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The Official Publication of the Washington State Bar

MAY 1999



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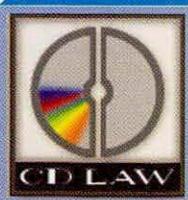
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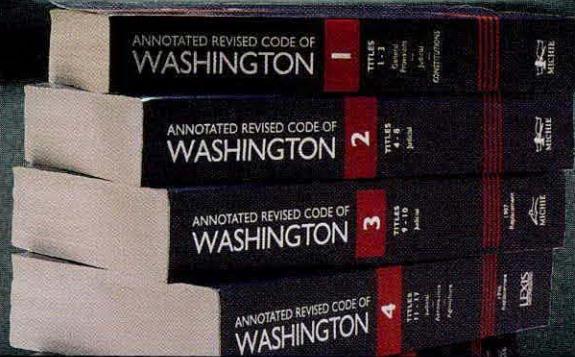
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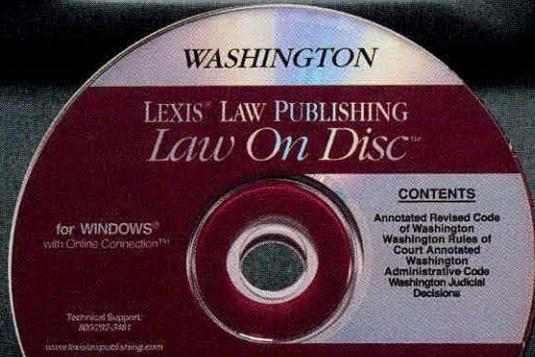
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# Washington State BAR NEWS

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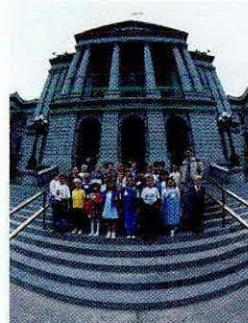
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*Sherrie Bennett* Editor 206-283-4015; *bennsl@aol.com*

*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*

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M. Janice Michels  
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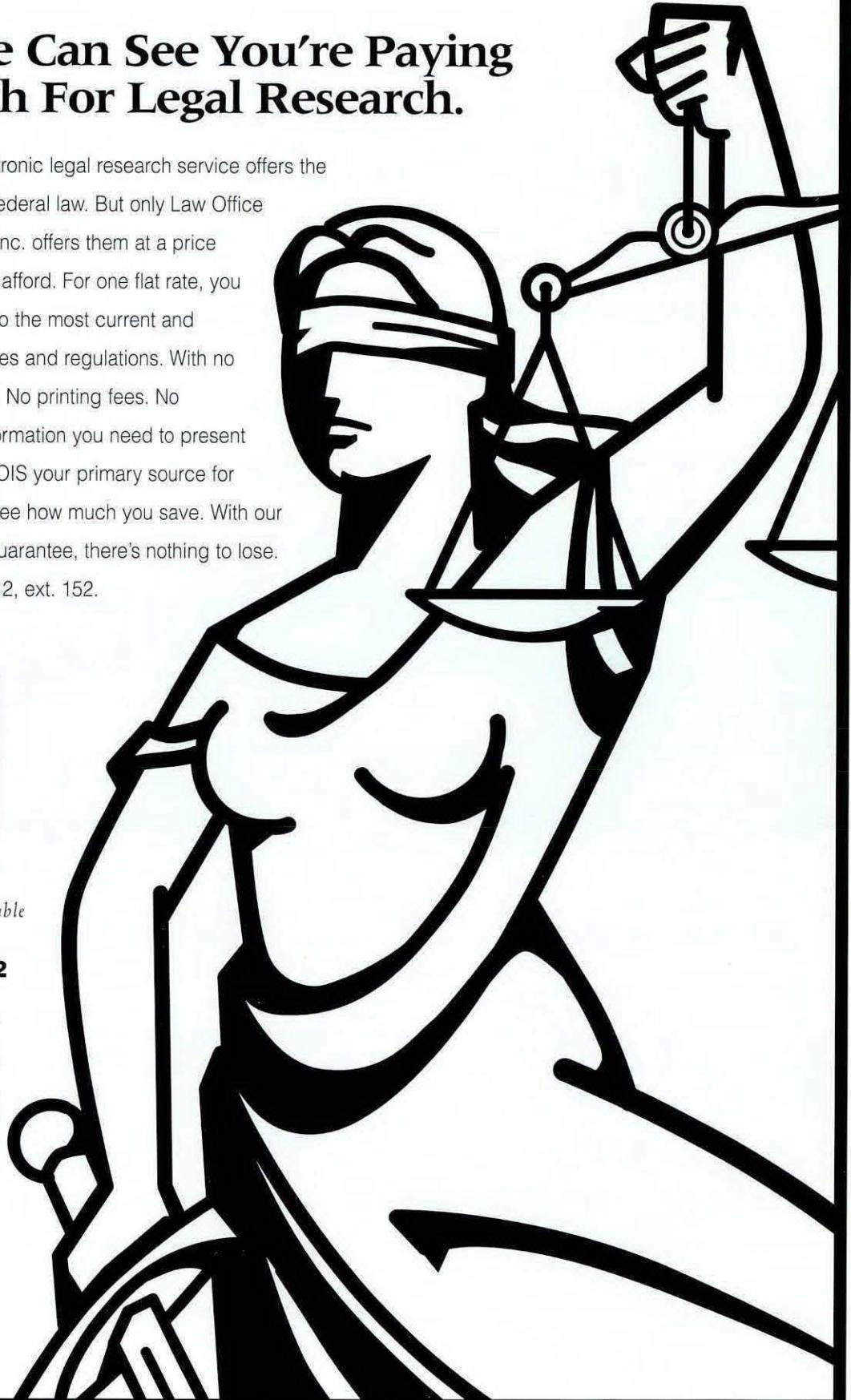


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# Letters

## WSBA Position on I-200 Chills First Amendment Rights

### Editor:

The "Editor's Note" in the February issue [p. 7] justifying the Board's decision to take a position on I-200 ignores the real issue. The WSBA is not just a private membership organization whose leadership can express opinions on public issues as they feel appropriate, and whose members can resign if they disagree; it is a state-created monopoly that exercises by delegation from the Supreme Court the power and authority of the state of Washington with regard to licensing, discipline and continuing education over a regulated occupation. Positions on I-200 that may be appropriate for purely private, voluntary organizations are not appropriate for one vested with state regulatory authority.

Formal positions — pro or con — by regulatory authorities raise concerns about chilling First Amendment-protected activities. Once the Board announces the position of the WSBA, applicants for admission may quite reasonably be concerned about taking public positions contrary to that of the organization that will pass on their fitness and character to practice their occupation. The issue is not whether the Board or the WSBA does in fact consider such activity in passing on admission (or discipline), but whether the possibility or public perception that it might chill protected speech or creates an appearance of impropriety. As lawyers, we should be sensitive to both.

Would it have been appropriate for the boards that oversee licensing and discipline of doctors, chiropractors or any of the other numerous occupations regulated in Washington to adopt formal positions supporting I-200? I doubt it. The WSBA exercises the same state regulatory authority over lawyers, and its adoption of a position — whether pro or con — on I-200 was equally inappropriate.

The Board needs to have more respect for the diversity of beliefs and opinions of its involuntary membership, and much more sensitivity to the possible chilling effect of its actions on First Amendment rights. If the WSBA wants to act like a private, voluntary membership organization in taking positions on issues like I-200, then it should consider surrender-

ing its regulatory authority and becoming one.

H. Lee Roussel  
Tacoma

## Citizens Should Determine Makeup of the Judiciary

### Editor:

After reading Todd De Groff's suggestions for reforming elections of the State Supreme Court judiciary [March, p. 29], I was left wondering, "So what's wrong with a few radicals on the Court?"

The proposal for a state "blue ribbon"

commission to rate judicial candidates and tag them as "qualified" on the ballot allows unwarranted intrusion into the election process by a group of élites. And for what purpose but to foist their political ideology on the rest of us?

Also proposed are subsidies for "qualified" candidates, i.e., those candidates who mirror the political views of the commission will receive state funding. Those candidates labeled by the commission as "radical" will receive nothing. Thus the arena of control over the state judiciary will shift from the people to the commission.

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## Why Some Washington Lawyers Get Rich... While Others Struggle To Earn A Living

TRABUCO, CA - Why do some lawyers make a fortune while others struggle just to get by? The answer, according to California lawyer David Ward, has nothing to do with talent, education, hard work, or even luck. "The lawyers who make the big money are not necessarily better lawyers," Ward says. "They have simply learned how to market their services."

Ward, a successful sole practitioner who once struggled to attract clients, credits his turnaround to a little-known marketing method he stumbled across six years ago. He tried it and almost immediately attracted a large number of referrals. "I went from dead broke and drowning in debt to earning \$300,000 a year, practically overnight."

Ward points out that although most lawyers get the bulk of their business through referrals, not one in 100 has a referral system, which, he maintains, can increase referrals by as much as 1000%. "Without a system, referrals are unpredictable. You may get new business this month, you may not," he says.

A referral system, by contrast, can bring in a steady stream of new clients, month after month, year after year. "It feels great to come to the office every day knowing the phone is going to ring and new business will be on the line," Ward says.

Ward, who has taught his referral system to lawyers throughout the U.S., says that most lawyers' marketing "is somewhere between atrocious and nonexistent." As a result, he says, a lawyer who uses a few simple marketing techniques can stand out from the competition. "When that happens, getting clients is easy."

Ward has written a report entitled, **"How To Get More Clients In A Month Than You Now Get All Year!"** which reveals how any lawyer can use this marketing system to get more clients and increase their income. For a **FREE** copy, call 1-800-562-4627 for a 24-hour **FREE** recorded message.

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Of course, the term "radical" is all in the eyes of the beholder. What is radical to one is moderate to another. The term is often used in the pejorative, to discredit one's opponents. Barry Goldwater once said, "Extremism in the defense of liberty is no vice, and moderation in the pursuit of justice is no virtue." Thus, the dissents and concurrences which Mr. De Groff finds disturbing are actually a positive sign that the Court is deliberating and debating the issues fully.

Trying to de-politicize the Court is like trying to de-politicize the Legislature. Powerful positions such as judgeships do not attract opinionless, blank-slate candidates. Nor should they. By its very nature, the Court is a highly charged arena which reviews cases embracing issues on the cutting edge of politics.

As Justice Philip Talmadge aptly points out in his counterpoint article, there is no group of "philosopher kings" who will give us better judges than the citizens themselves. In a representative democracy, citizens are the only blue-ribbon panel. Citizens, not state-funded commissions, should determine the makeup of the judiciary.

*Patricia Michl  
Sumner*

#### **47 Years of Practice Enough**

##### **Editor:**

The purpose of this letter is to announce my retirement from being an active, practicing attorney and a member of the Washington State Bar Association. I realize that because of Michael Jordan announcing his retirement from the NBA, my retirement statement loses some of its impact — but such is life.

I have actually been in a state of semi-retirement for the past two years. I have been conducting my practice from my home and discovered that I had the ability to say "no" to many clients and friends and refer them to other lawyers.

My trust account in the Ballinger Branch of City Bank contains only a few dollars of my own money kept in there to keep the account open. My office account at the same branch is fortunately considerably more loaded and will also be closed by me upon my return home.

My wife and I have been enjoying the sunshine in our travel trailer in Desert Hot

Springs, California, since early November 1998. We will probably return in early March. We have been taking these extended vacations for several years, which have long since confirmed my following firm beliefs:

1. I don't have to be a lawyer to be "me."
2. I can do "nothing" very, very well and with considerable imagination. I recognize that some of my clients probably thought that I had achieved that ability many years ago.

I earnestly believe that now that I have fully retired as a lawyer and attained full

status as a layperson, my knowledge of the law and its proper application will increase at least tenfold. This belief is confirmed each day by any lawyer who has seen a client or attended a social function.

Looking back over my 47 years of active practice and the thousands of lawyers I have encountered, it gives me great pleasure to say that the number of lawyers whose "word" I found I could not trust numbered less than my fingers on both hands. We are all lucky that it is not necessary for me to remove my shoes to continue the count.

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I am typing this letter myself on my laptop, which unfortunately uses the MS Word program. I usually use WordPerfect. I don't even know how to use the spell-check — but if you squint you should be able to work your way through.

In closing I will say that I will sorely miss my fellow members of the Bar — but I'd rather.

Levy S. Johnston  
Mountlake Terrace

### Discipline Lawyers Who Use Genderist Terms in Everyday Speech?

#### Editor:

I support the proposed RPC that would make a "manifestation of bias" unprofessional conduct. It is high time that this evil be eliminated root and branch. We can start with discipline against lawyers who use genderist terms in their everyday speech.

The EEOC has already cleared the path for the Bar Association with job-title rules. Henceforth, any lawyer who says

"fireman," "policeman" or "mailman" instead of "fire fighter," "peace officer" or "letter carrier" will have to undergo re-education at her/his own expense, or be suspended from practice.

This is no extreme measure. There are many professions and activities for which genderist language would remain perfectly appropriate. These include:

- subcultural normative business affairs consultant ("hit man");
- alternative fiscal management expert ("con man");
- lead poisoning lethality expert ("gun-man");
- household weatherization supply agent ("tin man");
- human resources special projects manager ("hatchet man");
- executive self-esteem actualization workers ("yes men");
- legal defense team ("henchmen");
- enlightened national leader ("manikin," "Congressman");
- entrenched oppressive government authority ("The Man").

Correctional institution redomiciliary efforts will continue to be known as "man-hunts." Piscine humanist dietary participants will still be called "man-eaters." Disposal technology workers and access implementata will still be known as "garbage men" and "manhole covers."

Words based on the Latin "manus" ("hand") are historically non-genderist and would remain in use. Hence, "maneuver," "manipulative," "mandatory" and "manure" would be perfectly permissible to describe, say, proposed rules of the Bar Association.

I have just one proposed amendment. When signing pleadings and letters to *Bar News*, to avoid bias, no one should be required to use a first name traditionally associated with only one gender.

Thus, lawyers named, e.g., "Thor" or "Athena" should be encouraged to use their initials instead.

M. T. Purcell  
Portland, OR

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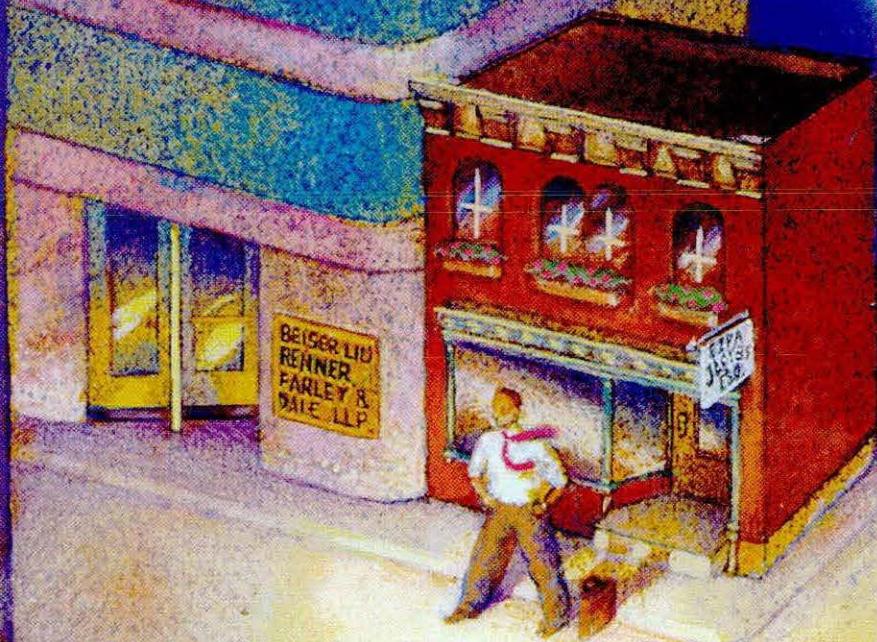
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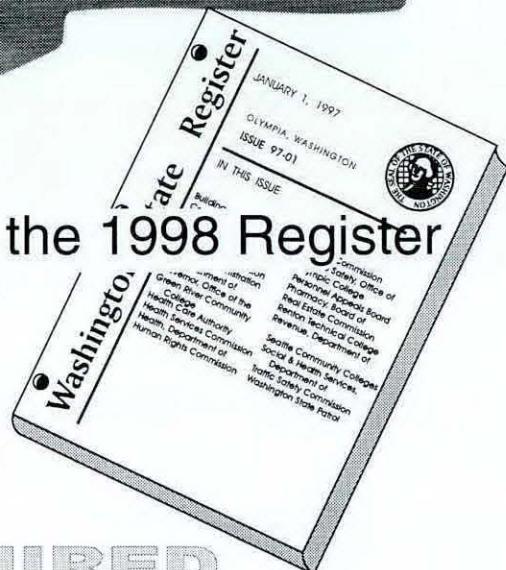
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## Volunteer Opportunities in Washington State

By **Sherrie Bennett**

*Editor*

There are 24 volunteer attorney programs in Washington state, all relying on the participation of local volunteer attorneys to provide services. Volunteer attorneys provide direct representation in areas such as landlord/tenant, family law, probate, benefits, consumer credit and bankruptcy. Attorneys also are needed to staff advice clinics, lecture to community groups and serve as board members. Whatever time, expertise and money you can donate to these programs not only fulfills your ethical obligation as an attorney to further equal access to justice, but also brings you the personal reward of helping other human beings who otherwise would not have obtained the help they need. Call your local volunteer attorney program for a complete list of the ways in which you can get involved in your own back yard.

### Benton-Franklin Legal Aid Society

10 North Washington, Ste. 4, Kennewick, WA 99336

*Contact: Marjorie Johnson*

*Phone: 509-582-5378*

Volunteer legal representation, dissolution clinics and parenting plan assistance for low-income persons, in conjunction with the Volunteer Center and the local bar.

### Blue Mountain Volunteer Attorney Referral Program

34 Boyer Ave., Walla Walla, WA 99362

*Contact: Jon Martin*

*Phone: 509-529-4980*

Volunteer lawyers from Walla Walla and Columbia Counties provide direct representation, family law clinics and pro se document review to low-income persons.

### Chelan-Douglas Community Action Legal Aid

620 Lewis St., Wenatchee, WA 98801

*Contact: Jeanne Everhart*

*Phone: 509-662-6156*

Legal advice, representation, and pro se dissolution assistance to low-income persons in conjunction with the Community Action Agency and the local bar.

### Clallam County Pro Bono Lawyers

P.O. Box 909, Port Angeles, WA 98362

*Contact: Cheryl Baumann*

*Phone: 360-417-0818*

Volunteer attorneys provide advice and representation to low-income persons.

### Clark County Volunteer Lawyers

406 W. 12th St., Vancouver, WA 98660

*Contact: Jane Van Dyke*

*Phone: 206-695-5975*

Volunteer lawyers from the local bar provide legal representation, advice, bankruptcy clinics and dissolution classes to low-income persons.

### Cowlitz Wahkiakum Legal Aid

526 Commerce Avenue, Longview, WA 98632

*Contact: Kayrene Gilbertson*

*Phone: 360-425-3430*

Volunteer attorneys from Cowlitz and Wahkiakum counties provide advice clinics and representation to low-income persons.

### Eastside Legal Assistance Program

15015 Main Street #208, Bellevue, WA 98007

*Contact: Michele Westlund*

*Phone: 425-747-7274*

Legal advice, dissolution workshops, and representation to low-income persons in east King County by volunteer attorneys.

### Grays Harbor Bar Volunteer Legal Aid

P.O. Box 1827, Aberdeen, WA 98520

*Contact: Suzanne Lehman*

*Phone: 360-533-3652*

Legal advice, representation, and a dissolution clinic for low-income residents by the local bar, in conjunction with Coastal Community Action.

### Jefferson County Volunteer Lawyers

5732 Cape George Rd., Port Townsend, WA 98368

*Contact: Peggy Thompson*

*Phone: 360-385-7557*

Monthly Do-It-Yourself Divorce Workshops for low-income persons.

### King County Bar Association Neighborhood

#### Legal Clinics

900 4th Ave., Ste. 600, Seattle, WA 98164-1005

*Contact: Sherri Anderson*

*Phone: 206-624-9365*

Volunteer attorneys provide 30 minutes of free legal consultation. Specialty clinics include a Spanish and immigration clinic. In need of Spanish-speaking volunteers.

### King County Bar Association Family Law

#### Mentor Program

*Contact: Robin Lester*

*Phone: 206-624-9365*

This program pairs new family law attorneys with experienced practitioners to represent clients in contested divorces where the children are at risk of physical harm. Clients must meet legal and financial guidelines. The cases are complex and involve litigation. This is an excellent way to receive courtroom experience with the help of a mentor.

**King County Bar Association Legal Services for the Homeless**

*Contact: Sherri Anderson  
Phone: 206-624-9365*

Legal Services for the Homeless works with firms and individual attorneys to provide free legal services to the homeless living in shelters. This program works closely with shelter case managers and firms to meet the unique

needs of the homeless population. As a volunteer, you will receive training, reference materials and a list of attorneys who can advise you on how to handle specific problems that may arise with your cases.

**King County Bar Association Newcomers Resource Coordination Project**

*Contact: Julie Seidenberg  
Phone: 206-624-9365*

This project coordinates and directs newcomers, refugees and immigrants to the legal resources currently available in King County. The program serves the newcomer community through three specialized clinics, community workshops, and referral to pro bono attorneys to assist newcomers on issues other than immigrant issues. A panel of volunteer

and low-cost interpreters is also available as required.

**King County Bar Association Self-help Plus Program**

*Contact: Christy Carpenter  
Phone: 206-624-9365*

This program helps low- and moderate-income King County residents to do their own non-contested divorce, and with child support or minor parenting plan matters.

**King County Bar Association Volunteer Attorneys for Persons with AIDS/HIV and AIDS Legal Access**

*Contact: Stacy Holmes  
Phone: 206-624-9365*

VAPWA/ALA is a free service that finds volunteer, reduced- or full-fee attorneys for persons who are living with HIV or who have legal problems related to HIV. Most clients qualify for pro bono services. Volunteers include attorneys for all areas of practice. Common referrals include estate planning, debt defense, insurance issues and discrimination.

**King County Bar Association Volunteer Legal Services**

*Contact: Cheryl Markham  
Phone: 206-624-9365*

Volunteer attorneys provide free representation in civil cases for low-income people in King County. VLS also provides a panel of attorneys for the Housing Justice Project to represent low-income defendants in unlawful detainer actions.

**Kitsap County Volunteer Attorney Services**

*1201 Park Ave., Bremerton, WA 98310  
Contact: Olivia Dennis  
Phone: 360-377-0053*

Volunteer attorneys provide legal representation, advice and dissolution clinics in conjunction with Kitsap Community Resources and the local bar.

**Kittitas County Volunteer Legal Services**

*413 N. Main, Ste. L, Ellensburg, WA 98926  
Contact: Aaron Pipkins  
Phone: 509-925-6434*

Volunteer attorneys provide representation, advice and dissolution clinics for low-income residents of Kittitas County.

**LAW Advocates of Whatcom County**

*408 N. Commercial, Bellingham, WA 98225  
Contact: Cheryl Boal  
Phone: 360-671-6079*

Volunteer attorneys provide free legal representation, advice and consultation, a summer Street Law Program, and a pro se dissolution clinic for low-income Whatcom County residents.

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**Lewis County Bar Legal Aid**  
462 N.W. Park, Chehalis, WA 98532  
*Contact: Pat Davis*  
*Phone: 360-748-0430*  
Volunteer attorneys from the Lewis County Bar Association provide legal representation and advice.

**North Columbia Low-Income Legal Aid Program**  
604 W. 3rd, Moses Lake, WA 98837  
*Contact: Melissa Flores*  
*Phone: 509-765-9206*  
Volunteer attorneys from the Grant and Adams County Bar Associations provide advice, representation and divorce assistance in conjunction with the Community Action Council.

**Northeast Washington Legal Aid Program**  
320 N. Main, Colville, WA 99114  
*Contact: Greg Orchard*  
*Phone: 509-684-8421*  
Volunteer attorneys provide direct legal representation, advice and consultation clinics, and pro se dissolution clinics.

**Okanogan Legal Services Program**  
P.O. Box 1067, Okanogan, WA 98840  
*Contact: Jim Martin*  
*Phone: 509-422-4041*  
Volunteer attorneys from the Okanogan County Bar Association provide advice, representation, and pro se dissolution assistance, in conjunction with the Community Action Council.

**Skagit County Volunteer Lawyer Program**  
P.O. Box 1507, Mount Vernon, WA 98273  
*Contact: Larry Hargis*  
*Phone: 360-336-6627*  
Legal advice, representation and dissolution assistance for low-income persons with the assistance of the Community Action Agency and the Skagit County Bar.

**Snohomish County Legal Services**  
P. O. Box 5675, Everett, WA 98206  
*Contact: Phyllis Selinker*  
*Phone: 425-258-9283*  
Advice, family law self-help classes and legal representation for low-income persons by the local bar.

**Spokane Bar Volunteer Lawyers Program**  
1843 W. Broadway, Spokane, WA 99201  
*Contact: Maureen Carl*  
*Phone: 509-324-0102*  
Volunteer attorneys provide free representation in civil cases, advice, dissolution and bankruptcy seminars to low-income persons in Spokane County.

**Tacoma-Pierce County Bar Association Volunteer Legal Services Program**  
620 S. 12th St., Tacoma, WA 98402  
*Contact: Elsie Ackerman Powell*  
*Phone: 253-572-5134*  
Free dissolution self-help classes for low-income persons, legal advice through a neighborhood legal clinic, and direct representation.

**TeamChild**  
810 Third Ave. #800, Seattle, WA 98104  
*Contact: Elizabeth Calvin*  
*Phone: 206-447-3900 x795*  
TeamChild helps juveniles in the juvenile justice system gain access to mental-health services, education and safe housing. TeamChild has offices in Tacoma, Seattle, Spokane and Yakima.

**Thurston County Volunteer Clinic**  
P.O. Box 405, Olympia, WA 98507  
*Contact: Linda Young*  
*Phone: 360-705-8194*  
Volunteer attorneys provide 30 minutes of free legal consultation in the general areas of family law, consumer law and landlord/tenant law and offer monthly "do-it-yourself" divorce workshops for help with uncontested dissolutions.

**Thurston-Mason Pro Bono Program**  
2627-A Parkmont Lane #1, Olympia, WA 98502  
*Contact: Marla Elliot*  
*Phone: 360-352-5657*  
Volunteer attorneys provide direct representation in these counties.

**Whitman County Indigent Legal Services**  
W. 105 Main, Ste. 1, Pullman, WA 99163  
*Contact: Ginny Adams*  
*Phone: 509-334-9147*  
Volunteer attorney representation, advice, dissolution clinics and landlord/tenant clinics for low-income persons in conjunction with the Community Action Center.

**YWCA/Yakima County Bar Association Volunteer Attorney Services**  
15 N. Naches Ave., Yakima, WA 98901  
*Contact: Marlena Bell*  
*Phone: 509-248-7820*  
Volunteer attorneys, with support from the Yakima YWCA, provide legal representation, advice and dissolution assistance for low-income persons.

## STATEWIDE LEGAL SERVICES PROGRAMS

There are two statewide legal services programs, the Northwest Justice Project and Columbia Legal Services. The Northwest

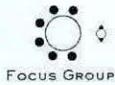
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Justice Project is a federally funded program. Columbia Legal Services receives its money from state, IOLTA, and other private and community sources.

#### Northwest Justice Project

401 Second Ave. S., Ste. 407, Seattle, WA 98104

Contact: *Joan Kleinberg*

Phone: 206-464-1519

The federal statewide partner in the Access to Justice Network, NJP provides direct services to low-income clients and serves as a primary point of access for clients through a centralized, statewide referral system called CLEAR (Coordinated Legal Education, Ad-

vice and Referral). NJP needs volunteer attorneys to answer and follow up on CLEAR calls, serve as a resource in their given field for CLEAR staff, and provide training to CLEAR staff on specific areas of law.

#### Columbia Legal Services

101 Yesler, Ste. 600, Seattle, WA 98104

Contact: *Gail Jackson*

Phone: 206-464-1155 ext 211

CLS is a full-service, statewide legal-services program dedicated to ensuring that a full range of legal services is available to all of Washington's low-income population, in particular, vulnerable and hard-to-serve special-needs populations that face unique barriers to the justice system. CLS focuses on hard-

to-reach/hard-to-serve poor people who are unable to use the CLEAR system. Each local office uses volunteer attorneys in a variety of ways. From research and writing to direct representation, there are many ways you can help.

#### SPECIALIZED LEGAL SERVICES PROVIDERS

The following programs provide direct representation, referral, advice and education to low-income people with civil legal problems. They depend upon volunteers to work with administrative staff and staff attorneys to ensure a basic level of service provision.

#### Fremont Public Association, Welfare Advocacy

P.O. Box 31151, Seattle, WA 98103

Contact: *John Tirpak*

Phone: 206-634-2222

The Welfare Advocacy program at Fremont Public Association represents low-income persons in administrative hearings and superior court regarding public benefits in King and southern Snohomish counties. The areas of focus are TANF (Temporary Assistance for Needy Families, formerly AFDC), GA-U (General Assistance-Unemployable), food stamps, Medicaid and childcare. Volunteer attorneys, paralegals and law students are needed to provide assistance with representation and advice. Volunteers with knowledge of SSI, Social Security and family law are desired.

#### Legal Action Center

100 23rd Ave. S., Seattle, WA 98144-2302

Contact: *Carolyn Frimpter*

Phone: 206-324-6890

The mission of the Legal Action Center is homelessness prevention. Volunteer attorneys are needed to staff neighborhood intake sites. Types of cases include landlord/tenant, debtor/creditor and consumer protection matters.

#### Northwest Immigrant Rights Project

909 8th Ave., Seattle, WA 98104

Contact: *Tuong Pham*

Phone: 206-587-4009

121 Sunnyside Ave., Granger, WA 98932

Contact: *Deirdre Mokos*

Phone: 509-854-2100

Northwest Immigrant Rights Project provides statewide immigration assistance to low-income persons. Volunteer attorneys are needed to take on individual cases, do research and work with clients. Staff attorneys will assist volunteer attorneys without expertise in the immigration area. NWIRP also uses volunteers for family law and criminal cases.

#### Northwest Women's Law Center

119 S. Main St., Ste. 410, Seattle, WA 98104

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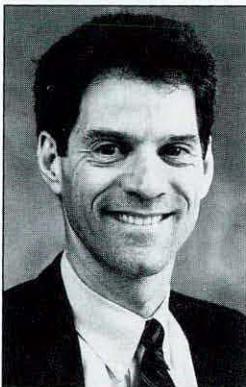
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*Contact: Kelli Maguire  
Phone: 206-682-9552*

The Northwest Women's Law Center provides legal information, self-help and referral services, and litigates public-impact cases. The Center depends on a large and active volunteer network. Volunteers are needed to staff the telephone line, prepare briefs in high-impact cases, prepare self-help materials, and present training workshops and seminars on sexual harassment, discrimination issues, family law and other women's issues. Please call the NWWLC for a complete list of volunteer opportunities.

**The Tenants Union**  
3902 S. Ferdinand, Seattle, WA 98118  
*Contact: Catherine Castillo Cota  
Phone: 206-722-6848*

The Tenants Union operates a statewide toll-free hotline which provides landlord/tenant information to callers. The Tenants Union needs volunteers to serve as members of the board of directors and to participate in annual fundraising events.

**University Legal Assistance**  
N. 1220 Dakota, Spokane, WA 99220  
*Contact: Janice Drye  
Phone: 509-324-5791*

University Legal Assistance Program provides legal assistance in family law cases for low-income persons in Spokane County. Services

are provided by Rule 9 legal interns at Gonzaga Law School.

**Unemployment Law Project**  
2800 First Ave., Rm. 220, Seattle, WA 98121  
*Contact: Pam Crone  
Phone: 206-441-9178*

The Unemployment Law Project provides counseling, assistance and representation without cost for low-income persons in unemployment hearings statewide. Volunteer attorneys are needed to interview prospective clients, investigate and prepare cases, and write appeals to the commissioner. This program also uses volunteers to serve on a referral panel of private attorneys who represent clients in superior court and to help with fundraising and community outreach.

**Native American Pro Bono Panel**  
*Contact: Phil Katzen, CLS  
Phone: 206-464-1155*

*Contact: Sherri Anderson, King County Bar  
Phone: 206-624-9365*

Approximately 50 attorneys serve on this statewide panel designed to provide assistance with federal Indian law issues.

**Children's SSI Pro Bono Panel**  
*Contact: Dinnen Cleary, CLS Everett  
Phone: 425-259-3421*

*Contact: Joan Fairbanks, WSBA staff  
Phone: 206-727-8282*

Nearly 100 attorneys serve on this statewide

panel, which was established to respond to new federal regulations which tighten the disability standard for children, making it harder for children with disabilities to qualify for SSI benefits.

#### **GIVE MONEY**

Legal Services in Washington is a model public-private partnership. Providers leverage state, federal and private funding to provide critically-needed legal assistance for thousands of low-income people a year. There are four foundations in Washington that exist primarily for the support of the Washington State Legal Services Provider Network. By giving generously to these foundations and your local volunteer programs, you increase resources for the entire Washington State Access to Justice Network.

**King County Bar Foundation:** KCBF is a charitable and educational foundation which promotes programs that increase legal remedies to the poor, enhance public understanding of the law and increase minority participation in the legal profession.

**LAW Fund:** Created by members of the private bar in 1991, LAW Fund seeks to institutionalize private support for civil legal services programs in Washington state by raising funds to preserve and expand civil legal services for low-income persons.

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**Legal Foundation of Washington:** LFW is dedicated to the provision of equal access to the justice system by funding legal and education programs for low-income persons through the fair and efficient administration of IOLTA and other available funds.

**Pierce County Bar Foundation:** Created in 1996, the Foundation's purpose is to carry on law-related education and charitable activities, with a primary focus on the support of the Tacoma-Pierce County Bar Association's Volunteer Legal Services Program.

#### BUILD AWARENESS

There is an enormous need for volunteers to work to increase public awareness about access to justice issues. By increasing awareness, new opportunities and re-

sources for providing legal services emerge. Here are some ways you can help.

#### Join the Equal Justice Coalition

The Equal Justice Coalition is a broad-based bipartisan coalition of nearly 100 community leaders and 50 organizations statewide. The Coalition was formed in December 1994 to educate federal and state legislators and the public about the importance of legal services to our community and to advocate for continuing and broadening support for legal services in Washington state. The Coalition needs volunteers to meet with elected officials, join a fax tree, and provide education to the public about access to justice issues.

Contact: Sharon Ruiz

Phone: 206-447-8168

Or visit the EJC website at  
<http://home.earthlink.net/~equalj/>

#### Serve on an Access to Justice Board Committee

The Supreme Court of Washington created the Access to Justice Board in 1994 for the purpose of improving access to justice for low- and middle-income populations. This nine-member volunteer board has 10 committees working on important access-to-justice issues.

- Accountability Standards
- Access to Justice Conference
- Communication and Technology
- Education
- Equal Justice Coalition
- Jurisprudence of Access to Justice
- Resource Development
- Status Impediments to Access to Justice
- Systems Impediments to Access to Justice
- Telephone Access

Contact: Joan Fairbanks, WSBA staff

Phone: 206-727-8282

#### Join a WSBA Section or a Section of your local bar association dedicated to public service issues

Becoming involved with the public-service activities of the local and state bar is an excellent way to contribute to the Washington State Access to Justice Network.

Contact: Sheri Borgford,

WSBA Sections Liaison

Phone: 206-727-8239 and your Local Bar Association

#### Attend the Annual Access to Justice Conference

Since 1995, more than 250 members of the Access to Justice community have attended the annual Access to Justice Conference. The fourth annual Access to Justice Conference will be held June 25-27 in Wenatchee, and more than 300 people will be in attendance. The fifth annual conference will be held in Spokane, September 14-16, 2000. The conference offers educational workshops, networking opportunities, prominent speakers, and a forum to discuss the provision of legal services in our state.

Contact: Sharlene Steele, WSBA staff

Phone: 206-727-8262

#### Promote pro bono efforts within your law firm, corporate law department or government agency

The WSBA Pro Bono and Legal Aid Committee can provide you with model pro bono policies and other assistance.

Contact: Joan Fairbanks, WSBA staff

Phone: 206-727-8282

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## A Vision: Equal Justice for All. How Do We Get There?

by **M. Wayne Blair**  
*President*

In December 1990, I attended a meeting of the Board of Governors with Claude Pearson to advocate for alternative dispute resolution. Preceding us on the agenda was Ada Shen-Jaffe, then Executive Director of Evergreen Legal Services. She was making a pitch for more involvement by the WSBA in programs providing pro bono legal services for the poor. I was astonished to hear her say that this was the first time that she had been invited to address the Board of Governors. It was difficult for me to believe that Ada Shen-Jaffe, who had dedicated her professional career to providing civil legal services to the poor, only now — after all her years of service — was speaking to the Board of Governors for the first time.

At that same meeting, the Board authorized then-President Lowell Halverson to appoint the Long Range Planning Task Force, to be chaired by William H. Gates, to engage in long-term planning for the WSBA. The task force, composed of 17 lawyers throughout the state, met over the next six months. One of its primary recommendations was that the WSBA should accept the challenge of making our system of justice accessible to every Washingtonian and show more leadership in addressing the issue.

The task force's report included what has become well known as the "circles chart" drawn by Ada Shen-Jaffe. That chart depicted, in 47 concentric, tangential and intersecting circles, the many different programs, organizations and agencies (federal, state, county, local, public and private) that were in some way stakeholders in the system of providing civil legal services for the poor. These many programs, organizations and agencies all operated independently with little or no coordination — despite their common goals and interests. The 1991 report marked a fundamental change in the approach of, and the beginning of significant involvement by, the WSBA in issues of access to civil justice for the poor.

To implement the recommendations of the Long Range Planning Task Force, the Board of Governors, in 1992, appointed the Access to Justice Task Force, chaired by Tom Chambers, then a member of the Board of Governors. This task force was charged with recommending the most effec-

tive way to bring together all of those circles on the chart, so that the multitude of programs, organizations and agencies, by working together, would improve services and make better use of very limited dollars.

The Access to Justice Task Force met over the next 12 months and issued its report. Its primary recommendation, which the Board of Governors approved, was the formation of the Access to Justice Board. This board would act in concert with all of the other interested parties, organizations and agencies to bring the circles together. The board would have the imprimatur of the Supreme Court and be authorized by court order. The Access to Justice Board would be charged with overseeing the civil equal justice delivery system and taking such steps as may be necessary to deliver on the promise of "Equal Justice Under Law" for low- and moderate-income residents of our state.

After three separate advocacy efforts with the Supreme Court to obtain such an order, together with significant assistance from now Chief Justice Richard Guy and Justice Robert Utter (Ret.), the Supreme Court, by Order entered May 18, 1994, authorized an Access to Justice Board.

The initial board included Chair Paul Stritmater, immediate past president of the Washington State Bar Association; Judge Paul Bastine; Judge Marlin Appelwick; Ken Davidson; Isabel Safora; Phyllis Selinker; Nancy Isserlis; Mary Alice Theiler; and Judge Susan Agid (who later resigned and was replaced by Judge T.W. "Chip" Small.)

**T**he ATJ Board, as it is often referred to now, celebrates its fifth year of operation this month. What effect has this Board and its supporters had bringing the circles together? From my observation, the results have been phenomenal.

The ATJ Board has been able to channel the creative energies of staff at Columbia Legal Services and Northwest Justice Project; thousands of volunteer lawyers working in 28 separate volunteer legal services programs (18 are sponsored by county bar associations); and many specialized legal services providers, together with law-school clinical pro-

**Last year, members of the Access to Justice Network, including legal services providers and pro bono attorneys, assisted 80,000 low-income people in Washington state in need of critical legal assistance.**

grams; courthouse-based family law facilitators; domestic-violence advocates; county court clerks and administrators; dispute-resolution programs; county law libraries; bar leaders and judges; and many other community, educational and professional associations and volunteers too numerous to mention in this article, into a public-private partnership which extends as an Access to Justice Network throughout the state, supported by a mixture of federal, state, IOLTA and private funding. Last year, members of the Access to Justice Network, including legal services providers and pro bono attorneys, assisted 80,000 low-income people in Washington state in need of critical legal assistance.

This Network operates under the leadership of visionaries who are absolutely dedicated to providing access to justice for the poor and vulnerable, in ways that are not partisan, but reflect their strong belief that access to the civil justice system by the poor and vulnerable is a fundamental right, and one in which all of us involved in the justice system, each in our own way, have an obligation to support. Bringing the circles together in this public-private network is truly a model for the nation.

So who are these visionaries who have labored long to develop and implement this nationally recognized model? I would like to mention a few of these truly remarkable people, to whom all of us are indebted for their vision, their leadership, and their commitment: Judge Marlin Appelwick, Jim Bamberger, Judge Paul Bastine, Tom Chambers, Barbara Clark, Greg Dallaire, Ken Davidson, Jack Dean, Chief Justice Richard Guy, Lowell Halverson, Pat McIntyre, John McKay, Phyllis Selinker, Ada Shen-Jaffe, Paul Stritmatter and Justice Bob Utter (Ret.). A special mention goes to several others who have not been mentioned before but currently play important roles in the success of the Access to Justice Network: Susan Daniel, Judge Anne Ellington, Mary Fairhurst, U.S. Magistrate Judge Cynthia Imbrogno, Lucy Isaki, Colleen Kinerk, Ragan Powers, Leonard Schroeter, Diane Tibelius, Mary Wechsler, and the ATJ Board staff — Joan Fairbanks, Sharlene Steele and Joyce Raby.

Despite the success of these visionaries in creating the framework for a successful

### **Nearly one million residents of our state do not have the resources to secure legal counsel on important legal matters.**

and effective access to justice network, design alone does not deliver on the promise of equal justice for all. Much work remains to be done. Despite the hard work of the statewide ATJ Network, well-organized efforts to increase funding, and thousands of volunteers, only about 20 percent of the need is being met.

As I write this article, thousands of individuals and families are unable to secure legal assistance to meet critical life and legal challenges. Every day in our state, low-income parents are unable to protect the safety of their children from domestic abuse; disabled citizens are unable to challenge wrongful denials or terminations of essential services; families are unable to protect their homes from foreclosure or protect against illegal evictions; parents are unable to enforce the rights of their handicapped children; and senior citizens are unable to secure protection from illegal scams, abuse and exploitation. For these people, the rights afforded them under existing laws are hollow promises, if they cannot secure access to the courts. Nearly one million residents of our state do not have the resources to secure legal counsel on important legal matters.

**T**he federal money provided to the states each year through the Legal Services Corporation (of which our own John McKay is the President) is always at risk. In years past, most recently in 1995, significant cuts have been made in the availability of federal funds for legal services programs. IOLTA is currently under attack in the federal courts, and its future is not assured. Each year the state funding is carefully scrutinized in the budget process; it should never be taken for granted. In an effort to achieve permanent and stable funding for the Access to Justice Network and to be able to respond to attacks on funding, the ATJ Board established the Equal Justice Coalition. The EJC is a broad-based, bipartisan coalition of nearly 100 community leaders and 50 organizations (including the Washington State Bar Association) statewide whose mission is to educate federal and state leg-

islators and the public about the importance of legal services to our community, and to advocate for continued and increased support for legal services in Washington state.

With only 20 percent of the real need being met, and continued funding under attack or in doubt, the Board of Governors at its meeting in June 1998 declared that "civil access to justice is a chronic problem that has reached a crisis level in Washington state." At that meeting, the Board endorsed a resolution calling for \$10 million per biennium in "new" money from the state to support funding for civil access to justice programs. At this point, it is too early to say whether that effort will be successful.

So despite all that we lawyers in this state do, we all need to do more. We need to contribute more; we need to volunteer more. We need to become active in the EJC: to speak up and write to our legislators and members of Congress. And for some of you who have yet to provide pro bono services, now is the time to get involved. Call Joan Fairbanks or Sharlene Steele at the WSBA (206-727-8262); they will get you involved.

May is "Pro Bono Month" for the WSBA. The WSBA Pro Bono and Legal Aid Committee is seeking to have every firm in the state adopt a pro bono policy in an effort to raise pro bono participation by and within law firms. You will be hearing more from this committee.

As we all consider doing more, we need to remind ourselves — and everyone else — that access to justice is a cornerstone of our democracy. Access to justice means more than creating courts and providing judges. It means enabling those who need to access our courts to assert, enforce or protect their legal rights, a meaningful and effective way to do so. For those who cannot afford it, our civil legal services programs provide the means by which such access to justice is secured.

Fundamental to the effective operation of our democracy is the notion that our laws apply to everyone equally and fully. This notion of equality lies at core of the principles upon which our country was built, and endures in the promise carved into the marble façade of the United States Supreme Court building in Washington, DC — "Equal Justice Under Law." Let's make it happen! 



## A Salute to the Washington Young Lawyers Division

by Jan Michels

*WSBA Executive Director*

**M**ay is Pro Bono month and an appropriate time to salute the many pro bono service programs that the Washington Young Lawyers Division (WYLD) promotes. I'd like to tell you a little bit about WYLD and why their activities are supported by the WSBA.

Legal education is more than learning deductive reasoning and the Socratic method of argument. It's more than case strategy and legal research, more than clients and the business of practicing law. Legal education involves collegiality and civility; caring about the rule of law; helping and giving; and supporting the profession. By fostering these qualities, WYLD picks up where law school leaves off.

WYLD shepherds those new to the practice of law into their new profession, and demonstrates that the profession includes public service, community participation, leadership, self-care, and the business of practicing law. ("Young" is a word that doesn't fit well in describing the group of Washington attorneys who are 36 years of age or less, or who have practiced five years or less — but this nomenclature issue is worth a separate article.)

At its annual report to the Board of Governors, WYLD displayed its range of programs and services as well as its collegiality, diversity and enthusiasm. Because the WYLD is the "farm team" for Bar and community leaders, the WSBA supports the division with money (about \$8 of each full license fee) and staff. With this small and frugally expended amount, WYLD sponsors the following programs, among others:

- **Aspiring Youth Program:** serves at-risk middle-school students during the "latch-key" hours by combining education, sports and inspirational speakers.
- **Mentorship-Scholarship Program:** reaches out to public high schools with the purpose of identifying at-risk youth and pairing them with lawyer mentors during the summer. At the end of each program, students write a final paper and outstanding students are awarded college scholarships.
- **Pre-Law Student Leadership Conference:** offers hundreds of minority and economically disadvantaged high-school students the opportunity to explore law as a career option. The

**Legal education involves collegiality and civility; caring about the rule of law; helping and giving; and supporting the profession.**

full-day conference brings together students, attorneys and judges in a setting where each student can participate in interactive workshops and listen to top keynote community speakers.

■ **LawTalk:** presents a series of public-interest television programs which are designed to educate the public about their rights and remedies under the law. These programs are shown throughout the state on public-access television and address many common legal issues.

■ **FEMA Program:** provides free legal assistance to disaster victims through the Federal Emergency Management Agency.

■ **Greater Access and Assistance Program (GAAP):** enables individuals who do not qualify for other legal services to access legal representation. The WYLD is working with the

Board of Governors and the Access to Justice Board to create a system that ensures that the working poor will be able to receive legal assistance.

■ **Law Week:** provides an opportunity for the legal community to work with citizens, students and community leaders by coordinating materials and speakers for community public-service projects such as the Stay in School video, the Aspiring Youth Program, LawTalk, mock-trial scripts and "Know Your Rights" seminars.

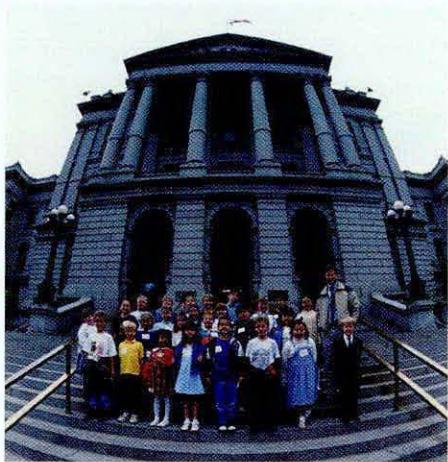
■ **YMCA Mock Trial Competition:** recruits young lawyers throughout the state to serve as coaches to the teams and audience raters for the various regional competitions.

**I**n addition, WYLD supports its members with Practice Issues forums, CLEs, and training programs targeted to the special interests of lawyers new to the profession. All these programs and services train WYLD members for their lawyer role, and for bar leadership. (Did you know that many current bar leaders — for example, John Riley III, Bradford Steiner, Pamala Cairns, Rosemary Daszkiewicz, Kathleen Hopkins, Lisa Lowe and John McKay — are past presidents of WYLD? Past and current WSBA Governors Lish Whitson and Terry Lee and Judge C.C. Bridgewater are also past WYLD leaders.) I salute WYLD for their role in encouraging young lawyers and for their commitment to pro bono service. ↗

# Positive Approaches to 21st Century Access to Justice

by Washington State Supreme Court Chief Justice Richard P. Guy

**A**S WE PREPARE FOR the challenges and opportunities of the 21st century, we face our most challenging and significant of responsibilities: redesigning our civil justice system to provide efficient, fair and prompt civil justice services to all, including those who cannot afford the cost of conventional forms of legal representation and dispute resolution.



To meet this challenge, all who are involved in the delivery of legal and justice services (lawyers, judges, law schools, county clerks, law libraries and dispute resolution professionals) must work together to devise — and to try — innovative, flexible and varied solutions. This challenge raises several issues of concern to the bench and bar, including:

- How should the role of lawyers and other legal service providers be defined? In light of our obligation to protect the public and in light of current trends in our civil justice system, what kinds of controls should be placed on persons who are permitted to provide limited legal information or assistance outside the traditional law office setting?
- How can technology be used, both in and outside the courtroom, to provide

accurate and helpful legal information and forms to those who cannot obtain a lawyer? How can technology be used to provide access to information, to witnesses or to the court — and to reduce the high cost of legal proceedings?

- How do we maintain an efficient legal system while providing an effective, fair and uncomplicated opportunity for people to represent themselves?
- How can we enable legal professionals to ethically provide limited, low-cost legal services, such as discrete task or “unbundled” legal representation, that are both effective for the client and viable for the lawyer?

IN THIS ARTICLE, I will touch on some of the issues raised by these concepts. My goal is not to offer pat solutions, but to stimulate a lively discussion in the legal community that will lead us toward positive approaches to meeting the challenges presented. In discussing these issues, I begin with the premise that equal justice for all is a cornerstone of our democracy. I make the assumption that the legal community substantially agrees that (1) there are significant unmet civil legal needs for those who cannot afford conventional methods of legal representation or dispute resolution; (2) all involved in the legal community share a responsibility to enhance justice for all members of society by, in part, improving meaningful access to our legal system; and (3) solutions to the challenges posed by the issues listed above must be approached with equal justice in mind.

## The Challenge

IN JUNE 1998, the Washington State Bar Association Board of Governors unanimously adopted a resolution declaring a civil legal justice emergency and recommending substantial increased funding for civil legal services. The Bar Association

resolution is based on the premise that “civil access to justice is a chronic problem that has reached a crisis level in Washington state.” The Bar Association’s call for action was based on the work of the WSBA’s Pro Bono and Legal Aid Committee, which documented the enormous, unmet and increasing demand for civil legal assistance. The Committee reported that the escalating demand is caused by reduced federal funding and a sharply increasing need among persons involved in the legal system who are of low income or who are vulnerable due to disability or language or cultural differences. We recognize, as well, that there are tens of thousands more whose incomes are too high to qualify them for free civil legal services, yet too low to afford access to professional representation in our legal system.

These economic realities result in problems which are all too familiar. Multitudes

# Access

of individuals try to represent themselves in court, often in complicated family law matters with disputed issues regarding the care of minor children. The majority of parties dissolving their marriages are not represented by attorneys but appear pro se. In many of these cases, unrepresented parties are able to obtain some helpful relief. Unfortunately, all too often this is not the case. In family law cases, it is frequently the children who suffer the consequences of inadequate or no legal representation of the parents. Of those who represent themselves in their dissolution actions, up to 80 percent must return to court for modification of the decree or parenting plan because of changes that occur or because some necessary element of the dissolution was not made a part of

the original action. The problem is not limited to family law. Many have no representation in crucial administrative hearings that determine whether or not they are entitled to receive or retain public benefits, housing, adequate health care, education, transportation, and other essential needs.

The rising demand for very low-cost legal assistance is currently being met, in some cases, by unregulated, unsupervised and often unqualified "paralegals" who fill out, or assist in filling out, forms for a fee. Many people outside the Bar share a perception that effective civil legal representation is too expensive and that lawyers do too little to provide it at a reasonable cost.

Washington's lawyers have a long, impressive history of providing generous pro bono services. In the area of giving money and help to provide services to persons who need access to the system, but who cannot afford a lawyer and do not know where to turn, the lawyers of this state have been magnificent. Our courts would be unable to assist our citizens in resolving their legal problems without the contribution of pro bono lawyers. But the current need for pro bono services is overwhelming. Although we can cite many instances of exemplary, self-sacrificing work on behalf of low-income litigants

**Our courts would be unable to assist our citizens in resolving their legal problems without the contribution of pro bono lawyers.**

mean to imply that the Bar and the judiciary are not working toward resolutions to the problems that exist. There are, of course, current efforts being made to increase access to justice. For example, the Washington Supreme Court has created the Access To Justice Board, which has worked very hard to enhance access for the many. My comments here are to encourage all who read *Bar News* to begin thinking about access-to-justice problems they observe, and to join in a dialogue about how we should address those problems.

#### **Defining and Providing Legal Services In a Changing Environment**

DUE TO THE ECONOMIC realities discussed above, there is a very significant, market-driven demand for low-cost legal information and assistance. This demand is often filled by untrained and unregulated individuals. This new and burgeoning "legal business" calls for a thoughtful response from all who participate in the civil justice system, for it threatens to undermine one

ited Practice Rule For Closing Officers.")

I recently chaired a group that studied whether a similar "limited practice" rule should be instituted for courthouse facilitators. The facilitators help pro se litigants (almost always in family law cases) select forms, and in some instances they give what could be called "legal advice" about how to fill out the forms and what to do with them once they are completed. These facilitators perform a vital service to many people who represent themselves. Often the pro se litigants have no other recourse but to follow the advice of the facilitator: the pro se litigants frequently cannot afford to hire a lawyer; civil legal services offices do not have sufficient staff to help them; there are not enough lawyers volunteering to take all the cases; and the court cannot give them legal advice. Continued study is necessary in this area because facilitators, who work either for the clerk's office or for a judicial administrator, may be caught between admonitions not to practice law and the practical fact that what they do to help people who are in need may fall within the definition of "the practice of law."

Our guiding principle in defining and regulating the practice of law has always been protection of the public, and this is surely what has motivated current efforts to redefine the limits. There are legitimate questions about whether the practice of law should be defined in the abstract by court rule.<sup>1</sup> However the practice of law is to be redefined, it must be done with the harsh realities of the equal justice crisis in mind.

The demand for low-cost legal information, advice and assistance is one of those realities, and it will be filled somehow. I am not suggesting that I know what my final views on proposed rules in this area would be. I do wonder, however, whether it would be adequate to institute a rule that simply makes illegal the provision of low-cost legal advice by non-lawyers. It may be that enforcement of such a rule would simply drive the low-cost providers further underground, having a potentially harmful effect on litigants who are in such desperate need of help that they are willing to turn to these providers on the assumption that "something is better than nothing."

There should be study of whether the regulation of low-cost lay providers is ad-

# **S to Justice**

by our colleagues in the Bar, pro bono services, delivered on a case-by-case basis, cannot provide a definitive solution to the problem of providing adequate, affordable access to our civil legal system.

It is time that we looked at the broad picture to determine the best methods of providing access to the increasing numbers of litigants who cannot afford to pay the costs required to have their needs met by our civil legal system. The search for long-term solutions must include efforts toward securing consistent, full funding for legal services programs. Until that becomes a reality, however, we must focus on improving access to the legal system, with the understanding that our system currently provides full access for a few and little or no access for the many. I do not

of the crucial tenets of the system: protection of the public from inaccurate, harmful "advice" about legal rights. Protection of the public is the fundamental rationale guiding our decisions determining the scope of "the practice of law" and the qualifications required of those who engage in the practice.

In any discussion of the scope of the practice of law, we must consider when non-attorneys should be licensed, regulated, and permitted to engage in what may technically be the practice of law. In one area so far, the Supreme Court has determined that allowing and regulating the limited practice of law by non-attorneys is safe and is justified in order to save time and expense in run-of-the-mill real property transactions. (See APR 12, "Lim-

visible. If it is, we could then impose standards and controls, and perhaps mandate the use of officially approved forms. Such an approach may be able to protect the public from being victimized by unqualified people, while expanding the assistance available to those who cannot afford full legal services.

### Technology

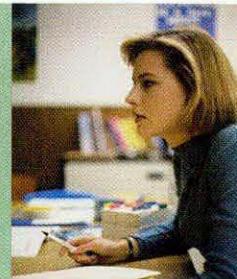
ONE OF THE MOST promising and exciting tools for expanding the availability of accurate legal information and assistance is that generated by technological advances. Rapidly improving technology demands that we re-examine the way we do business. The advent of the Internet, e-mail, websites, and forms that can be filled in and filed electronically (possibly soon by voice activation) and printed in final form, creates a golden opportunity for all involved in the civil legal system to participate in developing new ways of providing low-cost legal information and assistance. With funding, every superior court in this state could provide the public with access to current, correct forms and user-friendly instructions via public-access computers, for at least family law actions and domestic violence protection proceedings.

These court-sponsored programs would be one way for the Bar to address the computer-literate public's demand for legal information. That demand is now met (at least in part) by private, unregulated lay people. Will electronic information supplant the services of an attorney for those who could secure one? Rarely. Forms and general information can never take into account those nuances of a case invoking the need for the thoughtful response that only a lawyer can provide. But through electronic means we could provide accurate, basic information to many low- and moderate-income persons who desperately need it. We could also help to assure courts that the forms are correct and are likely to be correctly completed. There already is movement in this direction. The Communications and Technology Committee of the Access To Justice Board is currently working with the Office of the Administrator for the Courts to develop two interactive public-access terminals in Chelan and Thurston Counties. Microsoft has been approached for possible funding for this project. In addition, the Northwest Justice Project maintains a website, open to anyone, which contains a wealth of information and instructions to provide help for the unrep-

resented. These materials are written, updated and maintained by experienced professionals.<sup>2</sup>

Professionally staffed telephone advice or referral lines can also help to address the need for low-cost legal information. The Northwest Justice Project's CLEAR

**Professionally staffed telephone advice or referral lines can also help to address the need for low-cost legal information.**



line — offering information, referral and brief advice by professionals to those whose incomes qualify them for free services — is an important step in this direction. Due to funding constraints, however, the project is unable to fully meet the overwhelming need. We should explore whether there are other telephonic ways in which lawyers are able to provide brief, informative legal answers to people who desperately need legal information and who are able to pay for some legal services.

These efforts to use technology as a way

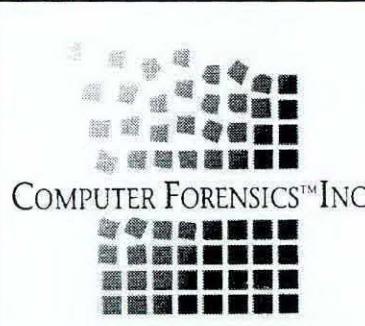


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to fill part of the access-to-justice gap should be just the start of an ongoing commitment by the Bar, the judiciary and the equal-justice community. Forms and websites will never equal full access, and there are many situations in which electronic information, alone, is inadequate. Until a lawyer or other appropriate level of comprehensive help can be made available for every person with a legitimate need for assistance, however, electronic information, regulated in a professional manner, can help to meet some of our needs.

We should continually be open to using technology in any number of ways that will help make access to witnesses, information, trials and other hearings less expensive, more efficient, and more available to all who use the civil legal system.

#### **Pro Se Litigants**

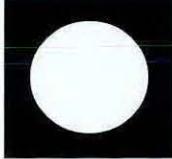
MANY OF THE IDEAS touched on above will help in addressing the need for accurate information for those trying to represent themselves in a complex system. We must search even further, however, for other ways that will enhance the ability of unrepresented parties to navigate the system. We should do this because it is fair and just, but also out of self-interest — better prepared pro se litigants will make the system more efficient for all. Judges, opposing parties and counsel should, for example, be spared the additional time needed to educate pro se litigants who fail to understand and properly follow our procedural rules. We can never create a perfect system for unrepresented parties, but there may well be new ideas that can greatly help in this area.

The most obvious way to assist the unrepresented is to simplify forms and procedures where we can. The mandatory family law forms are currently being reviewed to see whether they can be simplified, and yet still meet the important goal of uniformity. Not every area of law is susceptible to a forms approach, but we should think about whether simplified forms in other areas of practice are workable, especially in connection with the opportunity to make forms available to all on public-access computers. In addition, we should explore the possibilities for model local court rules that average readers can understand. We might even consider whether some matters or issues can be fairly and expeditiously handled in

less formal, administrative-style proceedings. Alternatives to dispute resolution — private judging — such as mediation and arbitration should be encouraged in certain cases. Cost, time, selection of a judge, informality, and certainty of trial date are some of the reasons why private judging might appeal to some litigants. We should consider these as favorable alternatives that may be offered to litigants to resolve their cases. Finally, we need to find better ways to serve the disabled and others who are vulnerable and who may be forced, because of lack of money, to represent themselves. We might, for example, develop methods for using TDD telephone tech-

nology, and provide translation or interpretive services for persons facing language difficulties.

Our courts should also consider providing unrepresented parties with procedural information. Federal district courts in many jurisdictions send unrepresented parties clear written information at the outset of a case. These notices detail requirements such as serving the opposition with all communications between the pro se party and the court, how to set motions for hearing, and how cases proceed through the system. Courts cannot, of course, provide specific legal advice, but they can apprise parties clearly, and in

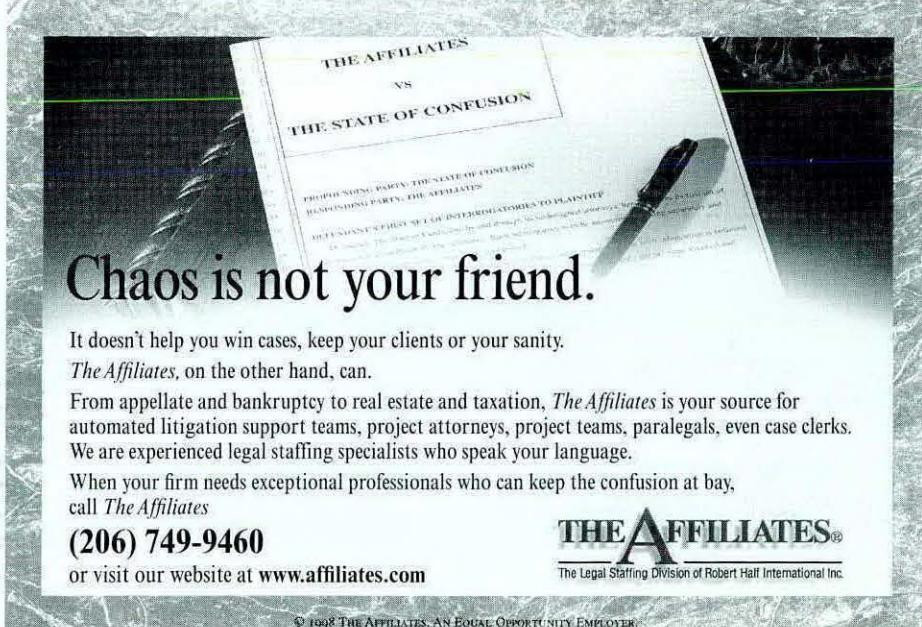


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writing, of the basics of navigating the rules. We should strongly consider ways to do this.

#### **Helping Lawyers Help**

THERE HAS BEEN much recent discussion about "discrete task" or "unbundled" legal representation, that is, a lawyer undertaking specific tasks or representation at particular stages of a case, but not taking representation responsibility for the whole case. See, for example, two recent articles on this subject by Barrie Althoff, WSBA Chief Disciplinary Counsel.<sup>3</sup> This is a large topic in itself, and should be the

subject of longer treatment than I can provide in this forum. I do want, however, to introduce the "equal justice" aspects of the "discrete task" concept.

Discrete task representation is a possible method of addressing part of the huge unmet need for legal services among those who cannot afford any (or very little) attorney services. Discrete task representation is not necessarily the best way for these needs to be met, but given that a lawyer is not available to all, it may provide a way in which some citizens can gain more access to the system than they otherwise would have.

Members of the Bar have raised many legitimate and practical questions about discrete task representation. Lawyers worry that even if they agree to represent someone for just one important hearing, the judge will take a "once in, you stay in" approach. In addition, there are serious ethical issues to be faced, such as whether the client is adequately protected, or whether lawyers or litigants are obligated to disclose to the court that an attorney (or "paralegal service") drafted the pleadings that have been submitted by a party who is officially appearing pro se. Some of the problems might be addressed by court rules that require certain kinds of disclosures, set ground rules for mid-stream withdrawal, and establish protections for a party whose attorney has withdrawn after assisting the party to gain temporary relief pending trial. There may be other ways as well to begin addressing these issues. We need to consider the pros and cons of discrete task litigation to determine whether lawyers can provide these services in a responsible and ethical way to those who otherwise would have no legal advice or assistance in complex cases.

## **What Is Your Client's Business Worth?**

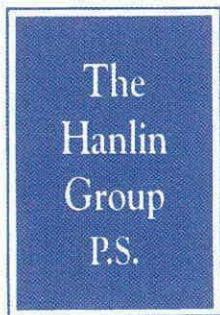
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### **Conclusion**

THE INTENT OF this article is to stimulate discussion on these important topics. I look forward to addressing this most important challenge. And I look forward to engaging in discussions about these topics with members of the public, the Bar, the judiciary, and the entire equal justice community as we work toward solutions that will ultimately provide "equal justice for all." ↗

### **NOTES**

1 Some state supreme courts have declined invitations to define the practice of law by rule. *In Re Unauthorized Practice of Law Rules Proposed by the South Carolina Bar*, 422 S.E.2d 123, 124 (S.C. 1992). Oregon courts have declined to craft "an omnibus definition of (the) practice of law." *Oregon State Bar v. Smith*, 942 P.2d 793, 800 (Or. App. 1997). The Colorado Supreme Court has specifically recognized "the difficulty of formulating and applying an all-inclusive definition of the practice of law." *Unauthorized Practice of Law Committee of the Supreme Court of Colorado v. Prog*, 761 P.2d 1111, 115 (Colo. 1988).

2 See <http://www.nwjustice.org>.

3 "Limiting the Scope of Your Representation: When Your Client Wants, or Can Afford, Only a Part of You," *Bar News*, June 1997; "Limiting the Scope of Your Representation: Questions of Cost, Candor and Disclosure," *Bar News*, July 1997.

# Pro Bono Programs Go High-Tech

by Joyce Raby

WSBA Access to Justice Communications and Technology Specialist

A recent collaborative effort among the members of the Access to Justice (ATJ) Network has resulted in a significant improvement to the level of technology currently used by pro bono coordinators in Washington state. A case management program, Clients 2000 for Windows by John Kemp, was purchased with a special grant from the Legal Foundation of Washington (LFW). Robin Lester, Director of Community Legal Services of the King County Bar Association, commented, "Clients 2000 will save us all time and increase our efficiency. This translates into better client service with more time to address clients' needs and to further develop legal service programs."

The amount of time spent gathering the data necessary to generate reports required by funding agencies has been a significant drain on scarce program resources. Until now, quarterly and half-yearly reports were calculated manually, and then input to a word-processing document. Clients 2000, by contrast, provides online entry of client data from initial contact. The pre-defined reports included in the software make the necessary statistical reporting available in minutes.

"Last year, the King County Bar Association's Community Legal Service programs assisted over 7,000 clients," Lester said. "With Clients 2000 we are hoping to increase the number of clients we serve by at least 10 percent."



Software training class held at the Goldmark Luncheon and Workshop, February 22-24.

service providers around the state. Donated software, valued at \$158,000, was distributed at the Goldmark Luncheon. "Dozens of copies of software, including Windows98, NT Server, NT Workstation and Office Professional for Windows, were distributed to volunteer attorney programs," said Judge T.W. Small, incoming Chair of the Access to Justice Board.

Each pro bono program received a site license and training in the software during the Goldmark Luncheon and Workshop held February 22-24 in Seattle. Twenty-seven staff members from 19 programs attended the training.

LFW also sponsored two enrollments in a Clients 2000 training session given by John Kemp for the purpose of providing technical support to the coordinators. One enrollment was used by Caitlin Davis-Carlson, LFW grants administrator. The second was used by Linda Young, pro bono coordinator for the Thurston-Mason County Volunteer Legal Clinic. Joan Kleinberg of Northwest Justice Project also attended the training and will be acting as technical support to the pro bono programs.

The Washington State Bar Association supported the effort by sending me to a "Train the Trainer" class and by helping defray the training costs for Robin Lester. Robin and I attended a special training in Atlanta, enabling us to provide instruction to the pro bono coordinators during the two-and-a-half-day workshop.

"This is an excellent example of how collaborative efforts work," said Judge Small. "Every member of the ATJ Network contributed time, money and/or staff to make this project successful."

The ATJ Network is an umbrella organization established to ensure that quality legal assistance is delivered to Washington's low-income residents in a coordinated and cost-effective manner. Each member organization contributed to this project, effectively maximizing our scarce resources.

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# Strained to the Breaking Point

**W**ASHINGTON STATE'S Access to Justice (ATJ) Network is a highly coordinated model public-private partnership designed to make the most effective and economical use of very limited resources to provide a continuum of legal services of varying intensities to nearly 1.2 million poor and vulnerable people.<sup>2</sup> Operating under the umbrella of the Supreme Court's Access to Justice Board,<sup>3</sup> and with the active support of the Washington State Bar Association, the Network consists of staffed legal services programs, specialty legal services providers, law school clinical programs, local bar volunteer attorney programs, courthouse facilitators, county law libraries, county clerk offices, court administrators, and a host of other individuals; community, educational and professional volunteers; and organizations.

By any measure, Washington state's civil equal justice delivery system is strained to the breaking point. The raw numbers tell part of the story: there are nearly 400,000 low-income households in Washington state.<sup>4</sup> According to the 1994 American Bar Association (ABA) Legal Needs Study,<sup>5</sup> 47 percent of low-income households experience at least one civil legal problem per year.<sup>6</sup> Low-income households experiencing civil legal needs had an average of 2.3 legal situations each.<sup>7</sup> According to the ABA study, between 61 and 75 percent of the legal needs of people with low income go unmet.<sup>8</sup>

Translating these numbers to Washington state,<sup>9</sup> we start with 400,000 low-income households. Assuming that 47 percent of these households experience a civil legal need each year, we find that about 188,000 households can be expected to have one or more civil legal needs each year. Carrying over the ABA Legal Needs Study's incidence rate of 2.3 legal needs per household, we conclude that Washington state's low-income population experiences about 432,400 independent occurrences of civil legal need each year. Between 264,000 and 324,000 of these are unmet, depending upon the definition of "unmet" legal needs.

Juxtaposed against the need is the current capacity of the civil equal justice delivery system. There are two primary gateways into the system, the Northwest Justice Project's Coordinated Legal Education, Advice and Referral program (CLEAR) and courthouse-based clerks, facilitators and law libraries.<sup>10</sup> CLEAR is a statewide, toll-free intake system which provides low-income people with "one-stop shopping" for legal screening, case assessment, advice, information and, where appropriate, referral to a Network provider for direct representation in court or before an administrative agency. Courthouse-based clerks, facilitators and county law libraries are the walk-in point for many thousands of

## The Current State of Washington State's Civil Equal Justice Delivery System<sup>1</sup>

by JIM BAMBERGER

low-income people who have self-identified a need for assistance in a broad range of legal matters,<sup>11</sup> most significantly in the area of family law.<sup>12</sup> In addition to these two primary gateway systems, other community-based organizations and direct service providers work to help low-income people identify the need for civil legal assistance and provide referral to an appropriate provider entity.

The ATJ Network also includes two statewide civil legal services providers (Columbia Legal Services [CLS] and the Northwest Justice Project [NJP]), 23 private bar volunteer attorney programs, specialty legal services providers (e.g., Northwest Immigrants Rights, Legal Action Center, Tenants Union, Unemployment Law Project, etc.), clinical law programs at each of the state's three law schools, and human and social service entities. While working closely with CLEAR, some of these programs must maintain supplemental client intake and case acceptance procedures that enable them to serve their targeted client population (in the case of specialty legal services providers) as well as clients facing emergent legal needs and those who may be unable to meaningfully navigate a telephonic intake system.<sup>13</sup>

**S**TILL REELING FROM devastating federal cuts and exploding demand for client services,<sup>14</sup> the staffed legal services programs presently maintain offices in 10 communities throughout the state,<sup>15</sup> and have a cumulative staffed capacity of 78 full-time-equivalent attorneys (excluding the 18 attorneys and paralegals who are dedicated to staffing CLEAR). The largest regional presence is in Seattle, where 12 attorneys (the total number of attorneys employed by CLS and NJP) are employed to meet the equal justice needs of about 200,000 low-income people in King County — a ratio of one staff attorney for every 16,667 poor people,<sup>16</sup> or one attorney for every 7,833 legal problems. Statewide, the ratio is one attorney for every 6,923 civil legal problems.<sup>17</sup>

Numbers go only so far in demonstrating the inadequacy of our civil equal justice delivery system. Every day, urgent requests for help are turned away by every kind of legal services provider. CLEAR staff help hundreds of people every day, but still cannot

handle all of the requests.<sup>18</sup> Staffed legal services programs are more severely curtailed as to the types of cases they can handle, leaving many thousands of clients nowhere to turn for help with important legal problems.

In the past, the ATJ Network counted on the staffed legal services programs to provide the largest proportion of direct legal representation. Now there is a huge "capacity gap" in the area of direct representation, the burden of which falls disproportionately upon local private bar volunteer attorney programs. Pro bono coordinators find themselves unable to keep

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up with the demand for help from clients. Moreover, with the advent of CLEAR there is a need for more volunteer attorney programs to refer cases requiring direct representation to the private bar, and this is proving difficult. To help meet some of the demand, these programs have turned to new service delivery approaches (substantive law clinics, discrete task representation, etc.) to leverage the limited capacity of their local private bars. As if these dynamics were not enough, courthouse facilitators are under siege as a result of the explosion in pro se litigation in both routine and complex contested matters. The same is true for county law libraries. Already taxed beyond their capabilities, libraries are unable to dedicate the time or resources necessary to maximize their capability to help meet the civil equal justice needs of their low-income consumers.

**Rebuilding Equal Justice in  
Washington State: Revenue and  
Service Delivery Capacity Objectives**

THERE WAS A TIME when minimum access for low-income people could be determined by a congressionally accepted Legal Services Corporation "equation"—

two attorneys for every 10,000 eligible clients.<sup>19</sup> This was a long time ago (1974-1980), when staffed civil legal services programs were almost the exclusive way to meet the civil equal justice needs of low-income people.<sup>20</sup> Times have changed. Federal funding cuts, a burgeoning poverty-stricken population, increasing costs, the advent of new technologies, radical changes in the laws affecting poor people, the emergence of new state-based funding sources (IOLTA, DC-TED), a decade of experience with organized local bar volunteer pro bono programs, and an explosion in the number of pro se litigants (particularly in the areas of family and landlord-tenant law), have all worked to force a change in the way we quantify and develop the justice system's ability to meet the civil legal needs of low-income people. While continuing to serve a critical — even central — role, the staffed legal services programs are no longer the exclusive vehicle for delivering legal services to low-income people. Instead, they are an integral component of Washington state's new statewide Access to Justice Network.<sup>21</sup> The vision articulated in the *Hallmarks* and *State Plan*, and the practical connectivity of NJP's CLEAR system, serve as the glue that holds the ATJ Network together and ensures that its members operate in an integrated and efficient manner.<sup>22</sup>

The design and implementation of the *State Plan* to create an integrated delivery network will guide all present and future planning to meet the civil equal justice needs of poor people. These needs will be met by an ever-increasing mix of individuals, institutions and organizations working together to provide clients with effective and timely diagnostic services, identification of appropriate resource(s) to address legal needs, and the practical ability to secure meaningful legal assistance from an appropriate service provider. Depending on the nature and intensity of the legal needs, clients will be able to secure help from a staffed legal services program, a pro bono lawyer, a courthouse facilitator, or CLEAR, or they may simply need to sit down at a county law library, public library or other place to obtain necessary legal information from the Internet.

We must always remember that no single component of the system can be

**On the cover:**

1. **Hon. Richard P. Guy**, *Chief Justice, Washington State Supreme Court, Olympia*
2. **Hon. Christine Gregoire**, *Washington State Attorney General, Olympia*
3. **Nancy Isserlis**, *Regional Director, Columbia Legal Services, Spokane; former ATJ Board and LAW Fund Board Member*
4. **Salvador A. Mungia**, *Gordon Thomas Honeywell Malanca Peterson & Dabeim, Tacoma; President, Tacoma-Pierce County Bar Association; Lifetime Member; LAW Fund*
5. **Pam Daniels**, *County Clerk, Snohomish County Superior Court, Everett*
6. **Michele E. Jones**, *University of Washington Clinical Law Program; Seattle Access to Justice Board Member*
7. **Hon. Rebecca M. Baker**, *Superior Court Judge, Ferry, Pend Oreille and Stevens County Superior Court; former Board Member, Legal Foundation of Washington*
8. **Alicia L. Lowe**, *Schwabe & Wyatt, Vancouver; Vice President, Legal Foundation of Washington*
9. **John Clute**, *Dean, Gonzaga University School of Law, Spokane; Board Member, Legal Foundation of Washington*
10. **Sara Pedrick**, *Courthouse Facilitator, Okanogan Superior Court; Director, Okanogan County Dispute Resolution Center*
11. **Greg Orchard**, *Pro Bono Coordinator, Northeast Washington Legal Aid, Colville*
12. **Bob Patrick**, *Aitken, Schable, Patrick, Neill & Ruff, Pullman; Board Member, Columbia Legal Services*
13. **Brenda Carlstrom**, *Client Board Member, Columbia Legal Services; Community Action Council Member, Hoquiam*
14. **Melissa Flores**, *Coordinator, North Columbia Low-Income Legal Assistance Program, Moses Lake*
15. **Jeff Sullivan**, *Yakima County Prosecuting Attorney*
16. **M. Wayne Blair**, *Montgomery Pрудье Blankinship & Austin, Seattle; President, Washington State Bar Association*
17. **Jean Holcomb**, *Librarian, King County Law Library, Seattle*
18. **Wendy Bohlke**, *Assistant Attorney General, Bellingham; Board Treasurer, LAW Fund; Past President, Whatcom County Volunteer Attorney Legal Services (now LAW Advocates)*
19. **Gary Ponti**, *McAdams Ponti & Wernette, P.S., Walla Walla; Contract Attorney, Northwest Justice Project*
20. **Lisa Stone**, *Executive Director, Northwest Women's Law Center, Seattle*
21. **Rosa Hernandez**, *Paralegal, Farm Worker Unit, Northwest Justice Project, Pasco*
22. **Hon. T.W. (Chip) Small**, *Superior Court Judge, Chelan-Douglas Superior Court; Chair-elect, Access to Justice Board; Former President, Legal Foundation of Washington*

counted on to comprehensively address the full continuity of client needs. The precise mix-and-match of local and state resources and capacities will necessarily differ by location.

The Access to Justice Board's *Hallmarks* and *State Plan* inform the planning of an effective delivery system. But they leave important questions unanswered. Foremost among these is the size, location and geographical deployment of civil equal justice capacities. The full continuum of civil equal justice capacities (client outreach, community legal education, brief service, self-help assistance and direct rep-

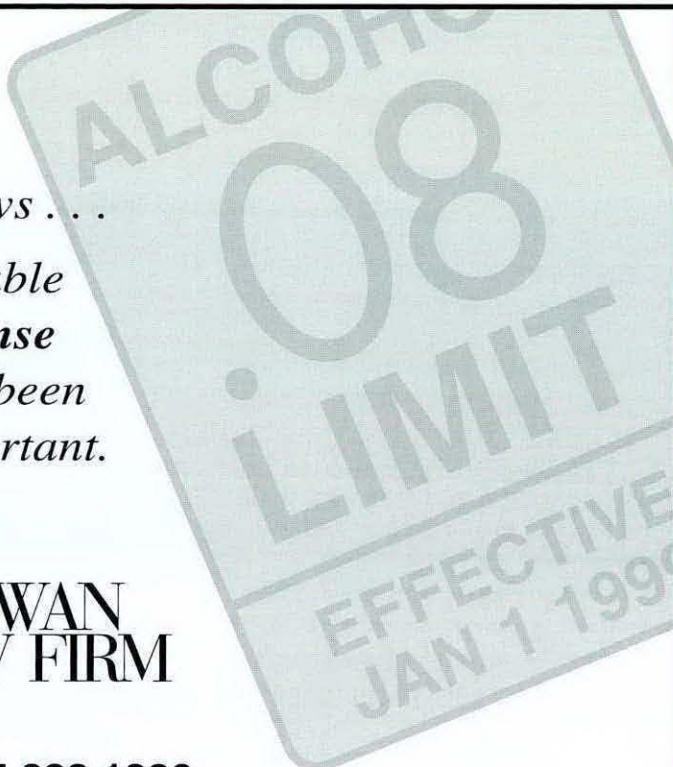
resentation) must be meaningfully available regardless of where low-income people reside in Washington state. Low-income people in Walla Walla, Longview and Republic should have similar abilities to secure appropriate civil legal assistance as their counterparts in Spokane, Seattle and Olympia.

At the same time, there is a minimum level of capacity below which civil access to justice is no longer meaningfully available to those in need of help. It is obvious that we are far below this minimum level of capacity. Led by the Washington State Bar Association and the Washington Su-

preme Court, our equal-justice community has concluded that an incremental first step in the effort to rebuild an effective statewide equal-justice system will require not less than five million dollars per year in additional funding during the 1999-2001 biennium to make this initial step toward a revitalized equal-justice delivery system meaningful.

**W**HAT WILL \$5,000,000 per year in expanded statewide funding buy? A five-million-dollar increase could support a substantial increase in the number of legal services staff attorneys throughout the state. This will enable the programs to restore meaningfully relevant service capacity in places like Bellingham, Vancouver, Pasco, Longview and the Olympic Peninsula, as well as in the large urban centers where legal services staff attorneys are laboring under almost insurmountable odds. It will also allow for expanded utilization of private attorneys in the most geographically isolated areas of the state. Finally, it will allow the Network to complete the investment necessary to ensure that the CLEAR system fulfills its promise of full statewide geographic and constituency relevancy. By increasing funding to these levels, we will take a great leap forward in ensuring access to the civil justice system for the poorest and most vulnerable members of our state.<sup>23</sup>

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Dean, National College of DUI Defense 1996-1997; Founder, Washington Association of Criminal Defense Lawyers; Founder/President, Washington Foundation for Criminal Justice

### **Vernon A. Smith, Partner**

Founder, National College of DUI Defense; Member, Washington Foundation for Criminal Justice; Member, Washington & National Associations of Criminal Defense Lawyers; Lecturer, DUI defense seminars; NITA graduate

### NOTES

1 Excerpted from the Final Report of the Pro Bono and Legal Aid Committee of the Washington State Bar Association to the Board of Governors of the Washington State Bar Association (May 1, 1998).

2 Statistics generated from the Census Bureau and trended to the most recent poverty information tracked by the state Office of Financial Management generate a base number of 915,000 individuals living at or below 125 percent of the federal poverty guideline in Washington state. In addition, there are about 176,000 non-census-based migrant and seasonal agricultural workers who, for the most part, have annual incomes at or below 125 percent of the federal poverty guideline and about 88,000 low-income residents of long-term care and correctional facilities.

3 The general design of the emerging delivery system is best captured in the Equal Justice Pyramid which is constructed under the Access to Justice Board's general oversight.

4 Assuming the 1990 census percentage of 2.3 individuals per low-income household is applied to the 915,000 census-based individuals with incomes at or below 125 percent of the federal poverty guidelines. This does not include non-cen-

sus-based households.

5 ABA Consortium for Legal Services and the Public, *Report on the Legal Needs of the Low-Income Public*, ABA Publication No. 4290018 (Jan. 1994).

6 ABA Legal Needs Study, table 4-1, at 19.

7 *Id.*, table 4-2, at 10.

8 The difference depends on the definition of "unmet need." If unmet need is defined as "legal needs for which low-income people did nothing or were dissatisfied with the outcome of their own efforts or those of non-legal third parties," then 61 percent of low-income legal needs are unmet. If unmet need is defined as "all legal needs that are reported but are not brought into the civil justice system, or are in the civil justice system without representation by an attorney or other legal advocate," then about 75 percent of all civil legal needs are unmet.

9 While a specific Washington state legal-needs study has not been undertaken, studies in Florida, Massachusetts, Missouri and other states come to the same general conclusion as the ABA study. Field experience reported by CLEAR, private bar volunteer attorney programs, and staffed legal services programs affirms the proposition that between two-thirds and three-quarters of low-income people's needs are not fully met.

10 There are additional specialty access systems for individuals with specific types of legal problems, most notably local domestic violence advocacy programs which help pro se victims of domestic violence secure judicial protection in accordance with the procedures set forth in RCW 26.50. In addition, CLS, NJP, local volunteer attorney programs and other direct legal services providers have developed systems to ensure that those who cannot effectively self-identify or self-refer (the so-called "hard-to-serve/hard-to-reach") have effective and meaningful access to the civil justice system.

11 In Spokane County, the family-law courthouse facilitator provides help to more than 5,000 pro se individuals each year. In Snohomish County in 1997, nearly 8,000 individual pro se litigants were assisted by the courthouse facilitator, and an additional 10,000 pro se litigants received assistance from the county's domestic violence advocate.

12 Clerks receive many requests for assistance and guidance across a wide variety of case types. Court-house facilitators, on the other hand, are generally limited to helping pro se litigants in family law matters.

13 E.g., farmworkers, disabled individuals, refugees, etc.

14 The staffed programs also labor under the burden of fiscal, administrative and service delivery redundancies (e.g., dual fiscal and personnel administration, dual physical infrastructure in single locations, etc.) as a consequence of the federal government's effort to regulate activities of LSC grantees that are underwritten with non-federal funding sources. For more detail on this, see the ATJ Board's *State Plan for the Delivery of Civil Legal Services in Washington State* at 2.

15 Columbia Legal Services has regional and sub-regional offices in Everett, Seattle, Tacoma, Olympia, Yakima, Wenatchee and Spokane. Its offices range in size from four (Spokane) to 7.67 (Seattle) lawyers. Some offices (Wenatchee and Yakima)

include both field-service staff and special-project (farmworker) staff. Including its farmworker offices, Northwest Justice Project maintains a staffed presence in Bellingham, Everett, Seattle, Tacoma, Olympia, Vancouver, Pasco, Yakima, Wenatchee and Spokane. The NJP's offices range in size from 1.5 (Bellingham) to four (Seattle and Spokane) lawyers.

16 This figure is trended from 1990 census data for King County. The consequences of this staffing level are only slightly mitigated by the presence of other legal services providers in the King County area.

17 See the earlier discussion of the ABA's study and the incidence of civil legal problems per poor household.

18 CLEAR handled more than 20,000 requests for civil legal assistance in 1998. About 50 percent of these required referral to a direct service provider; and, for the majority of these, there was no provider capable of accepting a referral from CLEAR.

19 This figure was embraced by the LSC Board appointed by President Ford in 1976, at a time when LSC-funded staff-attorney programs were seen as a near-exclusive source of civil legal services for poor people. The 2:10,000 figure was not envisioned as a goal, but as a benchmark for providing "minimum access" to justice for people in poverty, using a two-person office as the minimum level of staffing necessary that should be employed. Unfortunately, all too many programs (including the Northwest Justice Project) have been forced to operate staffed offices with staffing levels of less than two full-time-equivalent lawyers.

20 There was even a time when this so-called mini-

mum access level of capacity was achieved in Washington state. In 1980-82, there were 133 civil legal services staff attorneys in 18 offices and three special projects serving an eligible poverty population of 650,000 people.

21 While not the sole measure of "minimum access" anymore, the 2:10,000 relationship nevertheless remains a relevant gauge for determining how far we are away from a system that even begins to meet the civil equal justice needs of the poor. With 96 attorneys (including CLEAR staff) serving a population of 1.2 million, the staffed legal services programs now operate at a level of two attorneys for every 25,000 eligible poor people.

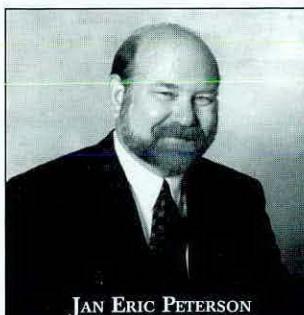
22 The Network is the physical manifestation of the Access to Justice Board's *State Plan for the Delivery of Civil Legal Services in Washington State*. This plan, developed in concert with more than 160 stakeholder entities and organizations, was adopted in November 1995 by the ATJ Board in response to then-pending congressional action that would substantially alter the mission and focus of the federal Legal Services Corporation, and that would prove to have significant implications on the ability of our state's civil legal services providers to ensure the continued availability of a full range of civil legal services capabilities for all low-income people in Washington state.

23 Since its initial publication, the Pro Bono and Legal Committee Report, from which this article is excerpted, has served as the foundation of a broad-based and bipartisan effort to secure new resources for civil legal services. For further information, please contact the Equal Justice Coalition, P. O. Box 21026, Seattle, WA 98111-3026; telephone 206-447-8168; e-mail [equalj@ejc.org](mailto:equalj@ejc.org).

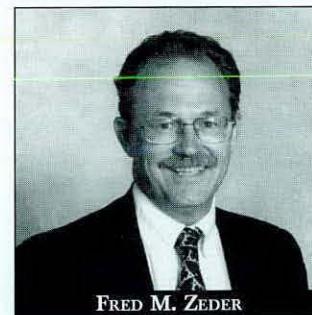
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### CORRECTION

**Jan Eric Peterson** and **Fred M. Zeder** recently obtained an \$11,000,000 jury verdict in Kennewick, Washington for a 16-year-old quadriplegic. The previous announcement in this publication incorrectly implied that the entire verdict was against the National Spa & Pool Institute. Sixty percent of fault was allocated to NSPI for negligent industry standards and failure to warn the public.

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# The Fundamental Right to Access to Justice: The Historical Antecedents

The individual right to access a system of justice has been the most basic and fundamental of the rights of our constitutional and common-law heritage. This right was adopted as a foundation-stone of our country's jurisprudential beliefs. It is found explicitly in state constitutions, and implicitly as an integral part of the United States Constitution's values. Because it is so fundamental, and so obvious a part of "rule of law," it has been assumed, and thus neglected. There is a paucity of contemporary legal literature reaffirming it. Any significant historical research, however, documents the prominence of the concept over the approximate 800 years of its existence.<sup>1</sup>

The core idea of "access to justice" is often referred to by terms such as "access to the courts," "the right to a remedy" and/or basic "common-law rights." Whatever the language differences are, in at least 39 of our state constitutions, there is some form of the following language: "All courts shall be open; every person for injury done to him in his goods, lands, or person shall have remedy by due process of law; and right and justice shall be administered without self-denial or delay." As Professor Francis McGovern noted: "These remedy clauses, traceable to the Magna Carta, guarantee that the courts of justice shall be open to every person for redress of any injury, without denial or delay."<sup>2</sup>

Other writers conclude that these clauses, as well as better

known due-process provisions, have as their origin the following comment from the Magna Carta:

*No free man shall be taken or imprisoned or dispossessed, or outlawed, or banished, or in any way destroyed, nor will we go upon him, or send upon him, except by the legal judgment of his peers or by the laws of the land, and "To no one will we sell, to no one will we deny, or delay right or justice."*<sup>3</sup>

Sir Edward Coke, the towering jurisprudential figure for our Founding Fathers, resurrected and interpreted chapter 29 of the 1297 Magna Carta, seeing these remedy provisions as a jurisprudential right.<sup>4</sup> That view was well-known and frequently appeared in the legal documents of the colonies, even before the Revolution. They were a part of the original constitutions adopted in the late 18th and early 19th century by most of the states. These "access to justice" provisions have been defined as:

*[t]he taproot of the English and our common law system, central to which is the idea that common law courts resolve disputes, creating precedents, and thus law....Some scholars trace the earliest foundations of the common law back to the reign of King Henry II (1154-89).*<sup>5</sup>

There is no question but that, for several hundred years, including before the United States Constitution came into existence, these provisions of the Magna Carta, signed by King John in 1215 and reissued by subsequent early British kings, were a central theme of what came to be known as English constitutionalism. There is no doubt that the Founding Fa-

thers who wrote the Constitution were fully familiar with them, and that the jurisprudential basis of the United States, and the individual states, was based on the language of that heritage. There are full expositions of this history and tradition from Coke through Blackstone in his *Commentaries Upon the Law of England*, and in E.S. Creasy, *The Rise and Progress of the English Constitution* (1886), essential texts for American legal scholars into the 20th century.<sup>6</sup> Repeatedly in the *Federalist Papers* and various commentaries on the creation of the United States Constitution and its Bill of Rights these themes are present.

These "access to justice" provisions appeared in all the original 13 colonies, except for Virginia, where it was taken for granted as so basic a doctrine of the common law and natural law, that its specification was unnecessary. When the Bill of Rights was prepared, it was modeled upon Virginia's Declaration of Rights of 1776, and thus the usual "access to justice" clauses found in other states were not included. Professor McGovern advises that one of the purposes for the Ninth Amendment ("the enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people") was that fundamental rights which were so self-evident need not be enumerated, although they had to be defined as a part of our fundamental constitutional heritage. Thus, the Ninth Amendment's intent was to include inherited fundamental common law values by a specific (albeit unenumerated) Constitutional clause protecting self-evident individual rights — the "truths" of the Declaration of Independence.<sup>7</sup>

Any possible textual ambiguity in the Federal Constitution was resolved in 1803 by our country's most important Supreme Court decision and Justice John Marshall's jurisprudence. *Marbury v. Madison*<sup>8</sup> stands virtually alone in our constitutional history in establishing the meaning of judicial power and judicial review. It defined what the original constitutional intent was, and gave shape and power to rule of law under a constitutional system. Marshall's opinion reviewed the historic background, English precedents and scholarship — principally Blackstone, the

*Federalist Papers* and the Constitution itself, in determining that *Marbury*, the petitioner, had a right to a writ of mandate, to compel Secretary of State Madison to issue his commission as a justice of the peace in the District of Columbia. He then reached his second inquiry, which was: "If he has a right, and that right has been violated, do the laws of his country afford him a remedy?" His answer was:

*The very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury. One of the first duties of government is to afford that protection. In Great Britain, the King himself is sued in the respectful form of a petition, and he never fails to comply with the judgment of his court.*

Citing Blackstone, he stated:

*It is a settled and invariable principle in the laws of England, that every right, when withheld, must have a remedy, and that every injury its proper redress. The government of the United States has been emphatically termed a government of laws, and not of men. It will certainly cease to deserve this high appellation, if the laws furnish no remedy for the violation of a vested legal right.*

Justice Marshall then defined the basis for judicial review in a constitutional system with separation and limitation of powers, noting that "[i]t is emphatically the province and duty of the judicial department to say what the law is." He describes "the very essence of judicial duty" as upholding fundamental principles.

In the almost 200 years since *Marbury*, the Supreme Court has recognized and reaffirmed this fundamental core principle, sometimes eloquently, as in the recent case of *Romer v. Evans*.<sup>9</sup> Justice Kennedy, in declaring unconstitutional a Colorado initiative rescinding city ordinances barring discrimination against homosexuals, stated to the court:

*Central both to the idea of the rule of law, and to our own Constitution's guarantee of equal protection, is the principle that government and each of its parts remain open on impartial terms to all who seek its assistance. "Equal protection of*

*the laws is not achieved through indiscriminate imposition of inequalities."*

Yet the 800-year-old jurisprudential principle of rule of law, and access to justice — the principle that government and each of its parts remains open on impartial terms to all who seek its assistance — has strangely and vigorously been contested over and over again.

## Access to Justice in Case Law

In researching "access to justice," the devil is not in the details, but in the classifications. The basic principle of "access to justice" can be found over and over again, often quite accidentally, reading case law and law reviews on other issues, because the values and principles of "access to justice" necessarily underpinned the more superficial issue. Research in the field of

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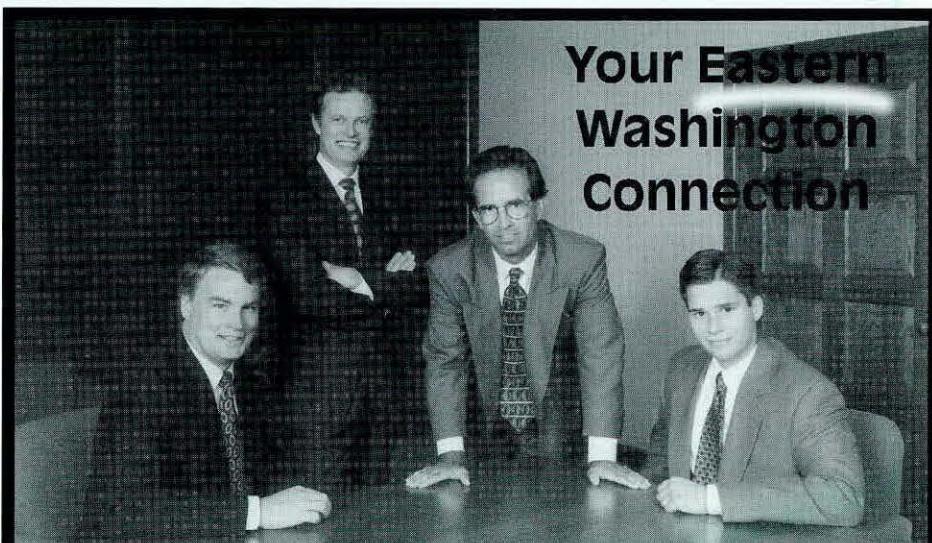
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tort preemption repeatedly led the United States Supreme Court's evaluation as to whether a state common law tort action was preempted to inquire as to whether preemption would deprive a party of a remedy. The Court recognized that result was a grave constitutional deprivation. Yet they did not generally adopt the language of "access to justice" in refusing to preempt a state cause of action. In evaluating the fundamental right involved, it is sometimes couched in terms of "due process of law" or "equal protection" of the law.

A principal subject area where the issue arises is poverty law. Another area of concern is court underfunding and shutdown. There is an ABA Special Committee on Funding the Justice System. Questions as to the right to have attorney representation and issues involving legal services raise these questions directly. Likewise, they are present in contingent fee; the English rule on costs; award of attorney fees in public-interest representation; and other impediments to access to justice from court rules, preclusive court rulings, and denial of the right to present one's case. But in legal research bibliographies and case headings, one is not apt to find an "access to justice" classification, despite its being the crucial underlying constitutional issue.

**In evaluating the fundamental right involved, it is sometimes couched in terms of "due process of law" or "equal protection" of the law.**

The high-water mark of Supreme Court sensitivity to poverty issues was almost 30 years ago. *Boddie v. State of Connecticut*<sup>10</sup> was a class action brought on behalf of all female welfare recipients residing in Connecticut and wishing divorces, but who were prevented by Connecticut statutes requiring payment of court fees and costs for service of process as a condition precedent to access to the courts. The Court held that this denied due process of law to indigent persons by refusing to permit them to bring divorce actions except on payment of fees and costs they were unable to pay. Justices Douglas and Brennan concurred, urging that the Equal Protection Clause be considered applicable. Justice Harlan's opinion for the Court<sup>11</sup> sets forth an historic and philosophic basis for the right of access to justice, citing large numbers of cases supporting that right. Douglas stated that he believed that "this case

should be decided upon the principles developed in the line of cases marked by *Griffin v. Illinois*,<sup>12</sup> quoting Justice Black's opinion in *Griffin* stating that "[t]here can be no equal justice where the kind of a trial a man gets depends on the amount of money he has."

The Court heavily relied upon the previous year's opinion in *Goldberg v. Kelly*,<sup>13</sup> holding that procedural due process under the Fourteenth Amendment required that welfare recipients be afforded an evidentiary hearing before termination of benefits by welfare authorities. Justice Brennan wrote the opinion which has been frequently cited, stating, "From its founding this Nation's basic commitment has been to foster the dignity and well being of all persons within its borders. We have come to recognize that forces not within the control of the poor contribute to their poverty."<sup>14</sup> The Court's decision refers to ". . . certain principles [that] have remained relatively immutable in our jurisprudence . . . They have ancient roots. They find expression in the Sixth Amendment . . . This court has been zealous to protect these rights from erosion . . . The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel."<sup>15</sup>

Since *Goldberg v. Kelly* and *Boddie v. Connecticut*, reflecting the Warren Court's sensitivity to the claims of the poor, and the fundamental right to access to justice, the Burger and Rehnquist Courts have been notable for their parsimonious attitudes about access to the courts. Occasionally, however, in the special circumstances of prisoner cases, these concerns were reinvigorated. In *Bounds v. Smith*,<sup>16</sup> in an opinion by Justice Thurgood Marshall, it was held that the fundamental constitutional right of access to the courts requires state prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with adequate law libraries, or adequate assistance from persons trained in the law. The Court's majority took it as indisputable that there is a fundamental right to access to the courts. Chief Justice Burger, joined by Justice Rehnquist in dissent, denied that there was such a fundamental right, but did so without any citation supporting that claim. Since 1977, some Supreme Court cases have reaffirmed the principles.<sup>17</sup>

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In the Ninth Circuit, in the leading case of *Armster v. United States District Court*,<sup>18</sup> Judge Reinhardt, for the Court, held that wholesale, nondiscretionary suspension of civil jury trials, and a blanket moratorium on all civil jury trials for three-and-one-half months due to lack of funds violated the petitioner's Seventh Amendment rights. The case was brought for petitioners by Seattle attorneys Brian Putra and Judith Bendich. It is a classic example of the unconstitutionality of non-funding and court suspension, and a forceful affirmation of the fundamental nature of the rights protected. The court stated:

*Constitutional rights do not turn on the political mood of the moment, the outcome of costs/benefit analyses, or the results of economic or fiscal calculations. Rather, our constitutional rights are fixed and immutable, subject to change only in the manner our forefathers established for the making of constitutional amendments. The constitutional mandate that federal courts provide civil litigants with a system of civil jury trials is clear. There is no price tag on the continued existence of that system, or on any other constitutionally provided right. The decision to maintain a system of civil jury trials was made long ago at the time our Constitution was adopted. It is not within our power or that of any other branch of government to create exceptions for budgetary reasons....Neither the Congress nor the courts can deprive a litigant of the right to a civil jury trial.*

There are many cases involving state constitutionalism where the "access to justice" issues arise directly, and far more frequently than in federal courts, because of the specific state constitutional provisions referred to above.<sup>19</sup> In Washington state, there have been numbers of state Supreme Court decisions raising these issues.<sup>20</sup>

More recently, although the fundamentality of access to justice was not articulated as clearly, it has been present in some interesting cases. *John Doe v. Blood Center*<sup>21</sup> was an action seeking damages for negligence from a blood center by the estate of a person who died from an AIDS-related disease after receiving a blood transfusion, and who sought to compel the blood center to identify the person who

donated the blood. The Washington Supreme Court affirmed an order permitting discovery of the identity of the donor. They specifically decided that the constitutional assurance of justice must be openly administered, and that the Washington "open court" provision, Article 1 Section 10, is the basis for the right of all parties to have access to the courts within the framework of the law. Discov-

ery rules serve to practically implement the particular interests of parties to a specific dispute in furtherance of this general principle of access.

Justice Brachtenbach, for the Court, studiously evaluated the plaintiffs involved, writing a three-page essay on the right of access to the courts, in this state.<sup>22</sup> Article 1, Section 10, like other "open court" provisions, has its origins in

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the Magna Carta. The Court stated, "That justice which is to be administered openly is not an abstract theory of constitutional law, but rather is the bedrock foundation upon which rest all the peoples' rights and obligations." The Court underlined that "the right of access to the courts is a fundamental right."<sup>23</sup>

Even fundamental principles of constitutional jurisprudence ebb and flow with the politics and passions of our times. But it is the duty of the courts to preserve and implement those principles. This view has been elaborated upon by the author.<sup>24</sup> The clearest expression of the imperative

necessity for legal responsibility to meet the ever-widening gap between rich and poor, and the priority which we must attach to it, was said almost 100 years ago by the famous French satirist Anatole France:

*The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread.*

#### NOTES

1 Roman law also was concerned with "access to the threshold of the judicial system." Bruce W. Frier, *The*

*Rise of the Roman Jurists: Studies in Cicero's Pro Coecina* (Princeton Univ. Press, 1985).

2 Francis E. McGovern, *The Variety, Policy and Constitutionality of Products Liability Statutes of Repose*, 30 Am. U.L. Rev. 579, 615 (1981).

3 *Statutes of the Realm* (1963).

4 See E. Coke, *The Second Part of the Institutes of the Laws of England*, I, 55-56 (1642) (New York: Garland Pub. Co., 1979).

5 See Thomas P. Lewis, *Jural Rights Under Kentucky's Constitution*, 80 Ky. L.J. 953 (1991).

6 More recent sources include Carl Stephenson and Frederick G. Marcham, *Sources of English Constitutional History* (New York, London: Harper & Brothers, 1937) and William Holdsworth, *History of English Law* (New York: Columbia Univ. Press, 1923).

7 See *The Rights Retained by the People: The History and Meaning of the Ninth Amendment*, (Randy E. Bargett ed., 1989).

8 5 U.S. 137, 2 L. Ed. 60, 1 Cranch 137 (1803).

9 517 U.S. 620 (1996).

10 401 U.S. 371 (1971).

11 See 401 U.S. 374, ff.

12 351 U.S. 12 (1955).

13 397 U.S. 254 (1970).

14 See 397 U.S. 264, ff.

15 Powell v. Alabama, 287 U.S. 45 (1932).

16 430 U.S. 817 (1977).

17 The United States Supreme Court has also recognized access to justice as a fundamental right in many other cases, from *Marbury* to the present. See *S.L.J. v. M.L.B.*, 517 U.S. 1118 (1996). Also see the following: *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Wolff v. McDonnell*, 418 U.S. 539 (1974); *California Transport v. Trucking Unlimited*, 404 U.S. 508 (1972); *Bivens v. Six Unknown Fed. Narcotic Agents*, 403 U.S. 388 (1971); *United Transportation Union v. State Bar of Michigan*, 401 U.S. 576, 585 (1971); *Johnson v. Avery*, 393 U.S. 483 (1969); *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965); *Brotherhood of Railway Trainmen v. Virginia ex rel. Virginia State Bar*, 377 U.S. 1, 7 (1964); *Mullane v. Central Hanover B. & T. Co.*, 339 U.S. 306 (1949); *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673 (1930); *Chambers v. Baltimore & Ohio R.R.*, 207 U.S. 142 (1907); *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); 18 792 F.2d 1423 (9th Cir. 1986).

18 See, e.g., *Doe v. Schneider*, 443 F. Supp. 780 (D.D.C. Kan. 1978); *Brennanman v. RMI Co.*, 70 Ohio St. 3d 460 (1994).

20 See the post-Boddie-Goldberg influence in the following cases: *Housing Authority v. Salors*, 78 Wn.2d 732 (1978); *In re Myricks*, 85 Wn.2d 252 (1975); *Carter v. University*, 85 Wn.2d 391 (1975); *In re Lusicer*, 84 Wn.2d 135 (1974).

21 117 Wn.2d 772, 819 P.2d 370 (1991).

22 See discussion, p. 780 ff.

23 For further amplification, see *Doe's Brief of Amicus Curiae*, by WSTLA, written by Bryan Harnetiaux and Robert Whaley, particularly pp. 4-7. See also law reviews discussing Washington's constitutional access to justice clause: *Wang, Janice Sue, State Constitutional Remedy Provisions and Article I, Section 10 of the Washington State Constitution: The Possibility of Greater Judicial Protection of Established Tort Causes of Action and Remedies*, 64 Washington L. Rev. 203 (1989); *Wiggins, Charles K., Harnetiaux, Bryan P. and Whaley, Robert H., Washington's 1986 Tort Legislation and the State Constitution: Testing the Limits*, 22 Gonzaga L. Rev. 193 (1986/87).

24 For a more detailed review of these issues, see Schreter, "The Jurisprudence of Access to Justice: From Magna Carta to *Romer v. Evans* via *Marbury v. Madison*," presented at the Washington Access to Justice Board's Annual Conference in 1996, and republished in *WSTLA Trial News*, June 1998.

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## PART 2 of 2

by Rob Apgood  
roba@sidlon.com



# E-mail: Privacy in the Legal Workplace

Many courts and practitioners agree that the use of e-mail in modern legal practice has become commonplace and will only continue to grow in importance. Communicating by e-mail is a faster and less costly method of sharing documents and information than the traditional mode of printing and physical delivery.<sup>1</sup> It is, then, not surprising that we are seeing an increase in its use for communication between lawyers and their clients.<sup>2</sup>

**A** RECENT SURVEY concluded that over 65 percent of lawyers use e-mail on a regular basis to communicate with their clients and other attorneys.<sup>3</sup> These communications frequently contain confidential client information. While the general trend of belief by courts, attorneys and commentators is that unencrypted e-mail is a sufficiently secure medium of communication, there is some fairly notable disagreement on this point.<sup>4</sup> Nevertheless, unencrypted e-mail seems to be gaining legal recognition as a valid means of communication. This is due, in part, to the protections afforded by the Electronic Communications Privacy Act of 1986 (ECPA).<sup>5</sup>

ECPA makes it illegal to intercept, copy, alter or disseminate an electronic transmission. It further provides that a privileged document does not lose that privilege simply because it is transmitted in electronic form.<sup>6</sup> ECPA's amendments to the Wiretap Act (which already criminalizes the interception and dissemination of telephone and aural communications) require that the government obtain a court order prior to intercepting e-mail. ECPA exempts from its coverage any communication system configured to make its transmitted messages "readily accessible to the general public," but the relative difficulty of accessing e-mail, combined with the fact that e-mail is not sent

by common carrier or otherwise transmitted in such a manner so as to demonstrate that it is not intended to be kept private, makes e-mail typically not accessible to the general public and protected by ECPA. Likewise, stored e-mail messages are protected by 8 U.S.C. § 2701(a). State courts are bound to enforce ECPA and the Wiretap Act,<sup>7</sup> and state legislatures cannot enact less restrictive provisions.<sup>8</sup>

The majority of state-bar ethics committees addressing the e-mail privacy issue have approved the use of unencrypted

e-mail as a legitimate means to communicate confidential information. This majority emphasizes a "common sense" approach. For example, if you wouldn't discuss a matter over the telephone or by use of the U.S. mail, don't use unencrypted e-mail as the alternative. On the other hand, if you feel comfortable discussing a matter over the telephone, e-mail is viewed as affording the same degree of expectation of privacy.

Arguably, e-mail is "mail" and has been so treated by most courts as a "record." Consequently, these communications, unless otherwise protected from disclosure by applicable Evidence Rules, are subject to discovery requests. Form discovery request lists now typically include e-mail messages, much to the boon of litigators who have encountered treasure-troves of incriminating information in these mes-

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sages (and much to the chagrin of the producing party). And, typically, most courts allow redaction of portions of these messages in a manner consistent with redaction of any other document. Today, however, there is not on-point precedent. As such, there is no guarantee that any particular court will agree that e-mail is afforded the privacy discussed here, and attorneys and their clients should keep this in mind when deciding on the communications medium to use in the exchange of sensitive information.

**T**O COMPLICATE the issue, as noted above, ECPA exempts transmissions made over common carriers (read: wireless transmissions). Since ECPA exempts communications over cordless and cellular phones, a serious question is raised as to the privacy expectations of e-mail sent, for example, from a laptop connected to an Internet Service Provider (ISP) by modem through a cellular phone. Transmissions of this type may well be classified as "radio communications" under ECPA, since they are ar-

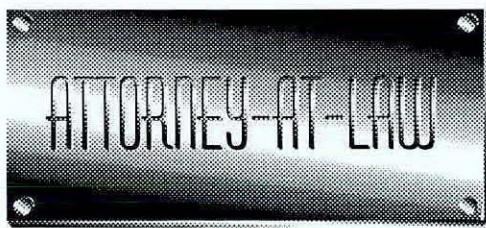
guably "readily accessible to the general public" by virtue of being transmitted over the airwaves. In rebuttal, privacy advocates may argue that improvements in technology since the advent of ECPA exempt these types of transmissions from the ECPA exceptions, an argument which is bolstered by some courts having given privacy protection to cellular phone conversations.<sup>9</sup> This argument is sound, since wireless Internet technology typically utilizes technology that is more sophisticated and difficult to intercept than conventional cellular-phone conversations.<sup>10</sup>

The attorney-client privilege and work-product privilege has been applied to e-mail messages. The privilege applies to the substance of the communication, and not to the form. As such, courts have held that the standard applied to these communications is the same as that applied to any other reasonably secure communication. If the communication is handled in an insecure fashion, the privilege is waived, the same as if the attorney and his or her client held a loud conversation in a crowded room, or posted a document on a bulletin board. Conversely, if the attorney and client took reasonable steps to ensure the confidentiality of the communication, the privilege remains intact. Courts confronted with the issue have typically treated attorney-client e-mail communications as privileged in reliance on 8 U.S.C. § 2517(4).

Similarly, e-mail inadvertently sent to an opposing or other party may lose its privilege under certain circumstances. Jurisdictions are all over the map on this issue. The duty of an attorney who receives an e-mail inadvertently sent by opposing counsel or party is unclear. The official ABA position is that the attorney receiving such a communication has a three-fold duty:

1. not review the document, or do so only to the extent necessary to determine its privileged status,
2. notify the sender, and
3. return it.<sup>11</sup>

This duty presupposes that the sender took adequate precautions to indicate that the e-mail was privileged. A multi-page message that contains a notice in the signature portion at the end of the message indicating that the communication is

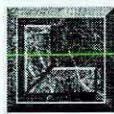


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privileged and confidential suffers the risk of losing its protection far more readily than one which contains the notice at its beginning or in the "Subject:" line of the message. The prudent communicator will impose a conspicuous notice of confidentiality at the beginning of a message, much the same as would be imposed on a traditional paper communication containing confidential information.

Moreover, a communication from an attorney to his or her client runs the risk of losing the privilege if the client forwards a copy of the message to a party not bound by confidentiality obligations. This is no different from a letter or other traditional communication. But "sharing" a privileged e-mail with members of a corporation, or among parties with an allied legal strategy, does not waive the privilege.

At this time, there is no Washington statute that specifically addresses the confidentiality of e-mail communications between an attorney and his or her client. Neither has the WSBA issued any formal opinion on the subject.<sup>12</sup> Similarly, there is very little official guidance from the courts.

While the general tendency appears to favor a societal expectation of privacy in e-mail, much the same as the expectation found in traditional mail and telephone conversations, the issue is unsettled and is likely to remain so for some time. Consequently, if you and your client need to discuss a matter of great import, you should keep in mind that e-mail communications may not afford the privacy protection that common sense dictates they should. If separation of distance warrants using this new medium of communication for a quick and easy mode of communication, however, serious consideration of the use of encryption technology, (our topic for next month), could well provide an excellent solution for ensuring confidentiality. 

#### NOTES

1 Symposium, *Lawyers Online: Discovery, Privilege, and the Prudent Practitioner*, 3 B. U.J. Sci. & Tech. L. 5, n.10 (1997); Alaska B. Assn., Op. 98-2 (1998).

2 Amy M. Fulmer Stevenson, *Comment, Making a Wrong Turn on the Information Superhighway: Electronic Mail, the Attorney-Client Privilege and Inadvertent Disclosure*, 26 Cap. U.L.Rev. 347, 368 (1997).

3 Hon. Donald E. Shelton, *Courts on the Internet: Not Just Another Pretty Face*, Mich. B.J., May 1998 at 398.

4 See *ACLU v. Reno*, 929 F.Supp. 824 (D.E. Pa. 1996). 5 Pub. L. No. 99-508, 100 Stat. 1848 (codified as amended in various sections of 8 U.S.C.). 6 8 U.S.C. § 2517(4).

7 ABA/BNA, *Electronic Communications Practice Guide* 55:414 (1996)

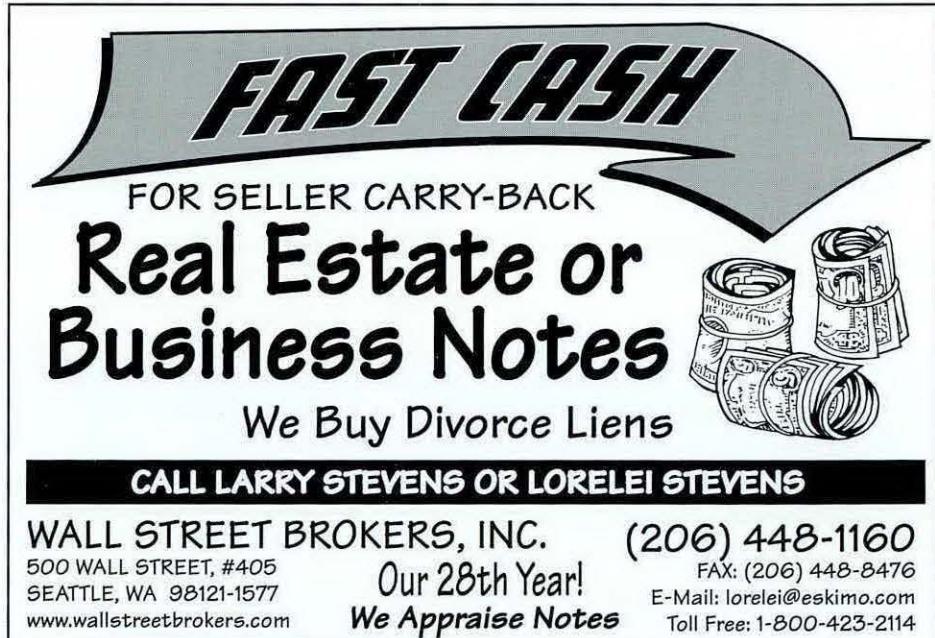
8 Albert Girardi, *Privilege and Confidentiality in Cyberspace* (<http://www.perkinscole.com/resource/ecommpriv.htm>).

9 Shubert v. Metophone, Inc., 898 F.2d 401 (3rd Cir. 1990).

10 See generally Lucy Schlauch Leonard, *The High-Tech Legal Practice: Attorney-Client Communications and the Internet*, 69 U. Colo. L. Rev. 851, 855-6 (1998); Jeff Schiller, *The Harvard Conference on the Internet & Society* 137 (1996).

11 ABA Comm. Eth. Prof. Resp., Formal Op. 94-382 (1994).

12 Apparently, the only states whose bars have issued opinions are Alaska, Arizona, Colorado, Illinois, Iowa, North Carolina, North Dakota, Pennsylvania, South Carolina, Vermont and the District of Columbia.



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By Christopher Sutton

WSBA Professional Responsibility Counsel

The WSBA Lawyer Services Department is pleased to announce the addition of a Mediation Program to the services offered through the Alternative Dispute Resolution (ADR) Program. The ADR Program's Voluntary Fee Arbitration service, in operation since the 1970s, offers a quick, low-cost method for clients or lawyers to settle disputes about the fair and reasonable value of legal services through binding arbitration. As an additional service, the Mediation Program now offers Washington lawyers the opportunity to resolve disputes through a designated mediator.

### What is Mediation?

Mediation is an informal dispute resolution process that seeks to facilitate settlements of disputed matters through negotiation. Disputes that may be referred to the Mediation Program include disputes between lawyers and lawyers; disputes between lawyers and clients; and other disputes, including those between lawyers and other professionals. In order to participate in the WSBA Mediation Program,



Almost any type of dispute in which at least one of the parties is a lawyer may be mediated.

at least one party must be a member of the WSBA. Mediation does not occur unless both parties agree to mediate.

### How Does Mediation Start?

When a lawyer has a dispute with another individual, or when a nonlawyer has a dispute with a lawyer, either party may call the WSBA ADR coordinator for information about resolving the dispute through mediation (toll-free 800-945-WSBA or direct line 206-733-5923). After a request for mediation is received from one party, the ADR coordinator will contact the other party to ensure that both agree to mediate their dispute and to abide

by the procedures for mediation. An agreement to mediate and to maintain confidentiality is sent to the parties to be signed and returned to the WSBA. The coordinator then selects a mediator, unless the parties have already agreed to a particular mediator, and schedules the time and location for the mediation to take place. The mediator may be a lawyer or nonlawyer, but must have the appropriate training and experience to serve effectively in a facilitative role.

### What Kinds of Disputes May Be Mediated?

Almost any type of dispute in which at least one of the parties is a lawyer may be mediated. Often disputes arise out of a misunderstanding concerning the expectations and responsibilities of the parties. These disputes are often settled once a dialogue is established. Mediators strive for open communication with the understanding that the mediator is not acting as a lawyer or fact-finder, but as a neutral individual whose purpose is to facilitate settlement between the parties.

### The WSBA Lawyer Services Department (LaSD) consists of these four programs:

**The Lawyers' Assistance Program (LAP) – 206-727-8268:** Confidential assistance for lawyers with emotional, drug/alcohol or other personal problems.

**The Law Office Management Assistance Program (LOMAP) – 206-727-8237:** Offers consultation and information to help solo and small-firm practitioners deliver legal services of the highest quality.

**The Professional Responsibility/Ethics Program – 206-727-8219:** Lawyers can call a WSBA lawyer for assistance in resolving ethical dilemmas.

**The Alternative Dispute Resolution Program (ADR) – 206-733-5923:** Offers two low-cost methods of resolving disputes: voluntary fee arbitration and mediation.

Please call our department at the phone numbers listed above for additional information and/or assistance in these areas.

### What is in the Agreement to Mediate?

By agreeing to participate in the WSBA Mediation Program, the parties agree:

- To use their best efforts to resolve the dispute.
- To keep communications with the mediator confidential, provided that no party is precluded from filing or pursuing a grievance under the Rules for Lawyer Discipline.
- Not to call the mediator as a witness in any other proceeding.

### What is the Goal of Mediation?

The WSBA Mediation Program is meant

to be a quick and inexpensive means of resolving disputes. Mediation does not stop the running of the statute of limitations, and the parties are reminded to take any action necessary to protect their legal rights. In cases where mediation results in only a partial settlement of the dispute, either party may seek additional relief through the courts.

#### **What Does Mediation Cost?**

There is a fee of \$50 for each party in the mediation.

#### **How Can I Start Mediation?**

Parties seeking mediation may obtain a Mediation and Confidentiality Agreement from the WSBA ADR coordinator. The completed form should be returned to the coordinator, who assigns a mediator and arranges a mediation session at a mutually convenient place and time within the next 30-60 days. The mediator reviews the written submissions of the parties, if any, before the meeting.

#### **What Happens at Mediation?**

At the mediation meeting, the mediator listens to both sides of the dispute and attempts to identify the issues and interests of each party. The mediator then facilitates a resolution of the dispute, using his or her skills to assist the parties in jointly solving the problems identified. If appropriate, the mediator may meet separately in confidential sessions with each party. If the parties find a mutually acceptable resolution of the dispute, the mediator assists in putting that agreement in writing so that it may be implemented. Such an agreement will be legally binding on the parties.

For further information on the Mediation Program or on Voluntary Fee Arbitration, please call the ADR coordinator (toll-free 800-945-WSBA or direct line 206-733-5923). For information on other services available to lawyers through the WSBA Lawyer Services Department, including the Lawyers' Assistance Program, the Law Office Management Assistance Program, and the Ethics Program, please call 206-727-8268 or visit the WSBA website at [www.wsba.org](http://www.wsba.org).

#### **Publication for Comment**

##### **Proposals of the Washington State Supreme Court for Changes to Washington Court Rules of Professional Conduct (RPC)**

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. These rules are to be published expeditiously in the Supreme Court advance sheet with the comment period expiring on June 30, 1999. In addition to publishing these proposals for comment, the Rules Committee requested that the Bar membership be notified on the Bar's website ([www.wsba.org](http://www.wsba.org)).

The Washington State Bar Association is publishing these proposals as a service to its members, the court system and the public. Bar members are invited to submit comments to:

Supreme Court Clerk  
Temple of Justice  
P.O. Box 40929  
Olympia, WA 98504-0929

##### **Proposal for a change to the State of Washington Court Rules of Professional Conduct (RPC)**

###### **PROPOSED AMENDMENT**

###### **RULES OF PROFESSIONAL CONDUCT (RPC)**

###### **RULE 1.8 Conflict of Interest; Prohibited Transactions; Current Client**

A lawyer who is representing a client in a matter:

(a) through(j) [No change.]

(k) Shall not:

(1) have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them at the time the lawyer/client relationship commenced; or

(2) have sexual relations with a representative of a current client if the sexual relations would, or would likely, damage or prejudice the client in the representation.

(3) For purposes of rule 1.8(k), "lawyer" means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.

##### **Proposal for a change to the State of Washington Court Rules of Professional Conduct (RPC)**

###### **RULES OF PROFESSIONAL CONDUCT (RPC)**

###### **RULE 8.4 (g) and (h) (new section)**

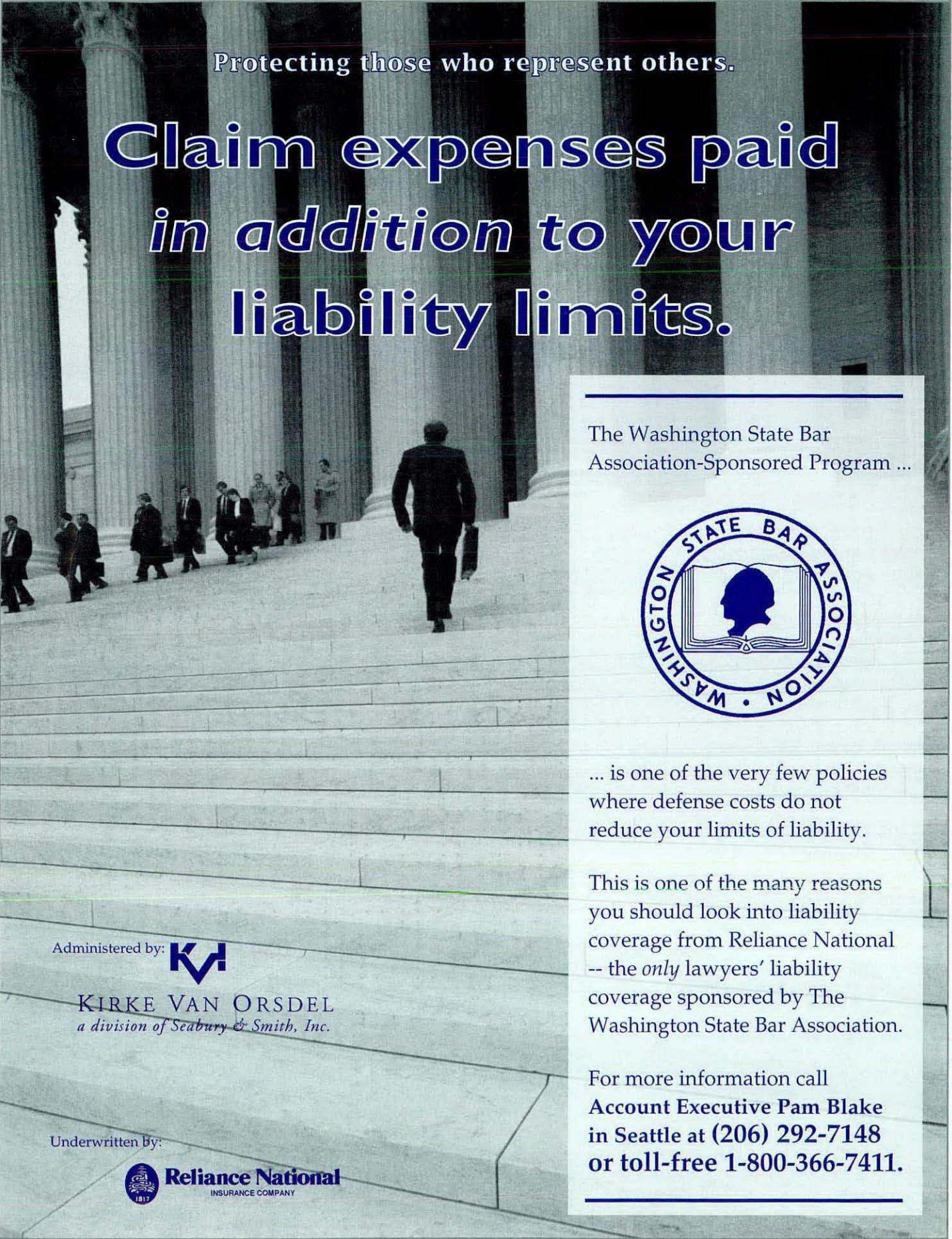
###### **MISCONDUCT**

It is professional misconduct for a lawyer to:

(a) through(f) [No change.]

(g) Commit a discriminatory act prohibited by state law on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, regardless of the number of persons employed by the lawyer, where the act of discrimination is committed in connection with the lawyer's professional activities. In that context, it is professional misconduct to commit a discriminatory act on the basis of sexual orientation if such an act would violate this rule when committed on the basis of sex, race, age, creed, religion, color, national origin, disability, or marital status. This rule shall not limit the ability of a lawyer to accept, decline, or withdraw from the representation of a client in accordance with RPC 1.15; or

(h) In representing a client, engage in conduct toward judges, other parties and/or their counsel, witnesses and/or their counsel, jurors, or court personnel or officers, that a reasonable person would interpret as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status. This rule does not restrict a lawyer from representing a client by advancing material factual or legal issues or arguments.



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# The Board's Work

by **Sherrie Bennett**

*Bar News Editor*

## **Legal Advice Hotline Standards Adopted**

After years of debate and many drafts, the Board of Governors at the March 26-27 meeting in Vancouver approved the following model standards for any for-profit legal advice hotlines that will receive referrals from CLEAR (Coordinated Legal Education and Referral) and the county legal referral services:

1. All hotline lawyers must be in good standing with the Washington State Bar Association.
2. All hotline lawyers must be covered by a minimum of \$1,000,000 malpractice insurance.
3. Each hotline lawyer must be identified to the caller by name and WSBA number.
4. All hotlines must maintain records of all calls and advice given to each caller, subject to criterion in #11.
5. All calls must be screened for income levels. Callers whose incomes fall within guidelines provided by CLEAR shall be informed of the availability of no-fee advice from CLEAR.
6. All calls must be screened for conflicts.
7. All calls must be screened for subject matter to ensure the client gets to the appropriate qualified hotline attorney.
8. Each call must receive advance notice of how much the caller will be charged for the call. Clients will not be charged for time spent on the screening, conflict check and/or referral.
9. All hotlines will pay a percentage of the revenue derived from each call referred by a county bar association lawyer referral service to the lawyer referral service that referred the call (this fee sharing is allowed by RPC 1.5(e)(1)).
10. All hotlines will periodically survey callers for client satisfaction and shall investigate and take appropriate action with respect to client complaints against a panelist, the hotline and/or its employees.
11. Disclosure of information to and by the hotline's agents shall be deemed a privileged lawyer/client communication.

12. Any hotline meeting these standards will be permitted to advertise or publicize that it follows WSBA standards.

## **No Position Taken on Mandatory Pro Bono Experience Requirement for Bar Applicants**

After considerable discussion, the Board declined to take a position on a proposal requiring mandatory pro bono experience documentation from bar exam applicants, instead sending the proposal back to the Supreme Court.

## **Defining the Practice of Law Committee Looking for Help**

Steve Crossland, Chairperson of the Defining the Practice of Law Committee, asked the Board to canvass WSBA members for horror stories involving people who have been harmed by persons practicing law in an unauthorized capacity. Descriptions of experiences should be sent to General Counsel Robert Welden at WSBA, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or [bobw@wsba.org](mailto:bobw@wsba.org).

## **Opportunities for Minorities Committee Renamed**

At the request of Bonnie Terada, representing the Opportunities for Minorities in the Legal Profession Committee, the committee has been renamed the Washington State Bar Committee for Diversity. This change was made to better reflect the work of the committee, which not only includes persons of color, but also addresses gay rights and Americans with disabilities issues. The Board authorized an additional \$1,000 in funding for the committee, which had exhausted an annual budget of \$1,500 halfway through the fiscal year due to transportation and conference-call costs.

## **Miscellaneous Board Matters**

The Board reviewed the 1999 WSBA Work Plan, following up on strategic-planning goals established by the Board in July 1998.

Governor Terry Lee (Third District) announced that he will be resigning from the Board on July 1, 1999. The Board appointed Steve Henderson, Governor-elect from the Third District, to fill the remain-

ing two months of Governor Lee's term.

The Board authorized a "banking relationships" resolution, which is updated each year, to be provided to banks when making investment purchases such as certificates of deposit.

## **ADR Standing Committee Report**

Governor Manning reported on recent meetings to establish a WSBA ADR standing committee to advise on the WSBA's voluntary mediation and arbitration programs and various issues facing the members of this committee. The committee is looking for new volunteer members; those interested should contact Chris Sutton, WSBA staff committee liaison, at 206-727-8219 or [chriss@wsba.org](mailto:chriss@wsba.org). The committee is also looking for volunteers for the voluntary fee arbitration program.

## **Survey Tabulation and Town Meetings Continue**

Responses to the member survey sent out in the March *Bar News* are rolling in; results will be tabulated and a report soon provided to the Board on the narrative comments received in the survey responses. The WSBA "town meetings" around the state are continuing, and several board members reported on their experiences in town meetings in their districts. Members seem to be reluctant to answer questions regarding the quality of specific WSBA services, perhaps because many members are not aware of what specific services actually *are* offered by the WSBA.

## **Technology Topic of Western States Bar Conference**

What began as a report from several Board members capsulizing knowledge gained from their attendance at the Western States Bar Conference in San Diego in February 1999 quickly moved to a more general discussion of law-based technology in the late 1990s. Governor Krueger reported on technology issues, including the use of Internet list servers, "push" technology (what information should be "pushed" at members simply because the technology is available), what kind of advertising should be present on bar websites, rating of other websites by WSBA members and televideo confer-

encing. Director of Communications Judith Berrett described the current WSBA website organization and talked about plans for future development and improvements. (The WSBA website can be accessed at [www.wsba.org](http://www.wsba.org).) Judge Judith Eiler described plans for upcoming court web pages.

#### Court Rules Committee Report

Court Rules Committee Chair Fred Diamondstone addressed several proposed court rules with the Board, including proposed ER 1101, which would exclude application of the evidence rules from domestic violence protection order hearings. The Board voted to approve the Court Rules Committee recommendation to add a new subsection (4) to ER 1101(c), providing that evidentiary rules need not be strictly followed when judges hearing domestic violence protection order hearings use court databases authorized by RCW 26.50.160 (which summarize prior domestic violence protection orders against the parties presently in front of the judge).

The Board voted to approve a proposed amendment to CR 40 which would add

a section regarding change of judges that "any right under RCW 4.12.050 to seek disqualification of a judge will be deemed waived unless, in addition to the limitations in the statute, the motion and affidavit are filed with the court no later than thirty days prior to trial before an assigned judge. For purposes of this rule, 'trial' includes any review of or appeal from an administrative body. If a case is reassigned to a different judge less than thirty days prior to trial, a party may then move for a change of judge, unless the moving party has previously made such a motion."

Pursuant to the committee's goal to eliminate duplication between Superior Court and District Court rules (Rules of Limited Jurisdiction), the Board reviewed and approved proposed changes to CR 16, CR 26(k), CR 41, CR 56, CR 81, CR 85, CR 38, CR 47 and CR 52. The Board continued the same review process for consolidating criminal court rules in Superior Court and District Court with CrR 3.1, CrR 4.7, CrR 4.8, CrR 5.2, CrR 4, CrR 4.2 and Form 2, RAP 18.9 and CRLJ 26.

After the laborious rules-review was completed, the Board discussed the speed

with which the process was expected to be accomplished, with President Blair noting that judges have become more active and adamant in moving court rule changes quickly through the system.

#### Lawyers' Fund for Client Protection

Barbara Selberg, chairperson of the Lawyers' Fund for Client Protection Committee, discussed several issues currently before the committee. The Board authorized the committee, subject to Supreme Court approval, to publicize the names of the lawyers whose clients are receiving monetary compensation from the Fund, but agreed with the committee that client names should not be publicized, to protect the clients' privacy. The committee is recommending raising the annual assessment each WSBA member would pay from \$10 to \$15, to keep pace with the growing number of applications for reimbursement from clients. Members who would like to comment on this proposed assessment increase should respond by June 4, 1999 to General Counsel Robert Welden at WSBA, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or [bobw@wsba.org](mailto:bobw@wsba.org).

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## Speak Out!

**Wanted:** Lawyers to volunteer to speak to schools & community groups on a variety of topics.

For more information, call Amy O'Donnell at the WSBA Speakers Bureau  
**206-727-8213**



# Changing Venues



Left to right: *Matthew Geyman (Heller Ehrman White & McAuliffe), Robert Stalker (Columbia Legal Services), Patrick McIntyre (Northwest Justice Project), Martha Knogsgaard (LAW Fund), Mark Parris (Heller Ehrman White & McAuliffe), Scott Holte (LAW Fund), Lauren Moore and Patricia Wagner (LAW Fund).*

Thumbs up to the Seattle firm of Heller Ehrman White & McAuliffe, for donating \$100,000 (yes, \$100,000) to LAW Fund.

## Honors and Awards

The Honorable **Joseph Jerome Farris** of Seattle has been elected Vice-Chair of The Fellows of the American Bar Foundation. The American Bar Foundation is a pre-eminent research center for the empirical study of law, legal institutions and legal processes in society.

The Eastside Legal Assistance Program, which helps more than 4,000 low-income individuals and families in the East King County area each year, has announced its 1999 officers: **Barry D. Rose**, a Bellevue attorney, has been elected president of the Board of Trustees; **Eric Frimodt**, a partner at Inslee, Best, Doezie & Ryder in Bellevue, is the group's new vice president; and Bellevue attorney **James B. Parsons** will serve as ELAP's new secretary-treasurer.

The Spokane County Bar Association recently honored **Harold "Pete" Clarke** with its annual Smithmoore P. Myers Professionalism Award. In addition, **Keith Campbell, Kermit Owens, Jack Bennett** and **Harvey Krell** were honored for 50 years of law practice.

**Timothy J. Blake** was recently appointed to the Paradise Valley Village Planning Committee and the Human Relations Diversity Committee of the

Paradise Valley Unified School District in Phoenix, Arizona.

## Movers and Shakers

**John T. Rodgers** and **Rosanna M. Peterson** have begun a new law partnership as Rodgers & Peterson LLP in Spokane.

**Kristin Olson**, the newly elected president of the East King County Bar Association, has become a principal shareholder in O'Shea Barnard Martin, PS in Bellevue.

Stoel Rives LLP has announced the election of new partners **Christopher J. Voss** (in the Seattle office) and **Louis A. Ferreira IV** (in the Vancouver office).

**Robin Kix Rock** has become a partner at the Seattle firm of Marten & Brown LLP.

California Bar member **Barry S. Levin** has been elected chair of Heller Ehrman White & McAuliffe.

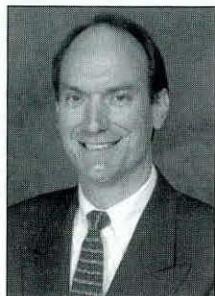
Dorsey and Whitney LLP continues its Seattle expansion with the addition of new partners **James Tune, Irwin Treiger, Bryce Holland, Timothy Osborn, Nancy Gallup, Christopher Barry, Robert Kaplan, Michael Brown, Richard Clinton, Evan Schwab, Jim Hermsen** and **Randall Steichen**.



*Robin Kix Rock*



*Barry Levin*



*Douglas R. Roach*



*Marisa M. Bavand*

## APPELLATE LITIGATION



*Douglass A. North*



*Michael T. Schein*

Recent, successful appeals include:

### Trial De Novo

*Roberts v. Johnson*, 137 Wn.2d \_\_\_\_ (1999)

### Equitable Mort. & Unlawful Detainer

*Pearson v. Gray*, 90 Wn.2d App. 911 (1998)

### Personal Injury

*Pudmaroff v. Allen*, 89 Wn. App. 928 (1998)

### Contractor Registration Act

*Hinton v. Johnson*, 87 Wn. App. 670 (1997)

### Collateral Estoppel

*Lee v. Ferryman*, 88 Wn. App. 613 (1997)

### Trust Litigation

*Estate of Tosh*, 83 Wn. App. 158 (1996)

### Evidence

*Reese v. Stroh*, 128 Wn.2d 300 (1995)

### Property Division

*In Re Marriage of Short*, 125 Wn.2d 865 (1995)

### Attorneys Fees

*Dempere v. Nelson*, 76 Wn. App. 403 (1994)

### Child Support

*Marriage of Stenshoel*, 72 Wn. App. 800 (1993)

### Trial Practice Rules

*Bryant v. Palmer Coking Coal Co.*, 67 Wn. App. 176 (1992)

### Motions to Vacate

*Vaughn v. Chung*, 119 Wn.2d 273 (1992)

### Service of Process

*Romjue v. Fairchild*, 60 Wn. App. 278 (1991)

### Insurance

*Tissell v. Liberty Mutual*, 115 Wn.2d 107 (1990)

### Business Torts

*Hoffer v. State*, 110 Wn.2d 415 (1988)

### Workmen's Compensation

*Dennis v. Dept. of Labor and Ind.*, 109 Wn.2d 467 (1987)

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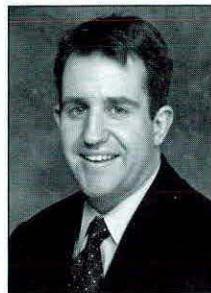
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Gary D. Luke



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**Lucy Isaki** has joined the Attorney General's office, where she will handle complex litigation throughout the agency. Isaki, who serves as a trustee of the University of Puget Sound and Eastern Washington University, will also become the president of the King County Bar Association.

**Douglas R. Roach** has become a partner at the Seattle firm of Groff & Murphy PLLC. He will continue his practice in construction law and commercial litigation. New associates include Marisa M. Bavand, Michael P. Grace, Barbara J. Yarington and Gary D. Luke.

**Stephanie Bloomfield** has been named a principal at Gordon Thomas Honeywell Malanca Peterson & Daheim, PLLC. Ms Bloomfield's primary areas of practice are tort and personal injury litigation, commercial litigation and appellate law. New associates at the firm include Dianne K. Conway, Thaddeus P. Martin IV and Michelle Menely.

Olympia firm Owens Davis Mackie PS has announced the addition of **David B. Merchant** to its litigation group. Merchant's practice will concentrate on business and employment issues.

Preston Gates & Ellis LLP is adding three new attorneys to its Seattle office. **Eric E. Freedman**, of counsel, will focus on municipal law. **William Resnik**, also of counsel, will practice business law. **Cynthia A. Kennedy**, a new associate, will focus on environmental and land use law.

**Diane M. Walker** is now associated with Doug Phelps & Associates in Spokane.

Five new associates have joined the ranks at Stoel Rives LLP in Seattle. **Amy Christophersen** (Minnesota Bar member) practices in construction and design law. **Ivan Garcia**, formerly of San Francisco, will assist emerging companies and

closely held businesses with mergers, acquisitions, public and private placements, venture-capital financings, shareholder and stock purchase agreements, distribution contracts, and corporate resolutions. **Kristi Helgeson**, a commercial litigator, represents clients in all phases of the dispute resolution process in state and federal trial, administrative and appellate courts. **Sherri Jefferson**, whose litigation experience has included wrongful discharge; race, age and disability discrimination; and unemployment-compensation disputes, will concentrate her practice in employment and labor law. **Katriana Samiljan** practices in the corporate, securities and finance group, assisting clients in initial public offerings, mergers and acquisitions, and securities matters.

**R.M. Baker** is now with the Spokane County Public Defender Office.

**Thomas A. Olson** has joined the firm of Kim & White, PS in Spokane.

### In Memoriam

**Edward H. McKinlay**, a Pasco attorney who was a WSBA member for 49 years, passed away February 28, 1999 at the age of 72. A long-time member of the Benton-Franklin Counties Bar Association, he became well known statewide by reason of a series of whimsical ripostes between himself and attorney Stanbery Foster published in *Bar News*.

Former administrative law judge and Holocaust survivor **Jack Heller** passed away February 23, 1999.

Retired Kitsap County Superior Court Judge **Oluf Jorgen Johnsen** passed away March 3, 1999 at the age of 86. Johnsen capped his career with his 1972 dismissal of the suit to prevent the Kingdome from being built. Since 1974, he served as a pro tem judge on the state Court of Appeals and the state Supreme Court.  $\triangle$



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## Ethical Obligation to Provide Pro Bono Service

By Barrie Althoff

WSBA Chief Disciplinary Counsel

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

**L**awyers have long willingly provided legal services to those in need, without any expectation of compensation, acknowledgment or reward. Committed lawyers look at pro bono service less as an obligation than as an opportunity to serve the public and bring access to justice to those otherwise unable to afford it. This article looks at whether lawyers have any obligation to provide pro bono services, the possible sources or rationale for such an obligation, and the possible means by which any such obligation may be met.

### Reasons Advanced For and Against Pro Bono Obligation

Although generations of lawyers have given freely of their time and talents to provide pro bono legal services to those who cannot otherwise afford legal services, that history of committed public service does not of itself create an ethical obligation for other lawyers to do so, nor does it necessarily mean that it is possible for today's lawyers to continue to provide such services.

Various rationales are advanced for a lawyer's obligation to provide pro bono services. It may be argued that society has given lawyers a monopoly in the practice of law, especially in courtroom representation, through unauthorized-practice-of-law legislation or court rules. It may also be argued that lawyers have in effect added to and profited from the increasing legal complexity of our society, in that many transactions cannot easily or safely be accomplished without competent legal as-

sistance. In exchange for this monopoly and role, it is argued, lawyers owe it to the public to provide legal services to those who cannot otherwise afford such services.

The monopoly/complexity rationale appears inadequate, however, to mandate

**Committed lawyers look at pro bono service less as an obligation than as an opportunity to serve the public and bring access to justice to those otherwise unable to afford it.**

pro bono services of lawyers, since there appears to be no societal belief that other professions and occupations also licensed by the state (other than, perhaps, the medical profession) have any obligation to provide free services. Nor has there been any vast outpouring of free services by plumbers, electricians, accountants, engineers or architects.

It has also been said that lawyers are obliged to render pro bono services because as officers of the court they have an obligation to ensure that our system of justice is fair, and that because of the complexity of the system it cannot be fair to those who cannot avail themselves of legal representation. The Preamble to the RPCs observes that lawyers as guardians of the law play a vital role in the preservation of society, and that the continued existence of a free and democratic society depends upon the recognition of the concept that justice is based upon the rule of law grounded in respect for the dignity of the individual. Lawyers providing pro bono services directly help maintain that respect for the dignity of the individual by assisting the individual person to seek or defend fundamental rights.

When lawyers are admitted to prac-

ice law, they each take an oath of admission to practice (Admission to Practice Rule 5(d)), wherein they solemnly declare, among other things, that they "will support the constitution of the State of Washington and the constitution of the United States"; "will abide by the Rules of Professional Conduct approved by the Supreme Court of the State of Washington"; and "will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed...."

Supporting the constitutions means more than merely making a one-time statement declaring support when admitted to the Bar.

It also calls for actions consistent with the oath. If lawyers believe that clients have the right to counsel and that democracy and the public's access to justice is endangered or limited by not having counsel, then lawyers must provide that counsel either directly themselves, or indirectly by securing resources to provide it.

There are also solid arguments why lawyers should not be compelled to perform pro bono services. The same federal and state constitutions which lawyers declare they will uphold for their clients also apply to and protect lawyers. The constitutions guarantee that lawyers will not be subject to involuntary servitude, or to unjust "taking" of their services. They assure that lawyers also are entitled to equal protection under the law and to due process of the law. To require lawyers to provide free legal services while not requiring free professional services of other licensed professionals, for example, raises an issue of a lack of constitutional equal protection. Further, the burden of any mandatory pro bono services would likely fall unequally on lawyers, particularly those practicing in family law, government benefits, housing, and criminal law, and likely on newly admitted lawyers.

## **Washington's Hortatory Requirement to Render Pro Bono Services**

**The Rule.** Rule 6.1 of Washington's Rules of Professional Conduct, captioned "Pro Bono Publico Service," recognizes both the long tradition of pro bono services and the practical realities of the practice of law.

Washington's RPC 6.1 is only two sentences long, with the first sentence stating the obligation to provide pro bono services, and the second describing how to do so. The first sentence states simply: "A lawyer should render public interest legal service." Generally, the RPCs both point the way to the aspiring and specify the minimal level of conduct below which no Washington lawyer can fall without being subject to disciplinary action. In some provisions of the RPCs, however, such as RPC 6.1, the RPCs point the way to the aspiring, but do not specify a minimal level of conduct leading to discipline. In the RPCs, the word "should" is an exhortation to a lawyer to engage in the specified conduct, while the word "shall" requires the lawyer to engage in the specified conduct or face discipline for failing to do so. In effect, RPC 6.1 urges lawyers

to render public interest legal services, but if the lawyer chooses not to do so, the lawyer will not be disciplined.

The second sentence of RPC 6.1 describes several ways of rendering public interest legal service, including providing services at no fee or at reduced fees to individuals or groups, by participating in activities for improving the law, and by providing financial support. The sentence is as follows:

*A lawyer may discharge this responsibility by providing professional services at no fee or a reduced fee to persons of limited means or to public service or charitable groups or organizations, by service in activities for improving the law, the legal system or the legal profession, and by financial support for organizations that provide legal services to persons of limited means.*

**Direct Legal Services.** Providing pro bono services is most directly accomplished by providing professional services at no fee or at a reduced fee for individual persons otherwise unable to afford them. Pro bono services are those rendered by the lawyer

with the intent of their being free or fee-reduced; they are not services for which a client has subsequently refused to pay or proven unable to pay.

For lawyers with expertise in serving needs related to families, housing, government benefits, immigration, public and civil rights, and criminal law, there is a wealth of opportunities to provide such services, either directly or through legal aid offices or legal clinics. Although many lawyers contribute their time and talents to such services, the total quantity of services actually rendered is woefully inadequate to meet the huge need for such services.

As society becomes increasingly complex and legalized, and as law practices become increasingly competitive and financially insecure, it is questionable whether the economics of private practice will allow private practitioners, even with the best of will, to meet the unfilled need for such services.

Lawyers performing pro bono services know that their ethical obligations to their clients are not reduced merely because services are rendered pro bono. A lawyer must still be competent, be diligent, communicate with clients, and so on, regardless of whether the client is being charged or pays any legal fees.

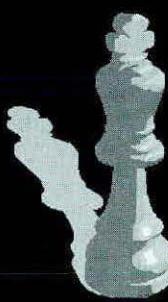
**Services to Organizations.** A lawyer may also provide pro bono services by providing free or reduced-rate professional services more broadly to the public by providing instead legal services to public-service or charitable groups or organizations. Providing services to such groups allows lawyers whose expertise may be of limited use to low-income persons (such as lawyers concentrating in corporate, securities, antitrust or tax cases) to donate their professional skills and contribute toward the public good.

**Improving the Law, Legal System & Profession.** The rule also recognizes that lawyers may provide pro bono services by using their talents and skills to improve the law, the legal system and the legal profession. This could include, for example, participation in legislative assemblies, state and local bar association activities, public legal education activities such as school

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mock-court competitions and career-day presentations, and more generally in public speaking about the legal system.

**Financial Support.** Washington's rule also recognizes that the contribution of financial support for organizations providing legal services to persons of limited means is a legitimate and important way for lawyers to render public-interest legal services. This in effect recognizes that the provision of such services is itself, in an increasingly specialized society, a legal specialty and that otherwise highly competent lawyers may simply lack the expertise to handle many of the legal problems facing the poor. While public-service agencies welcome volunteers, they also expend very substantial amounts of their resources and staff time training volunteers, so the net effect may be close to a wash. Thus, agencies often find that financial assistance may be equally or more valuable to them than volunteer services, since financial assistance in effect allows them to fund additional staff positions for persons already trained in the specific work that they do. Organizations in Washington dedicated to providing or funding such services include Columbia Legal Services, LAW Fund, the King County Bar Foundation, the Pierce County Bar Foundation, the Legal Foundation of Washington, and numerous county and local volunteer legal services programs.

The recognition of financial support as a legitimate means of rendering pro bono services also reflects the reality of law practice, in that many lawyers cannot, or will not, provide services in kind. The reasons for this vary, but include: lack of time; lack of emotional or temperamental compatibility with low-income clients; lack of expertise in appropriate areas of law; fear of malpractice claims; prohibitions by employers on legal work other than for the current employer; and feelings by some governmental and public interest lawyers that they are already in effect providing pro bono services by working in their regular jobs for very modest compensation. Other reasons include a desire by some lawyers to use non-work time to meet family obligations, or to work on other equally

pressing societal needs, such as working with the homeless, in domestic-violence shelters, or in providing other community services. And, of course, some lawyers simply do not believe they have any obligation to render any pro bono services or to do anything for anyone unless they are paid for it.

Washington's RPC 6.1 is identical to Rule 6.1 of the Model Rules of Professional Conduct as originally adopted by the American Bar Association in 1983. Washington has not adopted the substantial changes to the model rule adopted by the ABA in 1993. Those changes suggested that each lawyer should voluntarily contribute at least 50 hours of pro bono services per year. The revised model rule also established a hierarchy of the kinds of service that would be counted towards fulfillment of that service, with direct legal services to persons of limited means being most highly ranked. And, instead of recognizing that financial support is one alternative form of meeting the obligation for rendering pro bono services, the revised model rules provide that lawyers should, *in addition* to rendering such services, also contribute financial support.

### Conclusion

Lawyers have long rendered pro bono services without regard to whether there was any obligation to do so or any discipline for failure to do so. It has simply been an integral part of the profession which benefits the public, the profession and the lawyer.

Two thousand four hundred years ago, Thucydides quoted Pericles as criticizing states which left it to someone else to worry about the common good and thus, in effect, to allow the common good to go downhill. Lawyers have a long tradition of not allowing justice to go downhill. They know that the responsibility for the future of justice is too important to be left to chance, but instead must rest on each of us, and that each lawyer, as a guardian of the law, has a responsibility to work for and promote justice. Lawyers can assure that justice is not going downhill, by joyfully providing pro bono legal services and helping finance those services.

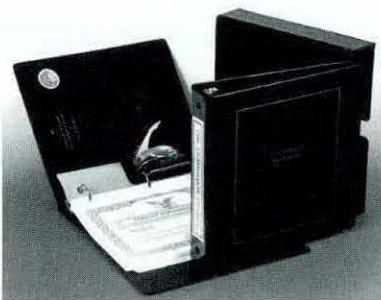
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# Disciplinary Notices

*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

Bellingham lawyer John D. Aaby (WSBA No. 54510, admitted 1973) has been disbarred by order of the Supreme Court effective February 24, 1999. The discipline is based upon his assaulting, taking sexually explicit pictures and asking highly personal questions of his female clients, and giving instructions leading to submission of an altered document to the Bar Association.

**Matter 1.** Mr. Aaby represented a 22-year-old client in a personal injury case. After taking several pictures of the client's injuries, Mr. Aaby asked the client to remove her bodysuit so he could take pictures of bruises on her buttocks. Mr. Aaby took several sexually explicit pictures of his client and made several sexually oriented remarks and suggestions. Mr. Aaby also engaged in sexual contact with this client. Mr. Aaby was charged with second-degree rape and taking indecent liberties. He pleaded guilty to fourth-degree assault.

**Matter 2.** In 1990, Mr. Aaby represented a 22-year-old client who had been in an automobile accident. During the case, several patients of the client's orthopedic physician alleged sexual contact by the orthopedist. The orthopedic physician treated the client for injuries she sustained in an earlier automobile accident. Mr. Aaby discussed the orthopedist's conduct with the client. Mr. Aaby also discussed a possible lawsuit against the doctor who performed the client's unsatisfactory breast surgery. In 1995, Mr. Aaby arranged to go to the client's home to discuss a settlement and take pictures of the client's injuries. The client arranged to have her mother present, but Mr. Aaby asked the mother to leave. Mr. Aaby then asked the client to remove her shirt and took pictures of her unclothed breasts in several poses. He also touched the damaged areas, and other areas, of her breasts. Mr. Aaby asked the client to reenact what occurred with the orthopedic physician. He asked the client specific questions and repeatedly touched her, questioning if he was touching her the way

the orthopedist did. Mr. Aaby left quickly when the client's brother knocked on the door. Mr. Aaby displayed the photographs of the client's breasts to his office staff, when not necessary for the representation.

**Matter 3.** In 1994, Mr. Aaby represented a female client in a personal injury case. He met with the client several times, usually with another staff member. On one occasion, Mr. Aaby met with the client alone. During this meeting, Mr. Aaby falsely told the client that he and several Seattle lawyers were studying issues of sex related to abuse. He explained to the client that she could help other women by answering the same questions they answered. Mr. Aaby then asked his client questions about her sexual practices and past emotional, physical and sexual abuse. These questions do not appear to have been related to the representation.

**Matter 4.** In 1993, WSBA received a grievance against a member of Mr. Aaby's firm. WSBA later asked for a complete copy of the client file. Mr. Aaby's firm's usual practice was to keep an ongoing chronological computer file for each case, called an "intake sheet." The firm member discussed WSBA's file request with Mr. Aaby. After this discussion, Mr. Aaby went to a secretary with a highlighted "intake sheet," and negligently gave instructions which the secretary reasonably interpreted as telling her to delete the highlighted portions.

Mr. Aaby's conduct violated RPC 8.4(b), which prohibits criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; RPC 8.4(c), which prohibits a lawyer from engaging in acts involving dishonesty, fraud, deceit or misrepresentation; RPC 1.7(b), stating that a lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's own interests; RPC 3.4(a), stating that a lawyer shall not alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act; and RPC 3.4(b), stating that a lawyer shall not falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law.

Maureen Devlin represented the Bar Association. Kurt Bulmer represented Mr. Aaby. The hearing officer was David T. Patterson.

## Suspended

Clark County lawyer Sharon Bartu (WSBA

No. 17080, admitted 1987) was suspended for five weeks pursuant to a stipulation approved by the Disciplinary Board on November 20, 1998 and by the Supreme Court on January 7, 1999. The suspension was effective from January 11, 1999 until February 15, 1999.

In June 1995, Ms. Bartu agreed to represent a Romanian citizen in an asylum proceeding before the Immigration Court. In August 1995, the Court notified Ms. Bartu of a July 1996 hearing. Ms. Bartu did not notify her client of this hearing. In February 1996, Ms. Bartu decided to withdraw from the client's case. Ms. Bartu told the client's interpreter that she intended to withdraw, but the client was not present during this conversation. Ms. Bartu prepared a Notice of Withdrawal, but did not file it with the Immigration Court, and did not serve her client until October 1996, when he picked up his file. Later, Ms. Bartu learned that her notice of withdrawal was not an effective way to withdraw in Immigration Court proceedings. In May 1996, the Immigration Court sent Ms. Bartu an advisory opinion about the client's case and a reminder of the client's July 1996 hearing. Ms. Bartu did not notify the client about the advisory opinion or hearing. In June 1996, the INS served the Preliminary Statement in the client's case on Ms. Bartu. Ms. Bartu did not notify the client about the Statement and did not file any responsive materials. Neither Ms. Bartu nor the client attended the July hearing. The Immigration Judge conducted the hearing and denied the client's application for asylum and his request to withhold his deportation. The Judge set a voluntary departure date of October 15, 1996, and included a deportation order. The Immigration Court sent Ms. Bartu a copy of the order. Ms. Bartu did not notify the client of the order. In August 1996, the client received a letter from the INS stating that in light of the decision in his case, he must be out of the country by January 2, 1997. The client then wrote to Ms. Bartu to find out the status of this case. Ms. Bartu did not respond. On October 26, 1996, the client met with Ms. Bartu and found out about the July 1996 hearing for the first time. He took his file and went to the INS to determine his status. An INS officer arrested the client on the spot and he spent five weeks in INS detention. On December 6, 1996, the client's new lawyer moved to reopen his case based on ineffective assistance of counsel. On January 2, 1997, the Immigration

Court granted the motion. During this time period, Ms. Bartu was moving her office and going through a painful dissolution.

By failing to advise her client of the hearing date, Ms. Bartu's conduct violated RPC 1.3, requiring lawyers to diligently represent clients; and RPC 1.4, requiring lawyers to keep clients informed about the status of their cases. By failing to notify the client that she had withdrawn from his case, and by failing to take steps to protect his interest, Ms. Bartu's violated RPC 1.15, requiring withdrawing lawyers to take steps to protect the client's interests; and RPC 8.4(d), prohibiting engaging in conduct prejudicial to the administration of justice.

Jean McElroy represented the Bar Association. James S. Smith represented Ms. Bartu. The hearing officer was Ronald Roberts.

#### **Suspended**

Franklin County lawyer David W. Corkrum (WSBA No. 13699, admitted 1983) has been suspended for 45 days, following a hearing, by order of the Supreme Court dated March 15, 1999. The discipline is based upon his failure to diligently represent his clients, and failure to keep his clients advised about the status of their cases. The suspension became effective March 22, 1999.

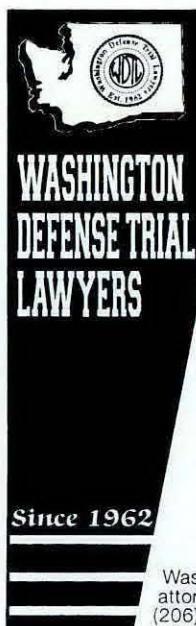
**Matter 1.** In April 1992, Mr. Corkrum agreed to represent a client in a child support modification action. Mr. Corkrum stated that he prepared the Petition to Modify Child Support, but did not file the petition, because he wanted to serve the father first. In April 1992, the father, an active member of the armed forces, was ordered overseas as a part of Operation Desert Storm. The father returned to the United States in July 1992. Based on conversations with Mr. Corkrum, the client believed that the father had been served with the petition. The petition was never served on the father. Mr. Corkrum did not correct his client's belief that the petition had been served, because he was on probation with the WSBA and wanted to resolve this matter favorably. In February 1993, Mr. Corkrum told his client that he had not served the petition. Although he asked to continue working on the case, on March 1, 1993, the client told Mr. Corkrum to stop working on her case. The client demanded her client file and \$3,760, which she apparently calculated to include the amounts she paid Mr. Corkrum and what she could have

received in increased child support. Mr. Corkrum wrote the client a check in that amount the same day. The client then demanded an additional \$308. When Mr. Corkrum refused to pay the additional amount, the client filed a grievance with the WSBA.

**Matter 2.** A client retained Mr. Corkrum to represent him in a case against a company for wrongful exposure to chlorine gas. Mr. Corkrum concluded that it would be difficult to prove that the damage to the client's lungs had been caused by the chlorine exposure, and not by his client's own cigarette smoking. Although Mr. Corkrum

had decided not to file a complaint, he did not convey this decision to the client. The statute of limitations on the client's claim lapsed before Mr. Corkrum told the client that he would not file a complaint. The client filed a malpractice action against Mr. Corkrum, and obtained a \$300,000 default judgment.

By failing to timely file and serve the Petition to Modify Child Support, Mr. Corkrum violated RPC 1.3 requiring a lawyer to diligently represent his clients; and RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the client's interests. By failing to



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November 4	<b>SPOKANE INSURANCE LAW SEMINAR</b> Cavanaugh's River Inn
November 5	<b>SEATTLE INSURANCE LAW SEMINAR</b> Westin Hotel
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tell one client that he had not filed and served the Petition to Modify Child Support, and another client that he had not filed a complaint before the statute of limitations had lapsed, Mr. Corkrum violated RPC 1.4, requiring a lawyer to keep a client reasonably informed about the status of the matter; and RPC 8.4(c), prohibiting conduct involving dishonesty, fraud or misrepresentation.

The presumptive sanction in this case was mitigated by testimony from a number of judges and lawyers about Mr. Corkrum's reputation and expertise in the criminal prosecution field, as well as his alcoholism and depression.

Leslie Allen represented the Bar Association. James Egan represented Mr. Corkrum. The hearing officer was Robert Redman.

#### **Admonished**

Newport lawyer Charles Baechler (WSBA No. 14861, admitted 1984) has been ordered admonished based on his neglect in representing a client in a marital dissolution matter. The client retained Mr. Baechler in November 1993. On January 13, 1994, the client requested that Mr. Baechler immediately file her Petition in Pend Oreille County, because her husband had retained counsel and was planning to file in Lincoln County. Apparently, Mr. Baechler falsely told the client that he had filed her petition. The client's husband filed his Petition in Lincoln County on February 4, 1994. Mr. Baechler signed an Acceptance of Service and Notice of Appearance without his client's knowledge or consent. On February 8, 1994, the client was personally served with the Lincoln County Petition. When the client discovered that Mr. Baechler had not filed her Petition, she retained new counsel, and requested a refund on her attorney's fees. Although Mr. Baechler's fee agreement stated that he would bill his time hourly, he did not keep any records of the time he spent on this case.

By failing to file his client's marital dissolution in a timely manner, Mr. Baechler violated RPC 1.3, which requires a lawyer to act with reasonable diligence. By failing to notify the client about the status of the dissolution, Mr. Baechler violated RPC 1.4, which requires a lawyer to keep a client reasonably informed and promptly comply with reasonable requests for information. By failing to provide the client with an accounting for the attorney's fees billed or the basis for the attorney's fees charged, Mr. Baechler violated RPC 1.5, which requires the basis for lawyer's fees to be communicated in writing.

Jonathan Burke represented the Bar Association. Mr. Baechler represented himself.

#### **Admonished**

Seattle lawyer Gary Ackerman (WSBA No. 1764, admitted 1975) has been ordered admonished by a Disciplinary Board Review Committee for contacting a represented party. A dispute regarding common-area expenses arose in a condominium between the owners of the commercial units and the owners of the residential units. Mr. Ackerman represented the commercial-unit owners. Another lawyer represented the residential-unit owners. Mr. Ackerman attended the 1996 annual owners' association meeting, but the residential owners' lawyer did not. Mr. Ackerman stayed after the meeting and discussed the common-area expense issue with one of the residential owners represented by the other lawyer. The residential owners' lawyer had not consented to the discussion. Mr. Ackerman urged the owner to consider a settlement proposal that had been sent to the residential owners' lawyer.

Mr. Ackerman's conduct violated RPC 4.2, requiring that lawyers not communicate with parties known to be represented about the subject matter of the representation, unless the other lawyer consents.

Jim Schellentrager represented the Bar Association. Mr. Ackerman represented himself.

#### **Admonished**

Lacey lawyer Karen Lundahl (WSBA No. 21247, admitted 1978) has been ordered admonished by a Disciplinary Board Review Committee. At a certain point in representing a family law client, without formally withdrawing, Ms. Lundahl discontinued performing any work on the client's matter. After this point, Ms. Lundahl did not communicate with the client, despite the client's repeated attempts to contact her. After several months of non-communication, the client terminated Ms. Lundahl and requested the client file. Ms. Lundahl still did not formally withdraw from the matter and did not provide the file for more than a year.

Ms. Lundahl's conduct violated RPC 1.4, requiring a lawyer to keep clients reasonably informed and comply with reasonable requests for information; and RPC 1.15 requiring a withdrawing lawyer to take steps to protect the client's interests, including surrendering papers to which the client is entitled.

Jim Schellentrager represented the Bar Association. Ms. Lundahl represented herself.

#### **Admonished**

Tacoma lawyer Marvin Olsen (WSBA No. 5462, admitted 1969) has been ordered admonished by a Disciplinary Board Review Committee for causing delay regarding a dissolution client's temporary orders. The opposing party filed a motion to obtain temporary residential placement of the children and noted it for hearing. Mr. Olsen obtained a continuance by agreement with opposing counsel, to allow him time to respond. Despite being granted a continuance, Mr. Olsen did not serve a responsive declaration until the day of the hearing. The Commissioner noted that the declaration also was not in the court file. Later investigation revealed that the declaration had an incorrect case number. The Commissioner continued the hearing two weeks. Mr. Olsen did not take any steps to assure proper filing of the declaration or to serve it on Court or counsel for the continued hearing. Mr. Olsen prepared two additional declarations but did not file them and did not timely serve them. The Commissioner continued the hearing again, and imposed terms against Mr. Olsen personally.

Mr. Olsen's conduct violated RPC 1.3, requiring lawyers to act with reasonable promptness in representing clients; and RPC 3.2, requiring lawyers to expedite litigation consistent with the client's interests.

Joy McLean represented the Bar Association. Mr. Olsen represented himself.

#### **Admonished**

Yakima lawyer Kenneth P. Schmidt (WSBA No. 14677, admitted 1975) has been ordered admonished by a Disciplinary Board Review Committee for failing timely to serve process and failing to so inform the clients. Several plaintiffs sued a husband and wife regarding a failed investment. The husband and wife filed for bankruptcy. The plaintiffs hired Mr. Schmidt to represent them in obtaining relief from the bankruptcy. Mr. Schmidt filed an adversary action but did not serve the adversary summons and complaint within the 120-day period allowed by FRCP 4, barring the adversary claim. Mr. Schmidt received a motion to dismiss based on the lack of proper service, but did not promptly inform the plaintiffs of the motion, or that the claim had not been served.

Mr. Schmidt's conduct violated RPC 1.3,

requiring lawyers to diligently represent their clients; RPC 1.4, requiring lawyer to keep clients informed about the status of their cases; and RPC 5.3(b), requiring lawyers to make reasonable efforts to assure nonlawyer assistants' conduct conforms to the RPCs.

Jim Schellentrager represented the Bar Association. Mr. Schmidt represented himself.

### **Admonished**

Everett lawyer Terry O. Forbes (WSBA No. 5626, admitted 1974) has been admonished pursuant to a May 15, 1998 order of a Review Committee of the Disciplinary Board. The admonition is based on Mr. Forbes' refusal, for over three years, to disburse to his client funds he held in his trust account. Mr. Forbes and the client disagreed on the portion of the funds due to the lawyer for his fees and the portion of the funds due to the client.

By failing to take prompt action to resolve this dispute and disburse to the client the funds to which the client was entitled, Mr. Forbes violated RPC 1.14(b)(4).

Julie Shankland represented the Bar Association. Mr. Forbes represented himself.

### **Admonished**

Spokane lawyer Robert R. Cossey (WSBA No. 16481, admitted 1974) has been ordered admonished pursuant to a stipulation, approved by the Disciplinary Board on November 20, 1998. The discipline is based upon his filing a client's bankruptcy petition in Washington, even though he knew that Idaho was the correct venue.

In 1996, clients residing in Idaho asked Mr. Cossey to file a bankruptcy petition in Washington. Although Mr. Cossey knew that the petition should be filed in Idaho, he filed it in Washington. The Assistant U.S. Trustee notified Mr. Cossey that the clients' petition would have to be dismissed and refiled in Idaho. Although Mr. Cossey filed the Motion to Dismiss, he did not follow through and obtain an order. The Washington court granted the clients a discharge, and then vacated the order, dismissing the clients' petition. The clients retained new counsel in Idaho to file a bankruptcy petition there. After the clients filed the grievance, Mr. Cossey refunded all of their funds.

Mr. Cossey's conduct violated RPC 3.4(c), stating that a lawyer shall not knowingly disobey an obligation under the rules of the tribunal, except for an open refusal

based on an assertion that no valid obligation exists.

Jonathan Burke represented the Bar Association. Mr. Cossey represented himself.

### **Admonished**

Seattle lawyer John E. Gibson (WSBA No. 19407, admitted 1990) has been ordered admonished pursuant to a stipulation approved by the Disciplinary Board on November 20, 1998. The discipline is based on his failing to appear for scheduled court hearings and tendering a check written on a closed bank account.

Mr. Gibson failed to appear for a scheduled court appearance. The Court issued a bench warrant, and he was taken into custody. Mr. Gibson then purchased two bail bonds. He wrote checks for the bonds on a closed checking account. Mr. Gibson failed to appear for a second hearing, and the Court ordered forfeiture of the bail bond. Mr. Gibson agreed to pay restitution for the check.

Mr. Gibson's conduct violated RPC 3.4(c), stating that a lawyer shall not knowingly disobey an obligation under the rules of a tribunal; RPC 8.4(b) prohibiting committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness to practice in other respects; RPC 8.4(c), prohibiting engaging in conduct involving dishonesty, fraud or misrepresentation; and RPC 8.4(d) prohibiting conduct that is prejudicial to the administration of justice.

Jonathan Burke represented the Bar Association. Mr. Gibson represented himself.

### **Admonished**

Seattle lawyer David Utevsky, (WSBA No. 7958, admitted 1977) has been ordered admonished following a hearing. The discipline is based upon his revealing a client's secrets/confidences without the client's consent. Mr. Utevsky's firm assigned him to litigate a small business client's multi-million dollar federal district court lawsuit. Following an unsuccessful settlement conference, the Court scheduled a Rule 39.1 mediation. Prior to the mediation, Mr. Utevsky wrote a letter to the mediator disclosing that he and his client had a difference of opinion regarding the settlement value of the client's case. Mr. Utevsky's letter stated that he was disclosing this information to the mediator in confidence. Mr. Utevsky did not obtain the client's consent prior to sending the letter to the mediator. The hearing officer

found potential harm, but no actual harm. The hearing officer also stated that the fact that these types of communications are frequently made to mediators does not exonerate the conduct.

Mr. Utevsky's conduct violated RPC 1.6, which prohibits a lawyer from disclosing a client's secrets or confidences without the client's consent.

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

## **NONDISCIPLINARY NOTICES**

### **Interim Suspension**

Blaine lawyer Roland O. Foster Balloun (WSBA No. 20884, admitted 1991) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered March 26, 1999.

### **Interim Suspension**

Spokane lawyer Scott A. Everard (WSBA No. 20218, admitted 1990) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered March 2, 1999.

### **Interim Suspension**

Tacoma lawyer Kelly M. Seidlitz (WSBA No. 17470, admitted 1987) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered January 26, 1999. This interim suspension is due, in part, to the lawyer's failure to respond to the Bar Association.

### **Interim Suspension**

Tacoma lawyer Jerold R. Weidenkopf (WSBA No. 12438, admitted 1982) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered February 10, 1999. This interim suspension is due, in part, to the lawyer's failure to respond to the Bar Association.

## **CORRECTION**

### **Interim Suspension**

Seattle lawyer Terry P. Watkins (WSBA #2333, admitted 1967) was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered January 15, 1999. *ED*

## 1999 WSBA Board of Governors Election Biographical Statements

### Third Congressional District (uncontested)

#### *Stephen J. Henderson*

Life began in Seattle (1947) and high school ended in Spokane (1965).

I attended law school at the University of Puget Sound in Tacoma, and have been in private practice in Olympia since 1975. My practice includes worker's compensation, personal injury, and estate planning.

I was president of the Thurston County Bar Association in 1992 and twice voted Boss of the Year by the Legal Secretaries Association in 1982 and 1989. Community activities include president of the West Olympia Rotary Club (1991) and member of the Olympia Highlanders Bagpipe Band.

Judy and I have been married since 1970, and have two children, Stephanie and Drew.

### Sixth Congressional District

#### *Dale L. Carlisle*

Dale lives and offices in Tacoma. His practice is real estate and business law in western Washington, where he has practiced with his current firm since 1966. He has also served as an assistant U.S. attorney, an Air Force JAG, and in-house counsel for a real estate development company.

He has participated as liaison at Board of Governors meetings frequently for several years. Representation of the Sixth District on the Board of Governors will allow him to continue service to the Bar and the Sixth District lawyers.

Bar memberships in many county, WSBA and ABA committees have demonstrated his continued Bar service. Dale recently served as chair of the Business Section and currently is a member of the VLS Committee for the Pierce County Bar. He has regularly participated in lobbying efforts for the Bar and Access to Justice as managing attorney for the Gordon Thomas Honeywell firm.

Dale has authored chapters in WSBA deskbooks on real estate and legal ethics. He regularly speaks at seminars and has been an adjunct professor at Seattle University Law School.

#### *Bertha B. Fitzer*

I received my J.D. in 1981 from the University of Washington and an LL.M. from Harvard. My solo practice emphasizes appeals and litigation. I contribute to Bar Association publications, serve on Bar committees and speak frequently at CLE programs. I am a member of TPCBA, the Federal Bar Association and the Puget Sound Chapter, American Inns of Court.

As we head into the new millennium, our organization needs strong, imaginative people willing to challenge the status quo. I believe courts should be "user friendly" and accessible. As your representative, I will

seek ways to increase access, limit unnecessary regulation and meet the challenges of our evolving profession. I would be honored to serve on the Board of Governors.

### Seventh-East Congressional District (uncontested)

#### *Jenny A. Durkan*

A Seattle native, Jenny Durkan obtained a B.A. from Notre Dame and her J.D. from the University of Washington. She has an active trial practice, with broad experience in civil and criminal cases. Jenny is an adjunct professor at the UW Law School, has taught at NITA, and is a frequent CLE lecturer. She has served on various Bar committees. Jenny believes strongly in the Bar's obligation of public service. She has held several civic positions, including the Governor's Executive Counsel and Citizen Observer, Police Firearms Review Board. She recently co-chaired the merit selection committee for U.S. District Court judge.

### Eighth Congressional District

#### *Don M. Gulliford*

Private trial practice since WSBA 1968 admission. Previous Trustee, two terms, East King County Bar Association, Washington Defense Trial Lawyers, Special District Counsel Office of Disciplinary Counsel; previous Chair, King County Lawyer Referral; WSBA Fee Dispute Panel. Previous Trustee, Snohomish-King County Cerebral Palsy, Eastside Community Health Center; previous member Mercer Island Civil Service Commission; Board Member Washington Wildlife & Recreation Foundation. USAFR Staff Judge Advocate (ret.)

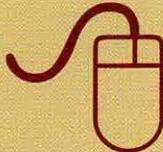
- President & Owner, 24 years aircraft parts mfg. co.
- UW B.A. 1961 UW Law School J.D. 1968
- Lifelong 8th District resident. Resides on Mercer Island with wife Sharon.

#### *Victoria L. Vreeland*

- Raised in eastern Washington
- Graduated from Gonzaga University School of Law, summa cum laude, 1976
- Clerked for Judge Dale M. Green, Washington State Court of Appeals, Division III
- Served as Assistant Attorney General, Consumer Protection/Anti-Trust, and Crime Victims Compensation Divisions
- Entered private practice in 1983 — partner in Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim — Seattle
- Trial practice emphasizing commercial, employment, civil rights
- Past member — WSBA Disciplinary Board, Special District Counsel, WSTLA Board of Governors, SKCBA Judicial Selection, numerous bar committees, task forces and CLE presentations
- Married, mother of three sons

## Access to Justice Establishes Presence on WSBA Website

The Washington State Access to Justice Network has just posted new pages to the WSBA website ([www.wsba.org](http://www.wsba.org)). The pages explain and document the founding and structure of the Access to Justice Network; alert interested attorneys of news, events, CLE and volunteer opportunities; provide links to other legal-services-related websites; and include a number of articles and reports explaining ATJ activities and principles. An opportunity for comment is also provided.



## "Dr. Frankenstein Beats Manslaughter Rap": Washington Attorney Educates Students and Teachers

"Most mock trial[s]...perform a trial based on a hypothetical set of facts, documents and statements," says attorney Steven Brown, who has turned law-related education into an art form as well as a second profession. "While that is fine as far as it goes, I believe that using books (such as historical novels) as the basis for mock trials is much richer." In addition to acquitting Dr. Frankenstein (whose creature, the

jury agreed, was responsible for his own actions), participants in Brown's kidLAW® program have also ruled in favor of Joan of Arc, accused of heresy; and Fagin, named in a civil

damage suit for wrongful death brought by the family of a former compatriot of his band of thieves.

An admitted "out of the box" thinker, Brown has put his creativity to use with kidLAW®. After a 14-year career as a trial attorney, in 1995 he moved out of his large firm and into a small home-office to develop the program, whose aim is to teach schoolchildren (K-12) about the law and the American justice system.

kidLAW® programs (now also available outside the greater Seattle area) include simple lessons in lawyer language, a courthouse tour, observation of a real-life trial, a student-run mock trial, "kidCourt" camp, town meetings and more. Brown tailors each program to the age of his audience, and either to their interests or to the current focus in a teacher's classroom. A believer that in legal education "more participation is better" and "process counts more than results," Brown designs programs that span several days helping students understand the trial process and prepare their questions and arguments.

In addition, Brown teaches the teachers as well as the students. This summer kidLAW® will offer an intensive 12-



hour teacher-training program, including instruction, class materials and trial scenarios. If you know a teacher or are the parent of a K-12 student and would like more information about kidLAW®, contact Steven Brown, 6541 Woodlawn Ave. N., Seattle, WA 98103; telephone 206-524-9339; e-mail [brownsd@aol.com](mailto:brownsd@aol.com).

## WSBA International Practice Section

### Notice of 1999 Annual Meeting

The International Practice Section's Third Amended Bylaws, adopted at the 1998 annual meeting, have been approved by the WSBA Board of Governors. To take advantage of the amendments, the Section Executive Committee has set the 1999 annual meeting for 5:00 p.m., June 14, 1999, at the offices of Williams, Kastner & Gibbs, 601 Union St., Ste. 4100, Seattle. The Section Nominating Committee has nominated as officers: Michael Herbst, Chairperson; Adam Chanak, Chair-elect; Rebecca Grant, Treasurer; and Nancy Norton, Secretary. Also nominated for positions on the Executive Committee are Adam Chanak, Position No. 1; Michael Herbst, Position No. 2; Nancy Norton, Position No. 3; Alan Rither, Position No. 4; Emanuel Tangas, Position No. 5; and Stefan Biberfeld, Position No. 6. Other nominations for any of these positions must be received by the Chair, Michael Herbst, Williams, Kastner & Gibbs, at least 20 days prior to the meeting date. Each additional nomination must be endorsed by five members of the Section.

## Lawyers' Fund for Client Protection Committee Recommends Increasing Mandatory Assessment

The Lawyers' Fund for Client Protection Committee is recommending that the Board of Governors ask the Supreme Court to increase the current annual \$10 Fund assessment to \$15, to be paid by all active members of the Bar.

The purpose of the Fund is to compensate those persons who have been the victims of the few dishonest lawyers who misappropriate, or fail to account for, client funds. Lawyers are privileged to be members of the only self-regulating profession and, unlike persons in many other regulated professions involving public trust, are not required to maintain bonds or insurance. Both nationally and locally, client protection funds have proven to be low-cost alternatives to other means to protect the public. *(continued on next page)*

## Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in April 1999 is 4.517 percent. The maximum allowable interest rate for May 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>.

The Fund was first established in 1960 as the "Client Indemnity Fund." Over the last several years, the number of applications submitted to or approved by the Fund has remained relatively stable, but the amount of money involved has increased significantly, as shown by the following table from the 1998 Annual Fund Report:

Year	# Applications	# Approved	Amount Paid
1988	39	19	\$28,494
1989	41	13	51,748
1990	30	15	35,920
1991	27	12	34,609
1992	23	18	87,751
1993	29	22	100,000
1994	36	23	99,902
1995	21	13	39,623
1996	42	13	134,153
1997	43	17	282,629
1998	43	22	193,000

Before 1995, the Fund was maintained as a line item in the WSBA budget. After adoption of APR 15 and establishment of the Lawyers' Fund for Client Protection, the annual assessment was set at \$10. In 1995 and 1996, this assessment was sufficient to permit full payment of all approved applications.

However, in each of the last two years, because of the limitation on funds available to pay approved applications, payments over \$3,000 have been prorated, by a factor of

## Support Group for Women Lawyers

The WSBA Lawyers' Assistance Program invites women lawyers to participate in a group provided in a supportive and confidential setting. Biweekly meetings will be held on Thursdays 12 noon - 1:30 p.m.

Co-facilitated by Jean Johnson, MSW, and Rebecca Nerison, Ph.D., LAP therapists.

**Fee: \$10 per session**

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

**206-727-8268**

*Services provided by LAP are confidential.*

.912 in 1997 and .984 in 1998. In 1999, it is anticipated that the \$10 assessment on each active member of the Bar, plus interest and restitution, will result in a total fund balance of about \$222,000. After Committee expenses and indirect costs (staff time and overhead) are deducted, the available funds will be about \$204,000. To date (halfway through the Fund year), the Committee has approved applications totaling \$94,000. If all pending applications were approved up to the per claim limit of \$30,000, the remaining possible exposure for the Fund would be \$490,000. Although not all pending applications will be approved, the Committee anticipates that for the third year in a row, there will be insufficient funds to pay all approved applications.

At their meeting scheduled for June 25-26, the Board of Governors will consider the Committee's recommendation to request the Supreme Court to approve an increase in the annual assessment on each active member of the Bar from \$10 to \$15. Anyone may submit comments on this proposal to the Board no later than June 4, 1999. Comments may be submitted either by U.S. mail to Robert Welden, WSBA General Counsel, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330, or by e-mail to [licensing@wsba.org](mailto:licensing@wsba.org).

## The Information Gathering Continues

Many thanks to those of you who have completed the "Raising the Bar" survey; we appreciate your thoughtful responses. It's not too late to participate – you have until May 15th. If you have Internet access, the easiest way to respond to the survey is online, through the WSBA website ([www.wsba.org](http://www.wsba.org)); simply click on the "Raising the Bar" icon and follow the simple on-screen instructions. You can also fill out the survey found on pages 19 and 20 of the March issue of *Bar News* and fax it to 206-727-8320. We hope to hear from you!

In addition to the surveys, we are also gathering data through a series of town meetings. We are pleased to report that town meetings in Bellevue, Wenatchee, Vancouver, Kennewick, Bellingham and Spokane have been very successful. Participants have enjoyed meeting with their colleagues to exchange ideas about the future of the bar, the legal profession, and ways in which the WSBA can help members meet the challenges of doing business in the 21st century. We invite

you to join us at one of our May meetings:

Seattle	May 4
Tacoma	May 5
Everett	May 17
Stevenson	May 16
Olympia	to be scheduled



Call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA for details or to register. Information is also on the WSBA website ([www.wsba.org](http://www.wsba.org)).

Data from the surveys, town meetings, and structured meetings with other stakeholder groups 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 in response to members' concerns and requests.

## 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 [www.wsba.org/service.html](http://www.wsba.org/service.html).

### WSBA Awards Nominations Sought

The Board of Governors of the Washington State Bar Association is seeking nominations to identify members of the Bar and the public who deserve the legal profession's recognition and thanks. For a description of the awards, please refer to page 53 of the April *Bar News* or the WSBA website ([www.wsba.org](http://www.wsba.org)). All nominations are due May 14, 1999.

### KCWWL to Hold Judicial Appreciation and Honors Luncheon

Bar members are invited to join King County Washington Women Lawyers in recognizing and honoring the contribution of women judges to our legal system at KCWWL's 1999 Judicial Appreciation and Honors luncheon, to be held at the Olympic Four Seasons Hotel in Seattle on Thursday, June 3, 1999, from 12:00 to 1:15. The luncheon will recognize all women judges whose jurisdiction includes King County, as well as selected individuals for their special contributions to justice. For more information contact Lynda Jonas at 425-822-1157; fax 425-889-2775; e-mail [legalease@legalease.com](mailto:legalease@legalease.com).



On March 23, KCWWL sponsored a table at the YWCA Professional Women's Luncheon in Seattle, which raised funds to benefit YWCA programs. Attendees heard moving stories from program clients, and also enjoyed keynote remarks from Star Jones, a former New York City prosecutor who now co-hosts ABC's program *The View*. KCWWL thanks Therese Hansen for acting as table captain, and the many KCWWL members and guests who helped make the event such a success.

### LAW Fund Celebrates Justice

LAW Fund invites WSBA members to the second annual *¡Viva la Justicia!* Saturday, July 17, 1999. *¡Viva la Justicia!* celebrates the accomplishments of civil legal services provider programs in Washington state while raising funds for their important work — with fun music, sumptuous food, and great company. For more information, contact LAW Fund at 206-623-5261 or [lawfund@lawfund.com](mailto:lawfund@lawfund.com). See you in July!

### Defining the Practice of Law

The Board of Governors will be reviewing a proposed definition of "the practice of law" drafted by the Committee to Define the Practice of Law appointed by the Board. The Committee is soliciting comments from members of the Bar and the public on this draft definition. The Committee will recommend that the final version be submitted to the Supreme Court for adoption as a court rule. Any written comments should be submitted by May 21, 1999 to Robert D. Welden, General Counsel, Washington State Bar Association, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330. The Committee will also hold a public meeting in Seattle on May 21, and anyone wishing to speak to the Committee at that time may contact Brenda Grocé at 206-727-8252.

#### Definition of the Practice of Law

**(a) General Definition:** The practice of law is the application of legal principles and judgment with regard to the circumstances or objectives of another entity or person(s). This includes but is not limited to:

- (1) Giving advice or counsel to others as to their legal rights or the legal rights or responsibilities of others for consideration.
- (2) Selection, drafting, or completion of legal documents or agreements which affect the legal rights of an entity or person(s).
- (3) Representation of another entity or person(s) in a court or dispute resolution process or in an administrative adjudicative proceeding.
- (4) Negotiation of legal rights or responsibilities on behalf of another entity or person(s).

**(b) Exceptions and Exclusions:** Whether or not they constitute the practice of law, the following are permitted:

- Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rule 8, 9, 12, or 14.
- Serving as a court house facilitator pursuant to court rule.
- Acting as a lay representative authorized by administrative agencies or tribunals.
- Acting as a legislative lobbyist.
- Sale of legal forms in any format.
- Activities which are preempted by Federal law.
- Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law.

**(c) Professional Standards:** Nothing in this rule shall be taken to define or affect standards for civil liability or professional responsibility.

# Calendar

## BUSINESS

### Business & Tax Law Section Midyear

May 21 - 22 - Seattle. 10.5 CLE credits (incl. 1 ethics). By WSBA-CLE and Business Law Section 800-945-WSBA or 206-443-WSBA.

### Limited Liability Companies in WA

May 26 - Seattle; May 27 - Spokane. 7.25 CLE credits (incl. 1 ethics). By NBI 715-835-8525.

## CREDITOR/DEBTOR

### UCC Article 9: A Primer for Insecure Creditors

May 5 - Seattle. 1.5 CLE credits pending. By King County Washington Women Lawyers 206-723-2330; mleary@demcolaw.com.

## EMPLOYMENT LAW

### Return to Work Issues in Workers' Compensation in WA

May 14 - Spokane. 6.5 CLE credits. By Lorman 715-833-3940.

### Nuts & Bolts of Employment Law

May 21 - Tacoma. 6.25 CLE credits (incl. .75 ethics). By WSTLA 206-464-1011.

## ENVIRONMENTAL LAW

### Washington Water Law

May 6-7 - Seattle. 14.5 CLE credits (incl. 1 ethics). By Law Seminars International 206-621-1938.

## ESTATE PLANNING

### Estate & Tax Planning for Qualified Retirement Plans & IRAs in WA

May 13 - Seattle. 7.25 CLE credits (incl. 1 ethics). By NBI 715-835-7909.

## FAMILY LAW

### Domestic Violence Team Training

May 17-19 - Wenatchee. 17.5 CLE credits. By Washington Association of Prosecuting Attorneys 360-753-2175.

## GENERAL

### Successful Equity Management

May 4-6 - Bellevue. 3 CLE credits. By Secure Start Seminars 425-456-0071.

### Legal Issues Facing Non-Profits

May 6 - Seattle. 6.5 CLE credits. By WSTLA 206-464-1011.

### Prosecutor Training

May 7 - Seattle. 1 CLE credit. By Seattle City Attorney's Office 206-684-7756.

### Chemicals, the Environment and Disease: A Research Perspective

May 7 - Seattle. 8 CLE credits. By Washington State Department of Labor & Industries 360-902-6315.

### School Law in WA

May 7 - Seattle. 6.25 CLE credits. By Professional Development Network 414-798-5242.

### Free CLE Program for New Lawyers

May 11 - Seattle. 1 CLE credit. By Washington Defense Trial Lawyers Assoc. 206-524-6559.

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.

## Advising the Client with the Wild & Crazy Business Idea

May 12 - Yakima; May 18 - Richland; May 20 - Spokane. 3.5 CLE credits (incl. .5 ethics). By Guy Zajonc 509-448-1328.

### The Nuremberg and Subsequent War Trials

May 13 - Olympia. 7 CLE credits. By Government Lawyers Bar Association 360-753-5544.

### Understanding Brain Injury Cases

May 14 - Seattle. 6.75 CLE credits. By WSTLA 206-464-1011.

### Legal Issues for the Media and the Courts

May 15 - Seattle. 6.5 CLE credits. By Bench Bar Press Committee of Washington Courts 206-623-7580.

### District & Municipal Court Judges Spring Program

May 16-19 - Leavenworth. 24 CLE credits (incl. 4 ethics). By Board of Court Education and District & Municipal Court Judges Association 360-705-5231.

### Support Staff Training - Victim Witness Track

May 17-19 - Yakima. 15.25 CLE credits. By Washington State Criminal Justice Training Commission 360-753-2175.

### Discrimination Complaints in Housing and Employment

May 27 - Seattle. 1 CLE credit. By King County Bar Association 206-624-9365.

## HEALTH LAW

### WSSHA Hospital & Health Law Seminar

May 6 - Seattle. 6.75 CLE credits (incl. 1 ethics). By Washington State Society of Health Care Attorneys 206-389-1680.

## LAW OFFICE MANAGEMENT

### Make Your Practice Your Business

May 6 - Seattle. 4.25 CLE credits (incl. 1 ethics). By Enterprise Technologies 281-296-2623.

### Getting the Most Out of Forms and Document Systems for Your Law Office

May 20 (beginner/intermediate) - May 21 (intermediate/advanced) - Seattle. By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

## LITIGATION

### Getting the Judge to Say Yes

May 4 - Seattle. 7 CLE credits. By Kinder Legal Writing 206-622-3810.

### Litigating Effectively with Technology (morning)

### Making the Most of Your Motion Practice (afternoon)

May 6 - Seattle; May 13 - Olympia. 3.75 CLE credits, incl. .5 ethics (morning); 3.25 CLE credits, incl. .5 ethics (afternoon). By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

### Power Persuasion: Trial Advocacy Techniques for the Experienced Litigator - Video Replay with Live Moderator

May 7 - Spokane. 6.75 CLE credits (incl. 1 ethics). By WSBA-CLE 800-945-WSBA or 206-443-WSBA.

### Communication in the Courtroom

May 8 - Spokane. 7.5 CLE credits. By Carl Grant 206-364-5289.

### Lessons From Two Decades of Trial Consulting

May 6 & 20 - Seattle. 3.25 CLE credits. By Tsongs & Associates 503-225-0321.

## REAL ESTATE

### Public Procurement & Private Construction Section Midyear

May 13 - Seattle. 6.75 CLE credits (incl. .5 ethics). By WSBA-CLE Public Procurement & Private Construction Section 800-945-WSBA or 206-443-WSBA.

### Staying Out of Court: a Legal Update for the Busy Real Estate Practitioner

May 18 - Tacoma; May 19 - Vancouver; May 20 - Spokane. 7 CLE credits. By Washington Association of Realtors 800-748-7053.

## RESEARCH & DISCOVERY

### Internet Legal Research Series

May 5 - Seattle. 3.25 CLE credits. By Washington Law School Foundation 206-543-0059.

### How to Use the Internet for Legal Research

May 5 - Seattle. 7 CLE credits. By National Center of Continuing Legal Education 850-561-3506.

### Private Investigation Seminar & Certification Course

May 15 - Seattle. 6.5 CLE credits. By Linda Montgomery Investigations 206-548-0627.

### The Law of Confidential Records

May 20-21 - Seattle. 11 CLE credits (incl. 1 ethics). By Washington Law Institute 206-726-9337.

### Current Issues in Forensic Practice

May 20 - Seattle. 2 CLE credits. By Seattle Forensic Institute of WA 206-624-6454.

### Taking and Defending Effective Depositions in WA

May 21 - Seattle. 6.5 CLE credits. By Lorman 715-833-3940.

## Announcements

### BUCK & GORDON LLP

is pleased to announce that

#### SAMUEL W. PLAUCHÉ

has become a Partner

and

#### ALIZA C. ALLEN

has become Of Counsel.

Mr. Plauché will continue his practice in the areas of land use, environmental and real estate litigation

and

Ms. Allen will continue her practice in the area of real estate transactions.

1011 Western Avenue, Suite 902  
Seattle, Washington 98104-1097  
206-382-9540 phone  
206-626-0675 fax

### GARVEY, SCHUBERT & BARER

is pleased to announce that

#### LARRY J. BRANT

has joined the firm in its Portland office as an owner.

Mr. Brant is an honors graduate in Business Administration from Portland State University and an honors law graduate of Willamette University. Mr. Brant has an LLM in tax from the University of Florida. Mr. Brant will practice in the firm's business group, emphasizing taxation, business law, mergers and acquisitions, and real estate law.

Mr. Brant is a member of the Oregon and Washington State Bar associations.

#### LAW OFFICES

#### GARVEY, SCHUBERT & BARER

SEATTLE Eighteenth Floor 1191 Second Avenue Seattle, WA 98101 (206) 464-3939	PORLAND Eleventh Floor 121 S.W. Morrison St. Portland, OR 97204 (503) 228-3939	WASHINGTON, D.C. Fifth Floor 1000 Potomac St. N.W. Washington, D.C. 20007 (202) 965-7880
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### FOSTER PEPPER & SHEFELMAN PLLC

ATTORNEYS AT LAW

We are pleased to announce

#### Christine E. Allen

Of Counsel  
Public Service  
Seattle

#### Andrea D. Axel

Associate  
Litigation  
Seattle

Have joined the firm

Anchorage • Bellevue • Portland • Seattle • Spokane

### LINN, SCHISEL & DeMARCO

is pleased to announce that

#### FRANK C. DeMARCO

has become  
a Partner of the Firm  
and will continue his practice in  
estate planning, probate, bankruptcy,  
family law, domestic violence  
and real estate

#### 245 SW 152nd

Seattle, Washington 98166

206-242-9876 Phone/TDD

206-431-5713 Fax

E-Mail: [LAW@LINNSCHISELDEMARCO.COM](mailto:LAW@LINNSCHISELDEMARCO.COM)

### GROFF & MURPHY, PLLC

is pleased to announce that

#### DOUGLAS R. ROACH

Has become a partner in the firm  
effective January 1, 1999.

Mr. Roach will continue his practice  
in construction law  
and commercial litigation.

1191 Second Avenue, Suite 1900  
Seattle, Washington 98101  
206-628-9500  
FAX: 206-628-9506  
E-Mail: droach@groffmurphy.com

### GROFF & MURPHY, PLLC

is pleased to announce that the  
following associates were added to the  
firm's practice in 1998:

#### MARISA M. BAVAND

#### MICHAEL P. GRACE

#### BARBARA J. YARINGTON

#### GARY D. LUKE

1191 Second Avenue, Suite 1900  
Seattle, Washington 98101  
206-628-9500 FAX 206-628-9506  
E-Mail: info@groffmurphy.com

1979 - 1999

### LEGGETT & KRAM ATTORNEYS AT LAW

Thank YOU:  
clients, friends, co-counsel,  
judiciary and opposing counsel.

We look forward to another 20 years  
of service to YOU.

James F. Leggett Peter Kram

AFL/CIO, UAW  
Teamster Panel Attorneys  
253-272-7929 / 206-467-7073

The law firm of

### OGDEN MURPHY WALLACE, P.L.L.C.

is pleased to announce that

#### GREG A. RUBSTELLO

has become a Member of the firm  
emphasizing Municipal, Public Labor  
and Employment Law

January, 1999

SEATTLE OFFICE  
2100 Westlake Center Tower  
1601 Fifth Avenue  
Seattle, WA 98101-1686  
206-447-7000  
FAX 206-447-0215

WENATCHEE OFFICE  
One Fifth Street, Suite 200  
P.O. Box 1606  
Wenatchee, WA 98807  
509-662-1954  
FAX 509-663-1553

# Professionals

## ADMINISTRATIVE LAW TELECOMMUNICATIONS

**Douglas N. Owens**  
advises and represents  
clients in regulatory matters.  
27 years experience.  
**206-748-0367**  
**dnowens@ricochet.net**

## SPEEDING TICKETS TRAFFIC INFRACTIONS CRIMINAL MISDEMEANORS

**Jeannie P. Mucklestone**  
available for representation,  
consultation, association for all  
types of traffic matters and  
criminal misdemeanor cases  
state wide. Over nine years of  
experience, former Judge  
Pro Tem in King County  
District Court.

**206-623-3343**  
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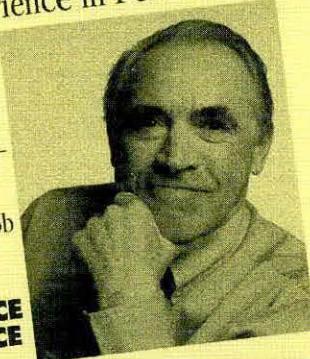
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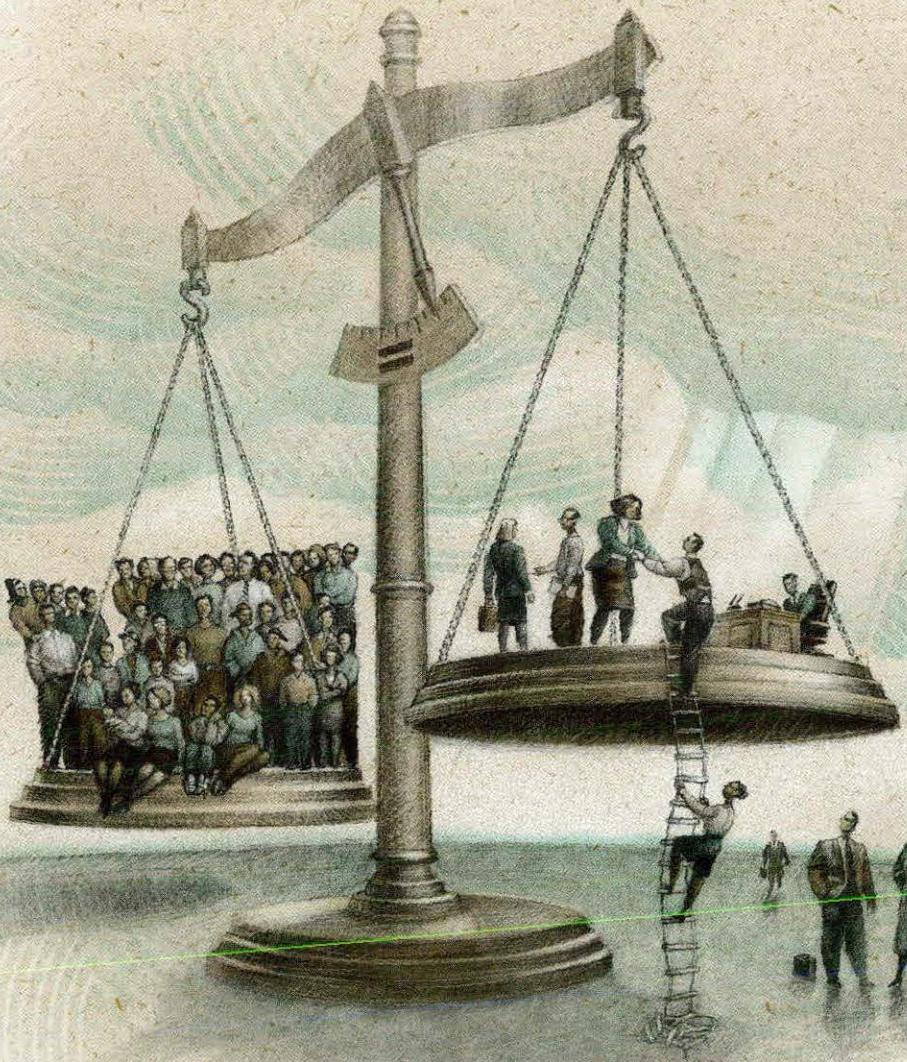
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# LAW Fund

1998 Report



**Along with the other members of the Access to Justice Network in Washington State, LAW Fund is working successfully, with your help, to strengthen the public-private partnership that provides legal services to our most vulnerable citizens.**



LAW Fund is a 501(c)(3) non-profit corporation. Advertisement costs have been offset by the generous contribution of in-kind printing services from The Boeing Company.

## The LAW Fund Volunteers

We rededicate ourselves to achieving LAW Fund's goal of supporting the legal services programs who, day in and day out, decade after decade, provide access to justice for those Washingtonians who need it most.



LAW Fund started eight years ago, with its three founding Board members being Jack Dean out of Spokane, Mark Hutcheson in Seattle, and Paul Stritmater in Hoquiam. These folks were committed to finding whatever resources they could to support the Washington state civil legal services programs that had so impressed them over the years. These programs and the people who staffed them showed remarkable dedication to their clients, their communities, and to the promise of equal justice for all. But they desperately needed financial help. Over the years, LAW Fund has grown in terms of the number of volunteers giving of their time and energy, and in terms of the amount of money we have been fortunate enough to raise around our state. The number of people in need, however, is greater than ever before. We, the Board, therefore rededicate ourselves to achieving LAW Fund's goal of doing whatever we can to support the legal services programs who, day in and day out, decade after decade, provide access to justice for those Washingtonians who need it most.

A handwritten signature in black ink that reads "Kirk A. Dublin".

Kirk A. Dublin, *Board President*

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**As a fair and decent society we cannot afford to deny justice  
to those who are unpopular at a given moment, whose claims  
may offend the most powerful, or who are forgotten.**



On behalf of our equal justice colleagues, we are grateful to have this opportunity to let you know what a vital difference your contributions make. It is literally impossible to overstate their value and importance.

Due to severe cuts in public funding and significant increases in the number of our state's poorest and most vulnerable people, equal justice continues to be an empty promise for many thousands of those who need it most. Many are far removed from the benefits of the economic upturn that parts of our state are now enjoying. These Washingtonians face terrible problems such as domestic violence, hunger, homelessness, physical and mental illness, rural isolation and joblessness. Many are victims of the harshest kinds of unfair treatment and discrimination. Such problems can seem insurmountable to people in need.

Having struggled over decades now to maintain stability and provide full range, high quality services, we well know what a dangerous predicament our clients would be in if those who represent them depended solely on favorable political winds. As important and appropriate as governmental funding may be, it is inevitably too limited—not only in amount, but in the ways it may be employed. As a fair and decent society, we just cannot afford to deny justice to those who are unpopular at a given moment, whose claims, in the context of our existing adversarial legal system, may offend the most powerful, or who are forgotten. It has never been clearer that the only real hope of making equal justice a reality lies in a strong public-private partnership. The dollars and other contributions you give to LAW Fund strengthen and expand that partnership.

Thank you for your help and your commitment to equal justice.



Patrick McIntyre  
Director  
Northwest Justice Project



Ada Shen-Jaffe  
Director  
Columbia Legal Services

## The Front Line

**Following severe public funding cuts, and a rapidly increasing poverty population, Washington state now has only 1 civil legal services lawyer for every 12,500 low-income persons, or 96 civil staff attorneys for 1.2 million poor people.**

LAW Fund was created in 1991 by members of the private bar in Washington state to increase the capacity of civil legal services programs to assist low-income people who need legal representation. The mission of LAW Fund is to ensure equal access to justice by raising funds to preserve and expand civil legal services for low-income people in Washington state.

On a typical day, legal aid lawyers handle everything from stopping unlawful evictions, to obtaining protective orders against abusive spouses, to preventing small farmers from losing their family farms through foreclosure. More than one-third of all cases focus on issues that threaten to divide families: child support, spouse abuse and custody. The majority of cases are resolved through advice and negotiation, thereby relieving the strain on already overburdened court and social service systems.

Columbia Legal Services and the Northwest Justice Project are Washington's two statewide civil legal services programs which share the duty of providing essential civil legal help to poor and vulnerable people in our state. They do this in close partnership with pro bono organizations and other client service providers throughout the state, including law schools, IOLTA grantees, county clerks, law libraries, community human and social service organizations, law enforcement, businesses, and other organizations.

**LAW Fund disbursements in 1998,  
(represents proceeds from the  
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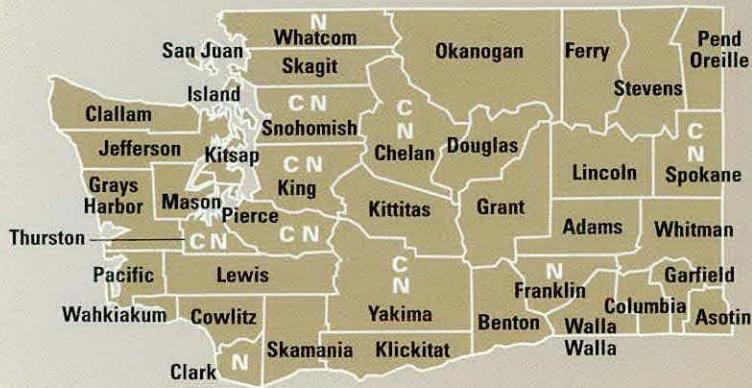
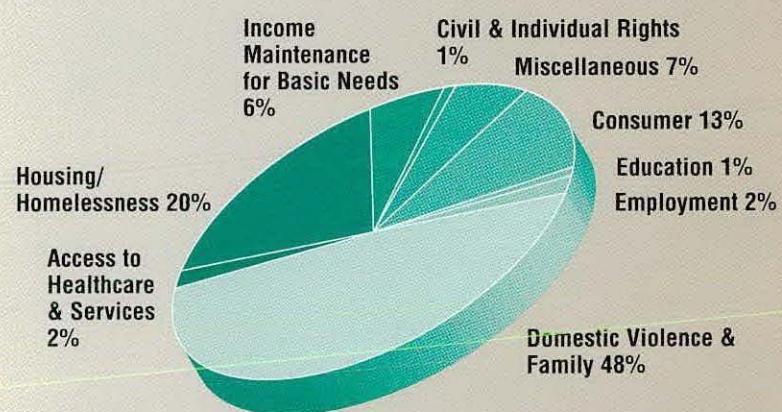
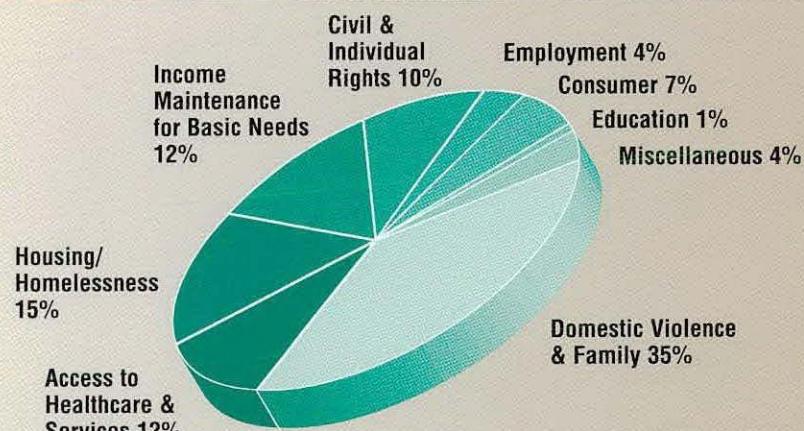
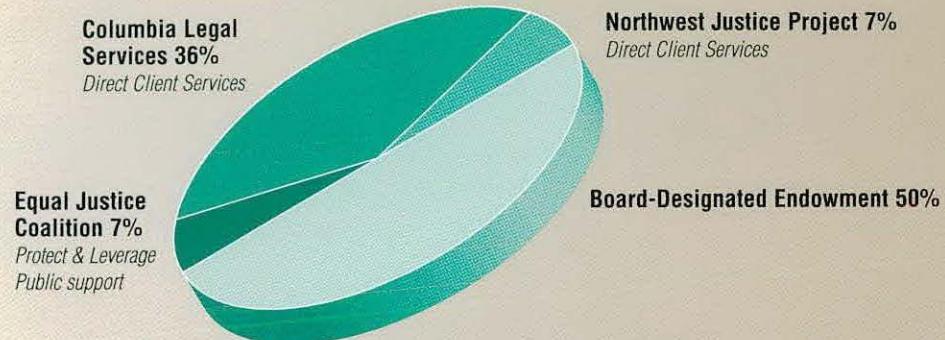
**Types of Cases  
Handled in 1998 by  
Columbia Legal Services**

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**Types of Cases  
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Northwest Justice Project**

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**Locations of Offices  
Around the State:  
Columbia Legal Services (C)  
and  
Northwest Justice Project (N)**



*"There are [very] few nice aspects of being old and poor; I have, however, found an exceptional and fortunate one: being represented by two lawyers from Columbia Legal Services in my recent dealings with a contractor and his attorney.*

*Columbia Legal Services not only saved my home but what's left of my health and sanity. I am 65 years old; this was the first time I was ever involved in a lawsuit. Initially I did consult with a private attorney. My low income and lack of tangible assets prohibited further consultation.*

*I hope your office will retain this letter in a permanent file. I am grateful—always will be."*

*Sincerely,  
W.R.  
Westport, WA*

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individuals across the state of Washington who  
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In honor of the law school graduation of Robert Starin from David Tarsches

## The Road Ahead

**Building LAW Fund's Endowment: Representatives from  
Heller Ehrman White & McAuliffe present a check for  
\$100,000 to LAW Fund board members and staff.**



Since the first annual campaign in 1992, the Board of LAW Fund has recognized and emphasized the need for more stability and long-term funding for civil legal services in Washington state. That first year, the Board committed a portion of the annual campaign proceeds as a board-designated endowment. The Board has continued to make deposits into the "Legal Aid for Washington Fund" which has grown over the years to more than half a million dollars.

During 1998, LAW Fund focused on the development of a five-year strategic plan. The new plan calls for the establishment of a far more substantial equal justice endowment.

In early 1999, the Heller Ehrman White & McAuliffe law firm announced that it would make an inaugural gift of \$100,000 to LAW Fund to help launch the endowment campaign and bring the fund closer to \$1 million dollars.

### **Laurel Rubin Farmworker Justice Internship Fund**

The Laurel Rubin Farmworker Justice Internship Program was established during 1999 by Northwest Justice Project and LAW Fund in the memory of Laurel Rubin, a staff attorney with Northwest Justice Project at the time of her tragic death in May of 1998. The purpose of the fund, which reserves designated contributions, is to honor the memory of Laurel Rubin by providing a law student with a summer internship working on access to the civil justice system for farmworkers. LAW Fund acknowledges the generous contributions made during the past months to this special program:

### **Laurel Rubin Farmworker Justice Internship Fund**

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## The Celebration

LAW Fund hosts the first annual ¡Viva la Justicia! on July 11, 1998 to celebrate the accomplishments of the civil legal services provider programs in Washington state while raising funds for their important work.



This first annual fundraising event drew a crowd of several hundred people who enjoyed lively music, sumptuous food, and the great company of fellow access to justice supporters from around the state. The event allowed an opportunity both for recognizing and celebrating the important work of the "front line" advocates of the Access to Justice Network and to raise additional, critical funds for the community.

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**Back by popular demand...save the date!**

LAW Fund will host the 2nd Annual ¡Viva la Justicia! on Saturday, July 17, 1999. Watch for announcements this spring or call the LAW Fund office for details.

# LAW Fund Donor Form

**I want to join thousands of my colleagues who are annually supporting LAW Fund to help secure Equal Access to Justice for all Washingtonians.**

Please print your name as you wish it to appear in recognition lists.  Check here if you wish to remain anonymous.

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- Supporters League (\$50-99 per firm attorney)
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Legal Aid for Washington Fund

phone: (206) 623-5261

fax: (206) 623-5701

email: lawfund@lawfund.com

MAIL THIS FORM TO:

LAW Fund

1325 Fourth Avenue, Suite 531

Seattle, WA 98101-2525



# LAWFund

**LAW Fund is a 501(c)(3) corporation. The mission of LAW Fund is to ensure equal access to justice by raising funds to preserve and expand civil legal services for low-income people in Washington state. Contributions to LAW Fund are tax-deductible to the extent allowable by law.**

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Phone: (206) 623-5261  
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