr. Lincoln violated RPC 1.5, requiring reasonable fees.

Fifth Matter. Mr. Lincoln agreed to represent the wife in a dissolution action. The client signed a fee agreement which set a fee of $650 for legal service up to one year, exclusive of trial. The agreement stated that the fee for trial would be $6,500. The client paid Mr. Lincoln $725. The client told Mr. Lincoln that her primary concern in the dissolution was the parenting plan, because her spouse had been arrested for making obscene phone calls to the children's babysitter. The client requested that the court determine if the spouse was stable enough to have visitation, that this visitation be limited, increase gradually, and that the outcome of the criminal proceeding be considered.

The client stated that she had to repeat these fact requests each time she spoke with Mr. Lincoln. Additionally, the client states that she provided Mr. Lincoln with multiple copies of the same documents, including pay stubs and daycare receipts. Mr. Lincoln stated that the client never gave him complete financial information. Mr. Lincoln met with the client in July 1996 in a Bellevue restaurant. The client states that Mr. Lincoln gave her a parenting plan drafted by the opposing lawyer to review, and then he moved to another table to meet with another client. The client stated that although she had questions about the parenting plan, she signed it and dropped it off with Mr. Lincoln, to avoid interrupting his meeting with another client. In August 1996, the client met with Mr. Lincoln to sign the final parenting plan. Apparently, when the client stated that the parenting plan did not address her husband's arrest, Mr. Lincoln told the client that he believed she was refusing to sign the parenting plan to punish her husband and that this was not proper. Two days later, Mr. Lincoln notified the client in writing that he was withdrawing from her case. The client retained a new lawyer and the court accepted the unchanged parenting plan.

By failing to adequately explain the parenting plan to the client, Mr. Lincoln's conduct violated RPC 1.4, requiring a lawyer to explain a matter to the extent necessary to permit the client to make an informed decision. By failing to place disputed fees in his trust account, Mr. Lincoln's conduct violated RPC 1.14(b)(2), requiring lawyers to place funds belonging in part to the lawyer and in part to the client, in the lawyer's trust account and to take prompt steps to resolve the dispute. By using a fee agreement allowing Mr. Lincoln to unilaterally determine whether fees would be increased, Mr. Lincoln violated RPC 1.5, requiring reasonable fees.

Sixth Matter. Mr. Lincoln met with a client and her father regarding a residential placement issue. The client signed, and the father initialed, a fee agreement setting a fee of $1,150 for a non-contested matter and $3,000 for a contested matter. This agreement used the same definitions of "contested." The fee agreement was similar to the one used in the other cases, but stated that Mr. Lincoln would "advise and assist in all aspects of the case." The father gave Mr. Lincoln a $1,175 check. The client was separated from her spouse, who lived in Florida. In October 1995, the client and her son visited the father in Florida. The parents fought and the client was charged with domestic violence. The father then obtained an injunction from a court in Florida awarding him temporary custody of the son. Mr. Lincoln told the client that he believed that if the father filed for dissolution in Florida, the client would have to litigate the case in Florida with Florida counsel. Over the next few weeks, Mr. Lincoln performed some legal research and spoke to the client and her parents a few times. In January 1996, the father filed for dissolution in Florida. On February 1, 1996, Mr. Lincoln met with the client and her father and told them that the client should retain counsel in

Florida, and that he would assist in having the case moved back to Washington. The client and her father demanded all of their money back and Mr. Lincoln declined their request.

By failing to place disputed fees in his trust account, Mr. Lincoln violated RPC 1.14(b)(2), requiring lawyers to place funds belonging in part to the lawyer and in part to the client in the lawyer's trust account and to take prompt steps to resolve the dispute. By using a fee agreement allowing Mr. Lincoln to unilaterally determine whether fees would be increased, Mr. Lincoln violated RPC 1.5, requiring reasonable fees.

Seventh Matter. Mr. Lincoln agreed to represent a client in an action to invalidate her marriage. The client signed a fee agreement setting the fee at $3,000. This fee agreement was similar to the others. In July 1996, the client retained Mr. Lincoln to represent her in an additional case filed against her by her husband and his parents. The client agreed to pay Mr. Lincoln $875 to appear in court and argue a protective order motion in this second matter. The client assisted by obtaining all of the necessary declarations for this motion. The Court ruled in the client's favor on the husband's motion and against her on the parent's motion. The client believed that Mr. Lincoln was not prepared for the hearing. In December 1996, approximately 90 days before trial, Mr. Lincoln told the client that the invalidity case was headed to trial and that the client needed to pay the $6,500 fee. The client asked Mr. Lincoln to do what he could to avoid trial, or she would be forced to find another lawyer. As a result of this conversation, Mr. Lincoln withdrew from the case, effective January 15, 1997. Mr. Lincoln stated that the client expressly terminated his services. Mr. Lincoln did not respond to several motions filed by opposing counsel on January 7, 1997.

By failing to adequately communicate with his client, Mr. Lincoln violated RPC 1.4, requiring that a lawyer keep a client reasonably informed about the status of a matter and promptly comply with the client's reasonable requests for information. By using a fee agreement allowing Mr. Lincoln to unilaterally determine whether fees would be increased, Mr. Lincoln violated RPC 1.5, requiring reasonable fees. By failing to take adequate steps to protect his client in the motions filed prior to the effective date of his withdrawal, Mr. Lincoln's conduct violated RPC 1.15, requiring that upon withdrawal, a lawyer take steps to the extent reasonably practicable to protect the client's interests.

Eighth Matter. Mr. Lincoln agreed to represent the wife in a dissolution action. She signed a brief fee agreement setting the contested fee at $3,000. This fee would cover proceedings, exclusive of trial, for one year. The fee agreement also stated that the fee was "non-trust, non-refundable." The client paid Mr. Lincoln $1,000. Mr. Lincoln drafted the initial pleadings. The husband and wife simultaneously served each other with initial pleadings. The client called and asked Mr. Lincoln to explain the pleadings that had been served on her. Mr. Lincoln told the client that he could not see her right away. The client retained new counsel and asked for a refund of unearned fees. Initially, Mr. Lincoln refused to refund any fees. Later, he refunded $500 to the client.

By using a fee agreement allowing Mr. Lincoln to unilaterally determine whether fees would be increased, Mr. Lincoln violated RPC 1.5, requiring reasonable fees.

Joanne Abelson represented the Office of Disciplinary Counsel. Joseph Ganz represented Mr. Lincoln. The hearing officer was David Hoff.

Suspended

Gregory Scharmach (WSBA No. 8562, admitted October 25, 1978), of Tacoma, has been suspended for six months pursuant to a stipulation approved by the Disciplinary Board on January 15, 1999 and by the Supreme Court on February 9, 1999.

On August 16, 1990, King County Northeast District Court granted Mr. Scharmach a Deferred Prosecution on a fourth-degree assault charge. Apparently, this matter was dismissed on August 27, 1992. Prior to the dismissal, on June 29, 1992, an Olympia police officer observed Mr. Scharmach in his pickup truck stopped in the traffic lanes, forcing traffic to steer around him. The officer spoke to Mr. Scharmach and noticed an odor of intoxicants, slurred speech, confusion, disorientation and unsteadiness on his feet. Mr. Scharmach told the officer that he was looking for the courthouse because he was scheduled to meet a client. The officer arrested Mr. Scharmach for Driving Under the Influence (DUI) and transported him to the Thurston County Jail. Mr. Scharmach bailed himself of jail. The police gave Mr. Scharmach a ride to a taxi stand and instructed him not to drive. Approximately an hour later, the same police officer noticed Mr. Scharmach, in his pickup, stopped at a red light. The policeman again booked Mr. Scharmach for DUI and Mr. Scharmach again bailed himself out and drove away.

Mr. Scharmach was charged with two counts of DUI. He petitioned the court to grant him a deferred prosecution. As part of this petition, Mr. Scharmach stated under penalty of perjury that he had not been granted a deferred prosecution within the last five years.

On December 20, 1993, Mr. Scharmach pled guilty to fourth-degree assault in Bainbridge Island Municipal Court. On December 22, 1993, Mr. Scharmach was convicted in Bainbridge Island Municipal Court of possession of a loaded weapon. Based on these criminal violations, the court revoked the deferred prosecution and sentenced Mr. Scharmach to two years in jail. Mr. Scharmach acknowledged that he has an alcohol problem. He sporadically attends alcohol treatment.

By making a false statement about the prior deferred prosecution, Mr. Scharmach violated RPC 3.3(a)(1), prohibiting a lawyer from knowingly making a false statement of material fact to a tribunal; RPC 8.4(b), prohibiting criminal conduct reflecting adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; and RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice. By violating RCW 46.61.501 (DUI), RCW 9A.36.040 (assault), and RCW 9.41.040 et seq. (possession of a loaded firearm), Mr. Scharmach violated RPC 8.4(b), RLD 1.1(a) prohibiting unjustified acts of as-

sault; RLD 1.1(b) prohibiting violation of a court order; and RLD 1.1(c) prohibiting a lawyer from violating his or her oath or duties.

Sachia Stonefeld represented the Bar Association. Mr. Scharmach represented himself. The hearing officer was Robert Hardy.

Suspended

Therese Wheaton (WSBA No. 18208, admitted October 31, 1988), of Thurston County, has been suspended for six months pursuant to a stipulation approved by the Disciplinary Board on January 15, 1999 and by the Supreme Court on February 9, 1999. The discipline is based on Ms. Wheaton's failure to promptly and diligently protect her clients during a time of illness that resulted in closing her practice.

In 1992, Ms. Wheaton opened a solo practice in Lacey, Washington. In fall 1996, Ms. Wheaton contracted with a company to provide complete office support, including client billing, accounting, trust account records, and secretarial services. Due to illness and continuing health problems, Ms. Wheaton provided a power of attorney to the contracted office manager and requested that the manager assume primary responsibility for the trust account. In November 1996, Ms. Wheaton suffered a severe physical assault which affected her mental and physical health. During this same period, Ms. Wheaton suffered her grandfather's death, breakup with her partner, and eviction by her former partner from her home and law office. Ms. Wheaton was hospitalized for 34 of the 44 days between November 24, 1996 and January 10, 1997. During late fall 1996, Ms. Wheaton and her support staff contacted other Thurston County lawyers to handle imminent client matters. On December 20, 1996, WSBA appointed an RLD 8.6 custodian was appointed to assist Ms. Wheaton in closing her practice. On March 27, 1997, Ms. Wheaton transferred to inactive status. In early summer 1997, after an order discharging the custodian, he returned unclaimed files to Ms. Wheaton, as her health improved. Ms. Wheaton has been in good health for the last 18 months. The Court reinstated Ms. Wheaton to active status on February 9, 1999. Ms. Wheaton transferred to inactive status in June 1997. The Court allowed Ms. Wheaton's suspension to run during the final six months of her inactive status.

In November 1996, WSBA received notice that Ms. Wheaton's trust account was $119.84 overdrawn. One client filed a grievance related to client funds and Ms. Wheaton paid restitution to that client. Additionally, Ms. Wheaton agreed to two years' trust account probation.

In July 1996, a client retained Ms. Wheaton to obtain an order establishing parentage, setting child support, and limiting the father's contact with the child. In mid-July, Ms. Wheaton filed the Petition to Establish Parentage, and obtained a waiver of the filing fee and a temporary restraining order against the father. Ms. Wheaton did not serve the alleged father. In fall 1996, Ms. Wheaton did not communicate with her client and did not explain that she had not served the father. Later in 1996, Ms. Wheaton became ill and WSBA appointed a custodian. In January 1997, the client received her file from the custodian. This was the client's first notice that Ms. Wheaton had not proceeded with her case. Ms. Wheaton made a partial refund to the client.

In late August 1996, Ms. Wheaton agreed to represent the husband in a dissolution action. In October 1996, the wife filed a Petition for Legal Separation; Motion for Temporary Support, Including Maintenance; and Proposed Parenting Plan. In November 1996, Ms. Wheaton filed financial information and resisted the maintenance request. The temporary orders hearing was set for November 12, 1996. Ms. Wheaton did not attend due to her illness. Ms. Wheaton's staff contacted the opposing party, who did not agree to a continuance. The Court entered an order imposing child support, maintenance and attorney's fees on the client. In December 1996, Ms. Wheaton's staff notified the client that Ms. Wheaton would not be able to continue to represent him. The client obtained a new lawyer on December 6, 1996. The new lawyer had to copy the court file, because Ms. Wheaton's office was already closed. In January 1997, the client filed an application with the Lawyers' Fund for Client Protection and received a gift of $500. In December 1998, Ms. Wheaton reimbursed the Fund for this gift.

In July 1996, Ms. Wheaton agreed to represent the wife in a dissolution. Ms. Wheaton prepared the pleadings and sent them to her client in Germany. Ms. Wheaton received the signed pleadings back from the client in November 1996. By this time, she was ill and took no further action on this client's case. The client received her file from the custodian. The signed pleadings were still in the file. Ms. Wheaton paid restitution to this client.

By failing to properly advise her clients of problems in their cases and failing to promptly advise clients of her own illness, Ms. Wheaton violated RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of a matter and to explain matters to the extent necessary to permit the client to make an informed decision; and RPC 1.15, requiring a lawyer to withdraw from a client's case if the lawyer's physical or mental condition ma-

terially impairs his or her ability to represent the client.

Maria Regimbal represented the Bar Association. Melanie Hantze represented Ms. Wheaton.

Censured

A. Graham Greenlee (WSBA No. 890, admitted September 20, 1968), of King County, has been ordered censured following a public hearing. The hearing officer's Findings of Fact, Conclusions of Law and Recommendation became final without appeal on December 31, 1998. This discipline is based on Mr. Greenlee's settling a personal injury case without full authorization from his client.

Mr. Greenlee represented a client in a personal injury claim. In 1993, Mr. Greenlee filed suit for his client. Mr. Greenlee did not file the required Statement of Arbitrability or Confirmation of Joinder. He also failed to attend a court-ordered Status Conference. In a telephone call with opposing counsel, Mr. Greenlee accepted a $3,000 settlement offer. Although Mr. Greenlee considered his acceptance to be subject to his client's approval, he did not convey this to opposing counsel. In December 1993, when Mr. Greenlee's office received the release, stipulation and order of dismissal and $3,000 draft, his office staff accidentally placed these documents in the file, instead of forwarding them to the client. In February 1994, Mr. Greenlee's secretary wrote a letter to the clerk of the court to prevent the clerk from dismissing the client's case. In March 1994, Mr. Greenlee obtained and sent the release and draft to the client. The client called Mr. Greenlee to discuss how much of this settlement she would receive. Mr. Greenlee believed that the client was satisfied with the amount of the settlement. During this conversation, the client realized that the draft had expired. Mr. Greenlee obtained and sent a replacement draft, but the client refused to sign, asking that Mr. Greenlee reduce his fee. The client terminated Mr. Greenlee's service in January 1995. Mr. Greenlee filed a notice of withdrawal and a notice of claim of lien for $1,435.05 in fees and costs. Later, the court dismissed the case for want of prosecution and the second draft expired. Apparently, the defendants will pay the $3,000 and Mr. Greenlee will reduce his fee. Mr. Greenlee agreed to obtain written authorization from clients in personal injury cases before entering binding settlements with the opposing party. The following mitigating and aggravating factors were considered in the sanction recommendation in this case: delay in disciplinary proceedings (mitigator); remorse (mitigator); remoteness of prior offense (other than suspension); prior disciplinary offense (aggravator); substantial experience in the practice of law (aggravator).

Lawyers' Fund for Client Protection

The **Lawyers' Fund for Client Protection Committee** meets quarterly to review applications for gifts from the Fund. 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 its meeting on February 19, 1999, the Committee took the following action:

Gifts of up to $3,000:

- To eight 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 $900, $894, $149, $695, $695, $500, $894 and $591). The Committee had approved three similar gifts concerning this lawyer at its previous meeting.
- To the former husband of the client of a lawyer who has been recommended for disbarment for other misconduct. When the lawyer was asked by a mortgage company to provide a judgment payoff amount for the husband to satisfy a judgment he owed to the wife, the lawyer added a $250 fee for himself without authority or consent from the husband, who was not his client (amount awarded was $250).
- To the client who was required by a lawyer to pay the lawyer $1,250 to be used to post an appeal bond. After the lawyer was suspended from practice, the client discovered no appeal was ever filed and the lawyer misappropriated funds (amount awarded was $1,250).

Recommendations for gifts of more than $3,000:

- To a client of the lawyer in the first item above, who gave the lawyer a check for $6,000 to hold for settlement of a debt owed to a third party. The lawyer stipulated that he misappropriated the funds (amount recommended is $6,000).
- To two clients of a lawyer, recommended for disbarment, in two separate matters: (a) In a probate matter for an elderly client, the lawyer charged a fee of $30,000, telling the client it was customary to charge a fee of 10 percent of the value of an estate but that she would charge the client only 5 percent. The estate was chiefly in cash and bank accounts. The lawyer subsequently had the client pay her $15,000 in a tax scheme, apparently fraudulent, which the lawyer devised. After the client consulted new counsel, she successfully recovered all but $16,000 of the funds paid to the lawyer (amount recommended is $16,000). (b) In a second matter, the lawyer settled a personal injury claim for client for $12,000. The lawyer and the client had a one-third contingent fee agreement. The client endorsed the settlement check to the lawyer, who promised to pay the balance to the client when the check cleared her trust account. The WSBA investigation disclosed that the lawyer misappropriated the client's funds (amount recommended is $8,000).

In addition, the Committee denied three applications as fee disputes or because there was no evidence of a dishonest taking of funds.

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

1999 WSBA Award Nominations Sought

Each year, members of the Washington State Bar Association are asked to identify those members of our profession and the public who deserve the legal profession's recognition and thanks.

Nominations are sought for the following awards:

Award of Merit: This is the WSBA's highest honor. It was first given in 1957. In general, the Award of Merit is given for long-term service to the bar and/or the public, although it has also been presented in recognition of a single, extraordinary contribution or project. It is given to individuals only — both lawyers and nonlawyers.

President's Award: As the name implies, this award is given for special accomplishment or service to the WSBA during the term of the current president.

Board of Governors' Award for Professionalism: This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. "Professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

Angelo Petruss Award for Lawyers in Public Service: This award is named in honor of the late Angelo R. Petruss, a Senior Assistant Attorney General who passed away during his term of service on the Board of Governors of the WSBA. The selection criterion is a significant contribution by a lawyer in government service to the legal profession, justice system and the public.

Pro Bono Award: This award is presented to a lawyer, nonlawyer, law firm or local bar association for outstanding efforts in providing pro bono services to the poor. This award is based on cumulative efforts, as opposed to a lawyer's or law firm's pro bono hours or financial contribution.

Outstanding Judge Award: This award may be presented to a judge from any level of court. It is presented for outstanding service to the bench and for special contribution to the legal profession.

Courageous Award: This award is presented to a lawyer who has displayed exceptional courage in the face of adversity, thus bringing credit to the legal profession.

Affirmative Action Award: This award is made to a lawyer or law firm making a significant contribution to affirmative action in the employment of ethnic minorities, women and the disabled in the legal profession within the state of Washington.

Outstanding Elected Official in the Legislative Branch: This award is presented to an elected official for outstanding service to the Washington State citizens with special contributions to the legal profession. The recipient has demonstrated a commitment to justice beyond the usual call of duty.

Lifetime Service Award: This is a special award given for a lifetime of service to the WSBA and the public; it is given only when there is someone especially deserving of this recognition.

It is important to note that presentation of these awards is made only when there are truly deserving recipients. Some years, no award is given in some categories. If you know of someone who fits the criteria set forth above, please send a letter of nomination and relevant information by May 14, 1999.

Send nominations to:

WSBA Executive Director, Attn: Awards
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330
fax: 206-727-8320 e-mail: oed@wsba.org

Survey Shows Strong Overall Support for U.S. Justice System

According to a national survey commissioned by the American Bar Association, 80 percent of Americans believe that, "in spite of its problems, the American justice system is the best in the world."

"Perceptions of the U.S. Justice System" found that the root of this support seems to lie in the jury system, with 78 percent of respondents saying it is the fairest way to determine guilt or innocence. More than two-thirds — or 69 percent — believe that juries are the most important part of our justice system.

The survey asked respondents to rate their confidence in 17 different institutions in American society, including particular components of the justice system, other professions and institutions, and the media. Respondents had the most confidence in the U.S. Supreme Court, with 50 percent "extremely or very confident" in this institution. Thirty-four percent of respondents in the ABA survey expressed strong confidence in other federal courts, and 28 percent expressed strong confidence in state courts. In contrast, only 18 percent expressed strong confidence in the U.S. Congress, while 14 percent expressed strong confidence in lawyers. The media fared the worst, with strong confidence expressed by only eight percent of the respondents, and slight or no confidence by 60 percent.

The survey results also indicate that people's knowledge of the justice system is quite uneven. Virtually all respondents (99 percent) know that "anyone accused of a crime has the right to be represented in court by a lawyer," and 96 percent know that "a defendant found 'not guilty' in a criminal trial can still be sued for money damages in a civil trial." Yet more than a third of the respondents — 37 percent — believe incorrectly that a criminal defendant has to prove his or her innocence. When asked to identify the branches of government, only 39 percent could identify all three unaided; 25 percent could not identify even one branch.

Complete survey results are available at http://www. abanet.org/media.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in March 1999 is 4.772 percent. The maximum allowable interest rate for April 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 http://www.wsba.org/barnews/usuryrate.html.

Opportunities for Service

WSBA President
Deadline: May 15, 1999
The Board of Governors of the Washington State Bar Association (WSBA) is seeking applicants to serve as President of the WSBA for 2000-2001. A description of the position appears on page 54 of the March *Bar News*, and on the WSBA website at http://www.wsba.org/service.html.

Commission on Judicial Conduct
Deadline: April 28, 1999
The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct or disability, separate from the judicial appeals system that allows individual litigants to appeal from legal errors. The Commission meets the first Friday of every other month. At these meetings, the Commission reviews new complaints, discusses the progress of investigations, and takes action to resolve complaints. The Commission consists of 11 members who serve four-year terms: six non-lawyer citizens, three judges and two lawyers. The lawyers, who must be admitted to the practice of law in Washington, are selected by the WSBA. Currently a representative and an alternate are sought. The term will commence on June 17, 1999. Please submit a letter of interest with résumé to the Office of the Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail: oed@wsba.org.

Limited Practice Board
Deadline: April 28, 1999
The WSBA is seeking letters of interest from members interested to serve a four-year term 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. This term is effective immediately. Please submit a letter of interest with résumé to the Office of the Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail: oed@wsba.org.

Potential Emeritus attorneys listen to volunteer opportunity presentations.

Emeritus Training Session a Success

The first annual training session for the new WSBA Emeritus program was held on January 27, 1999. Participants were welcomed by WSBA President Wayne Blair and Senior Lawyers Section member Claude Pearson. Lawyers interested in changing their status to Emeritus were introduced to the Washington State Legal Services Provider Network by Ada Shen-Jaffe, Executive Director of Columbia Legal Services, and Christie Hedman, Executive Director of the Washington Defender Association. This was followed by an overview of volunteer opportunities and an overview of key legal concerns and common barriers involving specific client populations. The afternoon segment focused on key substantive areas of law.

Training was provided by members of Washington state's Access to Justice Network, including Columbia Legal Services, Northwest Justice Project, Eastside Legal Assistance Program, Teamchild, Unemployment Law Project, Tacoma-Pierce County Bar Volunteer Legal Services Program, Attorney General's Office, Legal Foundation of Washington and the Seattle–King County Public Defender Association. Retired Washington Supreme Court Justice Vernon Pearson captivated the audience with a motivating luncheon speech.

The training session was held as a result of the recent Washington State Supreme Court adoption of APR 8(e). This rule creates a limited license status of Emeritus for attorneys otherwise retired from the practice of law to practice pro bono legal services through a qualified not-for-profit legal services organization whose primary purpose is to provide legal services to low-income clients. The goal of this rule is to encourage pro bono participation by highly skilled and experienced attorneys and judges who wish to make a significant contribution to current access to justice-related efforts. To date, Emeritus attorneys are working at King County Bar Association, Fremont Public Association, Columbia Legal Services, Northwest Justice Project, Chelan/Douglas Community Action Council Legal Aid and Whatcom County Public Defender.

The training was videotaped for use by attorneys who were unable to attend the program and for attorneys who may wish to change their status later during the year. Emeritus attorneys are exempt from Continuing Legal Education requirements. However, they must complete the full-day training program or view the video in order to be eligible for Emeritus status. To obtain an Emeritus status application form and a listing of qualified legal services programs, please contact Scot Stout at 206-727-8227 or scots@wsba.org.

Governor Locke Wins ABA Award

Governor Gary Locke was presented the American Bar Association's Spirit of Excellence Award at the ABA's Midyear Meeting on February 6 in Beverly Hills, CA. The Spirit of Excellence Awards are presented annually by the ABA Commission on Opportunities for Minorities in the Profession to lawyers who have demonstrated special achievement and have made substantial contributions to the legal profession and to society despite facing obstacles unique to minorities.

Interprofessional Committee Seeks Input

Have you had a dispute with a professional in another field during the course of your legal practice? The WSBA's Interprofessional Committee wants to hear from you.

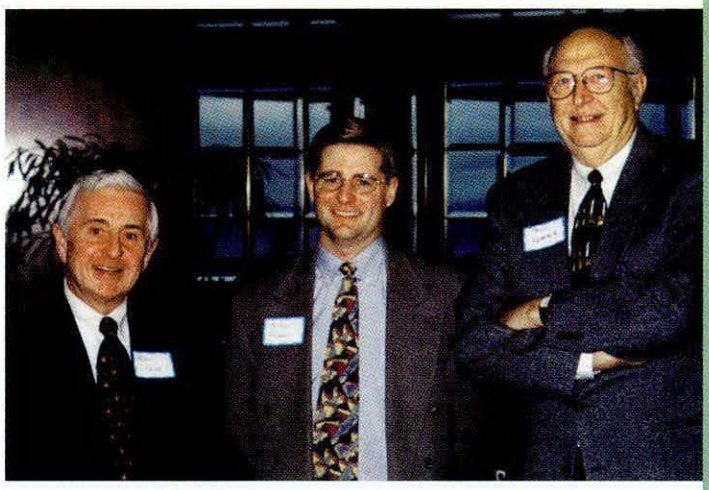
What is your answer to the following questions:

- What do you do when an independent medical examiner wants to charge your client $1,000 per hour for his deposition?
- Who pays for an opposing party's deposition preparation time and deposition review time?
- Who pays if that expert's deposition runs long due to excessive cross-examination?
- When is a lawyer responsible for paying the expenses of litigation service providers?

The Civil Rules do not answer these questions expressly. Rule 26(b)(5)(C) provides in pertinent part, "[u]nless manifest injustice would result...the court shall require that the party seeking discovery pay the expert a reasonable fee for time spent in responding to discovery...." *See also* WSBA Formal Opinion 140. Similarly, for health care providers, Rule 26(b)(6) provides: "[t]he party seeking discovery from a treating health care provider shall pay a reasonable fee for the reasonable time spent in responding to the discovery. If no agreement for the amount of the fee is reached in advance, absent an order to the contrary...the discovery shall occur and the health care provider or any party may later seek an order setting the amount of the fee to be paid by the party who sought the discovery."

Because the Civil Rules are subject to interpretation on many issues, conflicts arise among lawyers and between lawyers and other professionals. To help prevent these conflicts, the members of the Interprofessional Committee want to work with other professional organizations throughout the state to develop guidelines (consistent with antitrust prohibitions) for handling potentially problematic situations.

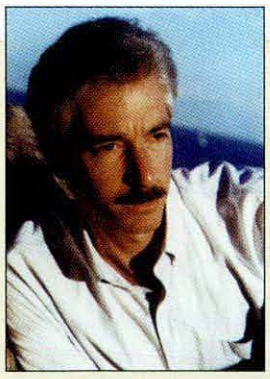
Before we begin contacting other professionals, we need input from you. We need to know what problems you have had during the course of your practice dealing with members of other professions. Please take a moment to recount a memorable conflict you have had, and fax it to WSBA Interprofessional Committee (attn. Molly) at 206-727-8325. Thank you.



February 17, 1999 Tax Section Annual Luncheon participants (left to right) are Alan Kane, Preston Gates & Ellis; Mike Roben, Arthur Andersen; Bill Gates, Sr., Preston Gates & Ellis. Mr. Gates was the featured speaker at the luncheon.

Proposed RPC Amendments Posted for Comment

On March 4, 1999, at its en banc administrative conference, the Supreme Court of the State of Washington approved the publication of RPC 1.8(k) and RPC 8.4(g) and (h) for comment. Bar members are invited to comment by June 30, 1999 on the proposals, which can be found at the WSBA website (www.wsba.org).



WSTLA to Feature Jan Schlichtmann as Speaker at Law Day Dinner

Jan Schlichtmann will be the featured speaker at the Washington State Trial Lawyers Association (WSTLA) Law Day and Awards Dinner, Thursday, April 29, 1999 at the Seattle Hilton. Schlichtmann is the plaintiffs' attorney protrayed by actor John Travolta in the recent movie *A Civil Action*. WSTLA will also present its Judge of the Year and Trial Lawyer of the Year awards at the April dinner, which is open to the public.

In the movie, Schlichtmann pits his glitzy Boston-based law practice against the monolithic resources of two corporations, W.R. Grace and Beatrice Foods, who are put on trial for drinking-water contamination responsible for killing several children in the working-class town of Woburn, Massachusetts. Although Schlichtmann settled the case for $8 million, it came at a great personal cost to himself, associates and staff. The case left Schlichtmann bankrupt and without a practice.

Mr. Schlichtmann has consulted with and testified before a number of governmental agencies and legislative committees on issues of toxic waste liability and the civil justice system. In 1990, Mr. Schlichtmann, as a member of a special legislatively mandated committee, helped author a complete revision of the Massachusetts Hazardous Waste Cleanup Statute which was enacted into law July of 1992.

For more information about the Law Day Dinner or to make a reservation, contact Rebekah Nairn at 206-464-1011.

Raising the Bar: WSBA Town Meetings Planned

As part of the WSBA's efforts to plan for the future and "Raise the Bar," a series of town meetings has been scheduled in April and May. Please see the WSBA website (www.wsba.org) for exact dates, places and times. At these two-hour meetings, fellow WSBA members, trained as facilitators, will lead small-group discussions in specific areas (listed in the March *Bar News*, p. 16). Also present at the meetings will be various members of the Long-Range Planning Committee, Governors, WSBA officers and the Executive Director. Following the meetings, the member feedback will be added to the database of members' thoughts, concerns and suggestions. We hope for personal feedback and input from up to 300 WSBA members. At the meetings that have been held so far, members who have participated uniformly report feeling very positive about the experience and that their time was well spent.

The town meetings are only one method of gathering information. We are now also receiving completed member surveys with thoughtful and constructive responses. (The survey appears in the March *Bar News* pp. 19-20, and online at www.wsba.org.) Another method of data gathering is structured interviews with such stakeholder groups as judges, specialty and local bars, staff, and Governors.

The data will be assembled into a report describing what kind of Bar Association members want in the future. The Board will then consider this information at its retreat in late July and begin to lay out future programs that answer members' concerns and requests. Results will be shared with members as we go along.

Please be sure we have heard from you using any or all of the vehicles described. And thanks to those of you who have already participated!

Attention Active and Inactive WSBA Members: 1999 Licensing Fee Reminder

If you have already paid your 1999 WSBA Licensing Fee, thank you.

The WSBA's mission is to serve our members. Whenever you have questions or need assistance, please do not hesitate to call the WSBA Service Center. We are open Monday through Friday, 8:00 a.m. to 5:00 p.m. and can be reached at 800-945-WSBA or 206-443-WSBA. You can also send e-mail to questions@wsba.org.

If you have not yet paid your 1999 WSBA Licensing Fee, we'd like to remind you that it was due on February 1st. Please note that beginning March 1st, a 20% penalty is imposed on unpaid Licensing Fees. After April 1, 1999, the penalty is increased to 50%.

It is important to note that the *last* day to pay your 1999 WSBA Licensing Fee is May 1, 1999. If the Licensing Fee remains unpaid after that date, the delinquency will be certified to the Supreme Court, which will enter an order of suspension from the practice of law. Please don't let this happen to you.

If you have any questions about the Licensing Fee or late-fee penalties, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail us at questions@wsba.org. We're here to assist you and answer your questions.

Court Rules Alert

Proposed amendments to a very substantial number of court rules have been published by the Washington Supreme Court for comment by April 30, 1999. The proposed amendments cover a wide variety of practices and courts.

The Supreme Court has published for comment proposed rules including the following:

ER 1101	Application of Evidence Rules
RAP 10.2, 10.6, 10.8, 12.4 and 13.4	Amicus Briefs
CR 40(f)	Affidavits of Prejudice
CrR 3.4	Presence of Defendant — Video Proceedings
CrR 4.2	Guilty Plea Statements
CrR 8.9	Affidavits of Prejudice
CRLJ 26	Discovery
CrRLJ 2.1(d)(2)	Filing Citations
CrRLJ 3.2(m)	Bail in Criminal Traffic Cases
CrRLJ 3.4	Presence of Defendant — Video Proceedings
RALJ 2.2	What May Be Appealed
RALJ 4.3	Stay of Enforcement of Judgment
IRLJ 2.2(d)	Filing Traffic Citations
IRLJ 6.6(b) and (d)	Speed Measuring Devices
JuCR 1.5, 2.1, 2.4, 3.9, 5.3, 5a.2, 6.4, 7.6, 7.7, 7.12 and 7.13	Numerous Rules Concerning Juvenile Court Proceedings
GR 19	Video Conference Standards
APR 11	Continuing Education
APR 14	Foreign Law Consultants–Limited Admission
APR 16	New Rule–Suspension from Practice

Additionally, proposals to revise and integrate the Civil Rules for Superior Court with the Civil Rules for Courts of Limited Jurisdiction have been published for comment. These involve all of the Civil Rules. While many of the changes do not change Superior Court or District Court practice, other changes may either make District Court practice more similar to Superior Court practice or may otherwise involve changes in court rules and procedures. A similar proposal to revise and integrate the Criminal Rules for Superior Court with the Criminal Rules for Courts of Limited Jurisdiction has also been published. Again, many of the combined rules will not change practice in either court, but other proposed rule changes may implicate the practice in one or the other court.

The Washington State Bar Association has commented on some of the proposed rule changes, but many are still under review by the WSBA Court Rules and Procedures Committee and the Board of Governors for comment by April 30, 1999.

Practitioners and others are likewise free to comment on the proposed rules by contacting the Supreme Court by April 30, 1999, either in writing or by e-mail. Comments may be mailed to PO Box 40929, Olympia, WA 98504-0929 or e-mailed to Lisa.Bausch@courts.wa.gov. E-mail messages must be limited to 1,500 words.

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 Fourth Avenue, Fourth 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

Commercial Transactions: Now and When the Big Changes Arrive
April 9 – Seattle. 6.5 CLE credits pending. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

Understanding Business Entity Formation, Maintenance and Termination
April 15 – Seattle. 3.5 CLE credits. By CT Corporation System 212-315-7800.

Specialized Evidence
April 16 – Seattle. 6 CLE credits. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

CONSTRUCTION LAW

Construction Laws 1999
April 7 – Bellevue; April 21 – Everett; April 28 – Fife. 7 CLE credits. By Pacific Legal Seminars 206-933-9247.

EMPLOYMENT LAW

Basics of Employment Law
April 7-8 – Seattle. 12 CLE credits. By Council on Education in Management 925-988-1841.

Workers' Compensation in WA
April 15 – Seattle. 6.5 CLE credits. By Lorman 715-833-3940.

ENVIRONMENTAL LAW

Basic Power Searching and Environmental Law
April 20 – Seattle. 6 CLE credits. By UW CLE 206-543-0059.

ESTATE PLANNING

General Practice Series: How to Draw a Valid Will in WA
April 20 – Seattle. 3 CLE credits. By UW CLE 206-543-0059.

General Practice Series: Simple Probate of a Family Estate
April 20 – Seattle. 3 CLE credits. By UW CLE 206-543-0059.

ETHICS

Beating the Odds on Legal Malpractice: Ethics and the Practice of Law
April 23 – Spokane. 1 CLE ethics credit. By Great American Insurance Co. Legal Professional Liability Division 407-667-7880.

FAMILY LAW

Child Support and Enforcement in WA
April 21 – Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-7909.

Family Law Skills Institute
April 23-24 – Seattle. CLE credits TBA. By WSBA-CLE & Family Law Section 800-945-WSBA or 206-443-WSBA.

GENERAL

One Day 401(k) Program
April 8 – Seattle. 6.5 CLE credits. By Pension Publications of Denver 800-246-9442.

Lessons from Two Decades of Trial Consulting
April 8 & 22 – Seattle. 3.25 CLE credits. By Tsongas and Associates 503-225-0321.

Communication in the Courtroom
April 12 – Everett; April 21 – Seattle; April 28 Olympia. 7.5 CLE credits. By Carl Grant 206-364-5289.

The Law of the Internet in WA
April 13 – Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-7909.

Claims Laws 1999
April 14 – Bellevue. 4 CLE credits. By Pacific Legal Seminars 206-933-9247.

Public Works Laws 1999
April 14 – Bellevue. 3 CLE credits. By Pacific Legal Seminars 206-933-9247.

Hazardous Waste in WA
April 14 – Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-7909.

Chiropractors and Lawyers
April 15 – Seattle. 6.25 CLE credits. By WSTLA 206-464-1011.

Current Issues in Forensic Practice
April 15 – Seattle. 2 CLE credits. By Seattle Forensic Institute 206-624-6454.

WSBA Lawyers' Assistance Program 2nd Annual Statewide Conference
April 16-18 – Lake Chelan. 9.25 CLE credits (incl. 4.25 ethics). By WSBA Lawyers' Assistance Program 800-945-WSBA or 206-443-WSBA.

Interest-Based Mediation
April 19-23 – Spokane. 41 CLE credits (incl. 1 ethics). By Fulcrum Institute Dispute Resolution Clinic 509-838-2799.

Internet Legal Research
April 20 – Seattle. 3.25 CLE credits. By WA Law School Foundation 206-543-0059.

Getting the Judge to Say Yes
April 22 – Seattle. 7 CLE credits. By Kinder Legal Writing 206-622-3810.

Child Witness and Juvenile Perpetrators: Addressing the Impact of Intimate Partner Violence
April 22 -23 – Spokane. 16.5 CLE credits. By Spokane County Domestic Violence Consortium 509-487-6783.

The Big Mouth: Confessions, Statements, Lies and Other Perils of Talking
April 23 – Seattle. CLE credits TBA. By WACDL 206-623-1302.

Training to Be a Professional Mediator
April 23-24 – Seattle. 15 CLE credits (incl. 1 ethics). By Alan Alhadeff Mediation 206-281-9950.

Insurance Coverage Issues
April 23 – Seattle. 6.25 CLE credits (incl. 1 ethics). WSBA-CLE 800-945-WSBA or 206-443-WSBA.

12th Annual Northwest Bankruptcy Institute
April 23-24 – Seattle. 9.5 CLE credits (incl. 1 ethics) pending. By Oregon State Bar 503-684-7413.

WSAMA Spring Conference 1999
April 28-30 – Vancouver. 10.75 CLE credits (incl. 1 ethics). By WA State Association of Municipal Attorneys 206-625-1300.

Overview of Landlord-Tenant Law in WA
April 29 – Seattle. 1 CLE credit. By King County Bar Association 206-624-9365.

Auto Cases
April 29 – Seattle. 6.25 (incl. .5 ethics). By WSTLA 206-464-1011.

INDIAN LAW

Indian Law: Interaction Among Three Sovereigns
April 30 – Seattle. CLE credits TBA. WSBA-CLE & Indian Law Section 800-945-WSBA or 206-443-WSBA.

LITIGATION

Power Persuasion: Advanced Trial Techniques for the Experienced Litigator Video Replay
April 2 – Yakima; April 8 – Seattle; April 15 – Vancouver; April 21 – Kelso; April 23 – Walla Walla. 6.75 CLE credits (incl. 1 ethics). By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

5th Annual Litigation Institute
April 15 – Seattle. 7.5 CLE credits (incl. 1 ethics). By WSBA-CLE & Federal Bar Assoc. of WA 800-945-WSBA or 206-443-WSBA.

Successful ADA Litigation in WA
April 27 – Seattle. 6.5 CLE credits (incl. 1 ethics). By NBI 715-835-7909.

REAL ESTATE LAW

1999 Advanced Conference on Real Estate Purchase and Sale
April 8-9 – Seattle. 14 CLE credits (incl. 1 ethics). By Law Seminars International 206-567-4490.

Frank and Rosen LLP
is pleased to announce
a change in the name of the firm to

FRANK ROSEN FREED GARFINKEL & ROBERTS LLP

EMPLOYMENT AND LABOR LAW

TRIAL LAWYERS

STEVEN B. FRANK
JON HOWARD ROSEN
CLIFFORD FREED
MARTIN S. GARFINKEL
MARY E. ROBERTS

MICHAEL R. KELLER
Of Counsel

Representing employees and labor unions in

- *Wrongful Termination*
- *Discrimination*
- *Sexual Harassment*
- *Unpaid Wages and Overtime*
- *Government Employment*
- *Pension Benefits*

Since 1981

PHONE (206) 682-6711
FAX (206) 682-0401

SUITE 1200 HOGE BUILDING, 705 SECOND AVENUE
SEATTLE, WASHINGTON 98104-1729

LAWYERS

RYAN, SWANSON & CLEVELAND, PLLC

is pleased to announce that

Craig B. Wright

has been admitted as a Member of the firm,

Kennard M. Goodman,
Hunington Sachs
and Paul Soreff

have joined the firm as Of Counsel,

and

Maureen D. Burke

has joined the firm as an Associate.

1201 Third Avenue, Suite 3400
Seattle, WA 98101-3034
206-464-4224
Facsimile 206-583-0359

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

is pleased to announce that

RACHEL A. BROOKS

has joined our firm as an Associate

Ms. Brooks practice will emphasize Commercial Litigation, Creditor's Rights and Real Estate

Pacific Tower • 915 Broadway, Suite 300
Vancouver, Washington 98660
360-696-3312 • 503-283-3393
fax 360-696-2122
e-mail: rachelb@landerholm.com
website: www.landerholm.com

CUSACK & KNOWLES, P.L.L.C.

is pleased to announce the addition

of

J.D. SMITH

as an associate with the firm.

Mr. Smith, a graduate of Texas Wesleyan University School of Law, will emphasize insurance defense and coverage matters in his practice.

Prior to joining the firm, Mr. Smith worked for Safeco Insurance Company as a Multi-Line Insurance Adjuster and Professional Liability Underwriter.

CUSACK & KNOWLES, P.L.L.C.
Two Union Square, 601 Union Street, Suite 3000
Seattle, Washington 98101
Telephone: 206-521-3001
Facsimile: 206-521-3997

www.cusack-knowles.com

GOTTLIEB, FISHER & ANDREWS, PLLC

ATTORNEYS AT LAW

is pleased to announce

that

ROBERT J. ("RUSTY") FALLIS

former Assistant Attorney General
for the State of Washington,

joined the firm as an associate on March 1, 1999

1325 Fourth Avenue, Suite 1200
Seattle, Washington 98101-2531
Phone: 206-654-1999
Fax: 206-654-8725

KENYON LAW FIRM

SERVING WASHINGTON CITIES

MICHAEL R. KENYON
MARGITA A. DORNAY
LISA M. MARSHALL
ROBERT F. NOE
BRUCE L. DISEND
CAROL A. MORRIS
OF COUNSEL

DANA D. KAPELA
GRAHAM P. BLACK
KIMBERLY A. WALDEN
ANNE C. JACKSON
LISA R. PODELL
SANDRA S. MEADOWCROFT

WE ARE PLEASED TO ANNOUNCE THAT

BRUCE L. DISEND

Bruce graduated from Boston University School of Law in 1972. After several years in private practice in Delaware, Bruce served as a civil deputy prosecutor in Whatcom County.
Since 1984, Bruce has provided counsel and assistance as City Attorney for Bellingham and Puyallup, and now for Shoreline.

and

CAROL A. MORRIS

Carol handles all land use litigation services for the Association of Washington Cities Insurance Pool members, and also serves as City Attorney for Gig Harbor and Hunts Point. A former member of Ogden Murphy Wallace, PLLC, she joins us as Of Counsel to the firm. Carol is an adjunct professor of municipal law at Seattle University School of Law, from which she graduated in 1988.

HAVE JOINED OUR FIRM

Kenyon Law Firm provides practical advice and a full range of legal counsel to Washington municipalities.
Please let us know if we can help.

11 FRONT STREET SOUTH, ISSAQUAH, WASHINGTON 98027
425-392-7090
206-628-9059
Fax 425-392-7071

Announcements

Bennett Bigelow & Leedom P.S.

is pleased to announce that

Mark C. Gary
Michael Madden
and
Vickie J. Williams

have become Shareholders of the firm and

Bruce W. Megard, Jr.
and
Michael C. Tolfree

have joined as associates.

999 Third Avenue, Suite 2150
Seattle, Washington 98104

C. Dennis Brislawn and Thomas D. Lofton

are pleased to announce the formation of

Brislawn Lofton, PLLC

A Professional Limited Liability Company

The firm will continue to provide a full range of legal representation to individuals, families & businesses. Areas of practice include asset protection, estate administration, business planning, wealth replacement, taxation, wills and trusts, insurance law, charitable bequests, estate tax returns, probate, and real estate.

Attorneys & Counselors at Law:

C. Dennis Brislawn, Jr. (WA)
Thomas D. Lofton (WA & OR)
Richard J. Gregorek (WA)
Thomas F. Jurney (OR)

The Emerald Building
520 Kirkland Way, Suite 301
Kirkland, Washington 98033
425-803-9500
800-466-6658

Regional Office:
800 American Bank Bldg.
621 SW Morrison Street
Portland, Oregon 97205
503-294-0699

Foster Pepper & Shefelman PLLC

Attorneys at Law

We are pleased to announce

James P. Dugan
Intellectual Property

John A. Fandel
Real Estate

Joann H. Francis
Employment • Municipal & Public Finance

Wade S. Leathers
Tax

Thomas M. Pors
Land Use & Environmental • Natural Resources

Sandra K. Saville
Litigation • Employment • Family Law

Have been elected members of the firm
Effective January 1, 1999

Anchorage • Bellevue • Portland • Seattle • Spokane

WOLFSTONE, PANCHOT & BLOCH, P.S., INC.

Attorneys at Law

is please to announce that

BRADLEY S. WOLF

has been named a shareholder in the firm.

Mr. Wolf's practice emphasizes civil litigation.

The firm continues its practice in the areas of real estate, business law, estate planning and administration, family law and all aspects of litigation.

Stanley G. Bakun, Lynn P. Barker, Kenneth A. Bloch, Kay L. Brossard, Robert L. DiJulio, John A. McGary, Dudley Panchot, Kevin M. Paulich, Robert J. Weber, Bradley S. Wolf, and Edwin G. Woodward

Seattle Office
1500 Norton Building
801 2nd Avenue
Seattle, Washington 98104

Bellevue Office
901-104th Avenue N.E.
Suite 200
Bellevue, Washington 98004

Phone: (206) 682-3840 Fax: (206) 340-8837

Professionals

TAX-DEFERRED EXCHANGES

James Robert Deal, P.S.
The Maplewood Exchange Corporation

425-774-0233 800-232-1457

www.child-support-lawyer.com

MEDICAL NEGLIGENCE & PRODUCT LIABILITY

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

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

CHEMNICK, MOEN & GREENSTREET
450 Market Place Two
2001 Western Avenue
Seattle, WA 98121
(206) 443-8600

CALIF/WA DUAL-LICENSED

Michael A. Aronoff
Aronoff & McGoran P.S.

Available for referrals, consultationor association on California matters. Heavy family law background. 20 years' experience in California.

(253) 874-0189
fax (253) 874-8005

CHILD ABUSE

Steve Paul Moen is available for assistance and referral of civil and criminal cases involving child abuse, delayed recall and mental health counseling.

SHAFER, MOEN & BRYAN, P.S.
Hoge Building, Seattle
(206) 624-7460

APPEALS

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

CHARLES K. WIGGINS
Former Judge, Court of Appeals
(206) 780-5033

CHILD ABUSE ALLEGATIONS

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

(206) 382-0000

HEARTLAND

Capital Funding, Inc.

Settlement/Lottery Buyer
We buy structured settlements, lotteries and large elder life insurance policies.

800-897-9825

"Since 1993, providing clients lump sum options"

CANADA

Gregory L. Samuels
Trial Lawyer in Washington & British Columbia

(800) 222-6332

APPEALS

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

Douglass A. North
MALTMAN, REED, NORTH, AHRENS & MALNATI, P.S.
1415 Norton Building
Seattle, Washington 98104
Telephone (206) 624-6271

DENTAL MALPRACTICE & DISCIPLINARY PROCEEDINGS

John J. Greaney announces his availability for referral of

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

(425) 451-1202, Bellevue

For information about advertising in the Professionals section of *Bar News* — call 206-727-8213.

Professionals

HIGHER EDUCATION LAW
EDUCATION LAW

Thomas K. Dalglish, J.D., Ph.D.
Former counsel to state universities, state Superintendent of Public Instruction. University teaching, research, administrative experience. 20+ years public, private practice of law. Available for referrals, consultation, association or mediation in disputes involving faculty, students.

THOMAS KILLIN DALGLISH
5215 Ballard Avenue NW
Seattle, WA 98107
(206) 706-1000

CONSTRUCTION SITE INJURIES

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

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

EMPLOYMENT INVESTIGATIONS

Amy Stephson and **Nalani Askov** are available to conduct independent investigations of employee discrimination complaints. Extensive experience.

STEPHSON ASKOV
705 Second Avenue, Suite 401
Seattle, Washington 98104
(206) 623-1628

Classifieds

FOR SALE

Complete sets of Wn.2d and Wa.App. for sale: only $10 per volume (full sets only). Call Gary at 360-438-7329.

Law Library: updated through August 1, 1998: Washington Practice; RCW; Washington Digest 2d; Washington Appellate Reports; Washington Reports; and Washington Reports 2d. Make offer 425-259-3915.

1890s golden oak office furniture in excellent condition: 11 pieces including 18-drawer 5x5 quarter-sawn partner's desk, combination standup desk, and two leather-back side chairs. Must sell by end of April. Phone 509-448-1414 or email bondgeg@juno.com.

SPACE AVAILABLE

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.

Pioneer Square/Maynard Building: well equipped law office, including receptionist, conference room, library, fax, copier, kitchenette. Congenial office-sharing. Ask for Steve or Dale 206-447-1560.

Mercer Island office-sharing: lake view, prime location, class "A" building, secretarial available. Call 206-275-0770.

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 space available for attorney in newly remodeled law office in Seattle, Denny Regrade area. Secretarial space available. Fully serviced: receptionist, phones, copier, fax, etc. Available now. Carol L. Edward, 206-283-9662.

Bainbridge Island: One attorney's office space in restored 1922 vintage landmark home. Shared fax, copy machine, receptionist and conference room included. Walking distance to Seattle ferry. $850/month. Call Bill McGonagle 206-842-5681.

Sole Practitioners: 1-3-person executive suites fully serviced, complete with conference room, fax, copy equipment, receptionist and accounting services available. New high-level offices located on the Denny Regrade. Available now. Call 206-467-9777.

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 206-624-9400.

Ballard: office space available in long-established Ballard law office; secretarial space and/or share secretary; library, fax, copier, parking; close to banks and post office. Call Jonsson 206-783-4100.

Bellevue downtown: views of downtown Bellevue, Lake Washington and Seattle skyline in prestigious City Center Bellevue. Reception, library, conference room, kitchen included. Possible referrals. 425-451-8301.

Two offices available in our Lynnwood law office, each overlooking small lake with its mallards, wood ducks and Canada geese. Perfect satellite office for downtown firm. Must have E&O. Contact James at 425-774-0233.

Kent East-Hill office sharing opportunity: Established 25-year attorney concentrating on estate planning, business law and personal injury seeks attorney experienced in other areas of law to share office space. Good opportunity for attorneys to complement one another. Recently remodeled office with room for one attorney and a legal assistant. If interested, please call David A. Gagley at 253-854-1244.

Northgate office: furnished space for one attorney/one staff. See it and you will like it. Bob 206-525-0600.

Place for one lawyer in two-attorney suite with library, reception, conference room, kitchen, fax and parking available. Please call Colleen at 425-641-6343.

Bellevue downtown: one or two offices now available. Receptionist, telephone, fax, copier, library/conference room and parking all included. One office has private bathroom, wet bar, secretarial space with waiting area. Call Barry Hasson 425-454-4901.

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

Leen & Moore (historical building/Capitol Hill area) has a large attorney office for rent, indoor parking available, phone, receptionist, use of library and conference room. $750/mo. Please call Judy at 206-325-6022 for further information.

POSITIONS AVAILABLE

Corporate/tax attorney: small, well established AV-rated Portland firm seeks attorney with four-plus years' significant corporate and tax experience to join growing corporate, tax planning and transactional practice. Send résumé in confidence to Calvin W. Collins, Newcomb, Sabin, Schwartz & Landsverk LLP, 111 SW Fifth Avenue, Suite 4040, Portland, OR 97204.

Reply to WSBA *Bar News* Box Numbers at:

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

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

Seattle: eight-attorney firm, AV-rated, with general civil practice seeks associate attorney with a minimum of two years' experience. Land use, real estate, business transactions, litigation or family law experience preferred. Please send résumé to WSBA *Bar News* Box 573.

Bainbridge Island law office seeking associate attorney with a minimum of two years' experience in estate planning, probate, real estate/business. Salary negotiable. Walking distance to Seattle ferry. Submit résumé and general description of client base, if any, to William McGonagle, Sherrard & McGonagle, 241 Madison Avenue, Bainbridge Island, WA 98110, or e-mail mcgonagle@telebyte.net.

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. http://www.attorneyjobs.com.

Mid-sized Portland, OR law firm seeks two associate attorneys for our land use, environmental and real estate groups. Applicants should have substantial relevant experience. Flexible work environment. Send résumé and letter of interest to Frank Hammond, Ramis Crew Corrigan and Bachrach, 1727 NW Hoyt St., Portland, OR 97209.

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.

Corporate/transactional attorney: Safeco Corporation is seeking an experienced business transactions attorney to join its in-house legal staff. Candidate should have a minimum of five years' experience in general corporate law, mergers and acquisitions, or secured financing transactions. We require excellent academic credentials and references, and strong analytical and writing skills. Washington State Bar membership preferred. Please submit a cover letter and résumé outlining qualifications to: Safeco Corporation, Safeco Plaza, Human Resources T-17, Attn: AT, Seattle, WA 98185, or fax 206-548-7117. We are an equal opportunity employer committed to employing a diverse workforce.

Quality attorneys sought to fill high-end permanent and contract positions in law firms and companies throughout Washington. Contact Legal Ease, LLC by phone 425-822-1157; fax 425-889-2775; or e-mail legalease@legalease.com.

Associate attorney, Seattle: seeking attorney for small Seattle firm concentrating on medical malpractice defense. Background must include experience as a healthcare provider. Excellent writing and good interpersonal skills. Will consider recent graduates. Send résumé and cover letter to McIntyre & Barns, Attn: Lee Barns, 1325 Fourth Ave., Ste.1700, Seattle, WA 98101-2509.

Real estate and business transaction associate with a minimum of two years' experience sought by Davidson, Czeisler, Kilpatric & Zeno. Résumés by fax to 425-827-8725 or by mail to PO Box 817, Kirkland, WA 98083-0817.

Plaintiff personal injury firm seeks an attorney to assist with practice. J.D.; minimum of three years' civil litigation experience required. Must have excellent oral, research and writing skills. Washington State Bar membership is required. Immediate opening. Send or fax cover letter with detailed description of litigation skills and experience, and résumé, to: Arthur D. Miller, Attorney at Law, 1220 Main St., Ste. 355, Vancouver, WA 98660, fax 360-694-5919.

Etco, Inc. is seeking a lawyer to represent it on a contingency basis in a contract dispute involving a large sum of unpaid commission. Please call Eitan at 206-762-1707.

The law firm of Birch, Horton, Bittner and Cherot has an opening in its Anchorage, Alaska office for two attorneys with excellent academic credentials and writing skills. Must have at least two years' experience in commercial transaction, litigation or employment law. Birch, Horton, Bittner and Cherot has offices in Anchorage, Alaska and Washington, DC. It is an AV-rated firm and recently celebrated its 25th anniversary. Competitive salary and benefits. Send résumé to: mparise@bhb.com or Michael J. Parise, Birch, Horton, Bittner and Cherot, 1127 W. 7th Ave., Anchorage, AK 99501-3399.

The United States District Court, Western District of Washington, announces the retirement of the Honorable David E. Wilson from his position as full-time United States Magistrate Judge in Seattle, Washington. Applications are now being accepted for the position being vacated in February 2000. The duties of the position are demanding and wide-ranging and will include: (1) the trial and disposition of civil cases upon consent of the litigants; (2) conduct of preliminary proceedings in felony cases; (3) trial and disposition at the Federal Courthouse in Tacoma of petty and misdemeanor cases arising from outlying government facilities such as Fort Lewis, Bangor Naval Submarine Base, Mt. Rainier National Park, Olympic National Park and Bremerton Naval Shipyard; (4) trial and disposition at Seattle of other federal misdemeanor cases; (5) assisting District Judges in disposition of prisoner petitions and Social Security appeals; (6) conduct of various pretrial matters and evidentiary proceedings on reference from the Judges of the District Court. The basic jurisdiction of the United States Magistrate Judge is specified in 28 U.S.C. & 636. To be qualified for appointment an applicant must: (1) be, and have been for at least five years, a member in good standing of the bar of the highest court of a state, the District of Columbia, the Commonwealth of Puerto Rico, or the Virgin Islands of the United States, and have been engaged in the active practice of law for a period of at least five years (with some substitutes authorized); (2) be competent to perform all the duties of the office; be of good moral character; be emotionally stable and mature; be committed to equal justice under the law; be in good health; be patient and courteous; and be capable of deliberation

To Place a Classified Ad:

Rates: *WSBA members:* $25/first 25 words; $0.25 ea. add'l. word. *Nonmembers:* $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., April 1 for May issue. No cancellations after deadline. **Mail to:** WSBA *Bar News* Classifieds, 2101 Fourth Ave., Fourth 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

and decisiveness; (3) be less than 70 years old; and (4) not be related to an active Judge of the District Court. A Merit Selection Panel composed of attorneys and other members of the community will review all applicants and recommend to the Judges of the District Court in confidence the five persons whom it considers best qualified. The court will make the appointment, following an FBI full-field investigation and IRS tax check of the appointee. An affirmative effort will be made to give due consideration to all qualified candidates, including women and members of minority groups. The salary of the position is $125,764 per annum. The term of office is eight years. Application forms and further information on the Magistrate Judge position may be obtained from the Clerk of the District Court (or via the court's web site at http://www.wawd.uscourts. gov): Bruce Rifkin, Clerk, 215 US Courthouse, 1010 Fifth Avenue, Seattle, WA, 98104; 206-553-5598 or Janet Thornton, Deputy in Charge, 1717 Pacific Avenue, Room 3100, Tacoma, WA, 98402; 253-593-6313. Applications must be submitted only by potential nominees personally and must be received no later than July 31, 1999. All applications will be kept confidential, unless the applicant consents to disclosure, and all applications will be examined only by members of the Merit Selection Panel and the Judges of the District Court. The Panel's deliberations will remain confidential.

SERVICES

Business practice, litigation and estates assistance: business agreements, formations, licensing and transactions. Also commercial and other civil litigation including briefs, appeals, discovery, research, trial preparation. Wills, trusts and probate. Yale and Stanford law graduate. Colorado bar member. High-quality work. Very experienced. Affordable hourly. William Goldstein 206-322-2204 or 360-720-0782.

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.

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 see Martindale, AV-rated. Zach Zabinsky 503-223-8517.

Skip tracing-locator: Need to find someone? Guaranteed locate or no charge/no minimum fee for basic locate. 87% successful. Nationwide. Confidential. Verify USA. 888-2-VERIFY.

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

Legal Research Solutions 800-627-8047. Our services include raw research, court-ready trial and appellate briefs, summations of law, drafting of pleadings, motions and discovery. All areas of law and all jurisdictions available. State and Federal. Our large network includes attorneys with many years of practical experience in vast areas of the law who are all top-quality researchers and writers. Areas of emphasis are also available, including tax, environmental, insurance among others. No additional charges for computerized research. Flat fee or hourly rates available. Seven days per week. Rush/long-term projects welcome. Fast turnaround. MasterCard/Visa accepted.

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.

California litigation/collection: California attorney ready to assist you in your California needs: domesticating judgments, jurisdictional challenges, collections, depositions, litigation. Rick Schroeder 818-879-1943.

Contract attorney: complex litigation. Eight years' experience including jury trials and appeals. Large firm experience. Excellent research, writing, case preparation, depositions and motions. Downtown office. Bob 206-892-2252.

Spring into action with a contract attorney: I perform legal research and writing for Washington lawyers. Located near 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. NE, Seattle, WA 98115. Telephone: 206-526-5777; e-mail: lizbottman@sprintmail.com.

Hawaii attorney with federal and state court commercial litigation background available for assistance in civil cases, real property, and probate matters. 808-396-4165; e-mail: susankern @aol.com.

WILL SEARCH

George F. Davis died January 23, 1998, a resident of Spokane, Washington. He was born July 10, 1918, in Toronto, Canada. If any attorney has possession of his will, please contact Francesca D'Angelo, 221 North Wall Street, Ste. 500, Spokane, WA 99201; 509-838-4261.

Will Search: Anyone with information concerning the Last Will and Testament of Mary E. McClelland, deceased February 22, 1999, please contact Emily R. Hansen 206-622-3280.

MISCELLANEOUS

Looking for business/tax law practice in Seattle or Eastside to acquire. Reply in confidence to WSBA *Bar News* Box 574.

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, set in vineyards, olives, apricots, weekly $1,600-2,500; on same estate: 18th C. farmhouse – 4 apartments, with views, weekly $800-1,000; 18th C. house, end of private road on wine, olive estate, 16 miles S. of Florence, 3 bedrooms (sleeps 6), 3 baths, pool, gardens, weekly $1,400-1,800; adjacent two bedroom (sleeps 4), two-bath apartment, weekly $1,100-1,500. Contact Ken Lawson 206-632-1085; fax 206-632-1086.

Whistler, Canada: six-person condo in one of the world's premier ski resorts. Available December 26, 1999 to January 2, 2000. Spend the millennium in international splendor. $2,000 for the week. Contact Randy Jones at 360-357-3501.

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

Are you interested in influencing the expansion and policies of a growing organization committed to preventing burns and supporting burn survivors? Northwest Burn Foundation is seeking enthusiastic board members to establish policy, secure and monitor funds, and develop strategic plans as we expand programs and fundraising efforts. We require 8-10 hrs. per month commitment and committee participation. For an info packet contact NWBF: 206-789-6838; e-mail: nwburn@ix.netcom.com.

Top dollar paid for structured settlements, lottery winnings and large life insurance policies. Heartland Capital Funding 800-897-9825. Professional annuity funding for you and your client.

In legal research, *control* of the outcome requires *command* of the process.

West's® Washington Case Law™ and Revised Code of Washington Unannotated™

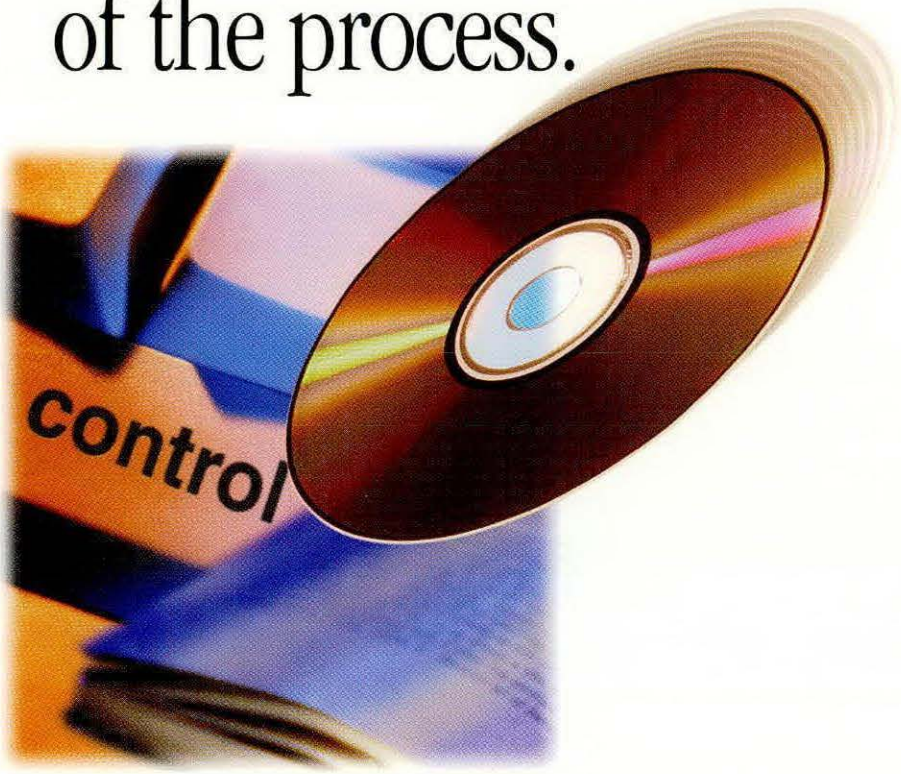
West's Revised Code of Washington Annotated™

West's Washington Digest CD-ROM Edition™

Washington Administrative Code

*American Law Reports**

*American Jurisprudence**



West CD-ROM Libraries™ put you in control, with interlocking research materials that are powerful, easy-to-use and structured to meet your needs. Whether you're beginning your research with a case, a statute or an annotation, West Group's legal research system will guide you to the correct answer–every time.

West Group has united the finest resources in the legal publishing industry into a cohesive, coherent whole. When you access this information through West CD-ROM Libraries, you'll get the power to zero in on big issues with headnotes and case synopses, solidify your argument with KeyCite™, then bring it all together with the very latest data from over 9,000 WESTLAW® databases.

Bring West CD-ROM Libraries into your practice. You'll watch your efficiency soar–while your costs, time and effort plummet.

Make more connections for your research dollar. Contact West Group at 1-800-762-5272.

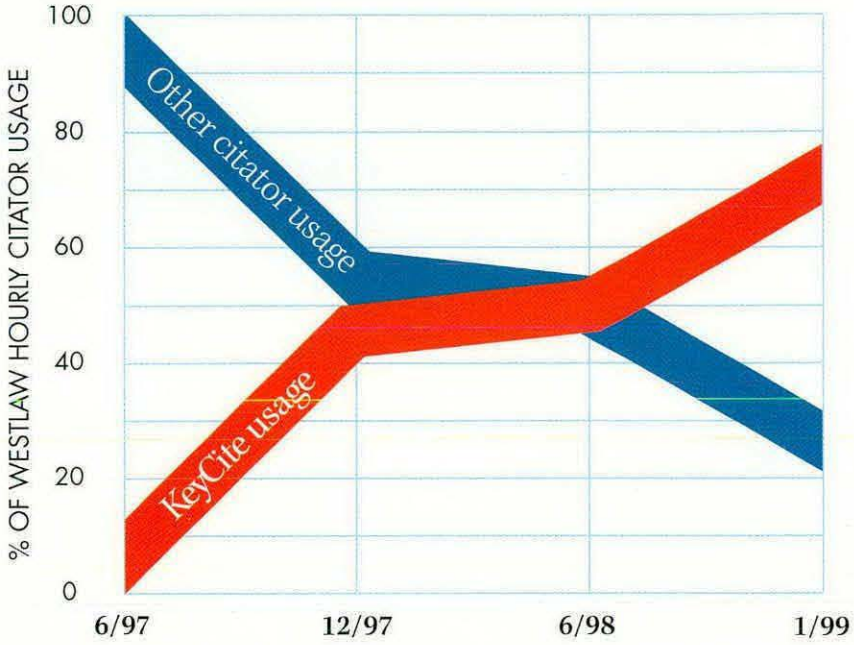
Please provide OFFER NUMBER 826077.

WEST GROUP™

Bancroft-Whitney • Clark Boardman Callaghan
Lawyers Cooperative Publishing • WESTLAW® • West Publishing

*Available on PREMISE® and Folio® Research Software.
The trademarks shown above are used under license.

9-9510-4/3-98 826077 1-566-922-5



KeyCite. There's a quiet revolution taking place.

Customers already use KeyCite™ by more than 2 to 1 over all other citators on Westlaw®.

Why this break from the old way of doing things?

Perhaps it's because KeyCite is so accurate, current, comprehensive and easy to use. Here's why:

- Every decision in KeyCite has been analyzed by an attorney-editor.
- KeyCite warns you of overrulings within hours of case receipt at West Group.
- Only KeyCite covers all West-reported cases, one million unpublished cases, 600 law reviews, ALR® and more.
- Full-text headnotes, warning flags and depth of treatment stars make KeyCite the easiest citator.

All the more reason to make your break to KeyCite.

FREE BOOKLET. Ask for the illustrated KeyCite guide today.

CALL 1-800-700-9378
or visit www.westgroup.com/keycite

KeyCite™
The Key to Good Law

INFORMATION ON YOUR TERMS℠

Bancroft-Whitney • Clark Boardman Callaghan
Lawyers Cooperative Publishing • Westlaw® • West Publishing

WEST GROUP