Vol. 53 No. 9

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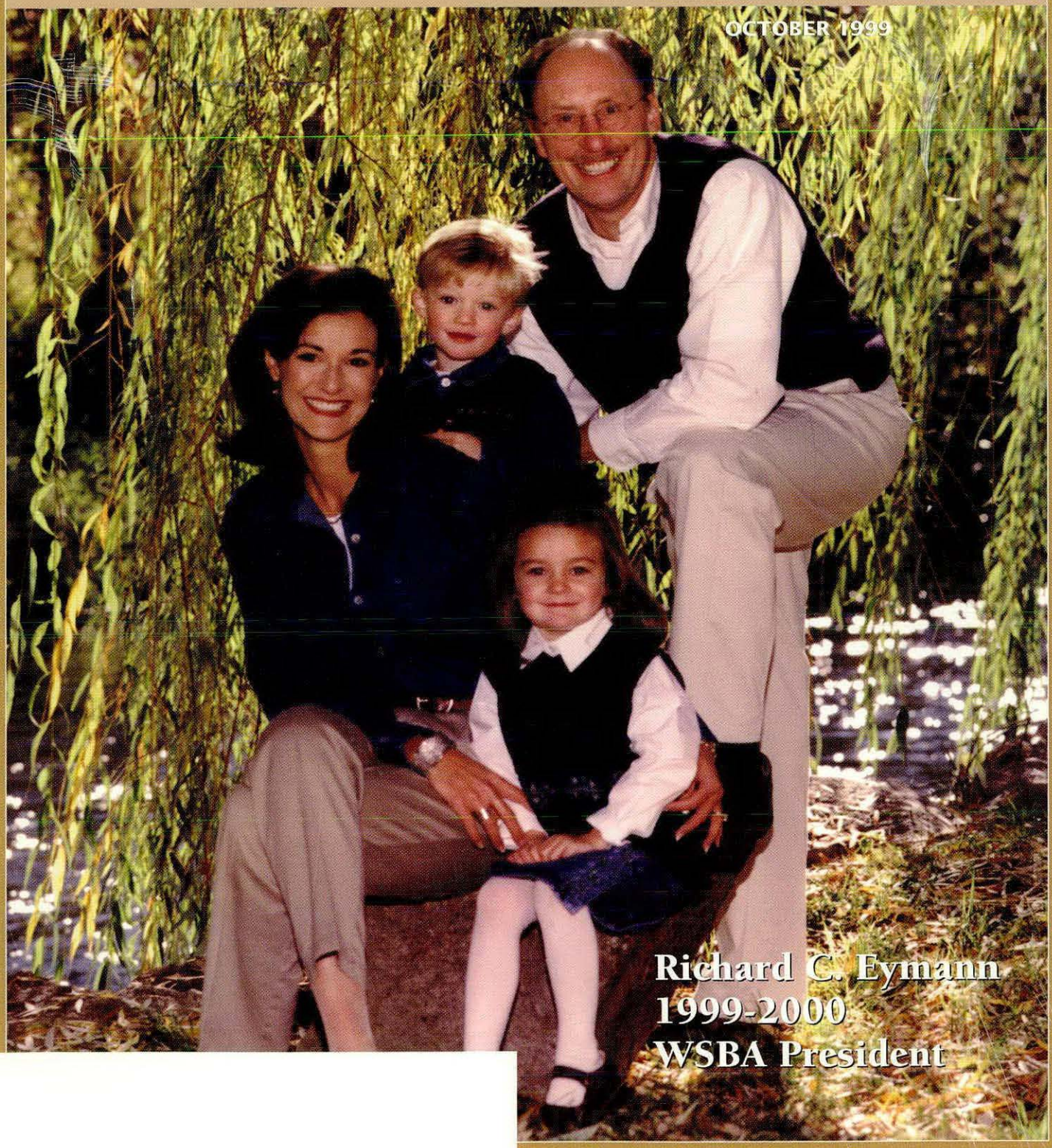
BAR NEWS

The Official Publication of the Washington State Bar

OCTOBER 1999



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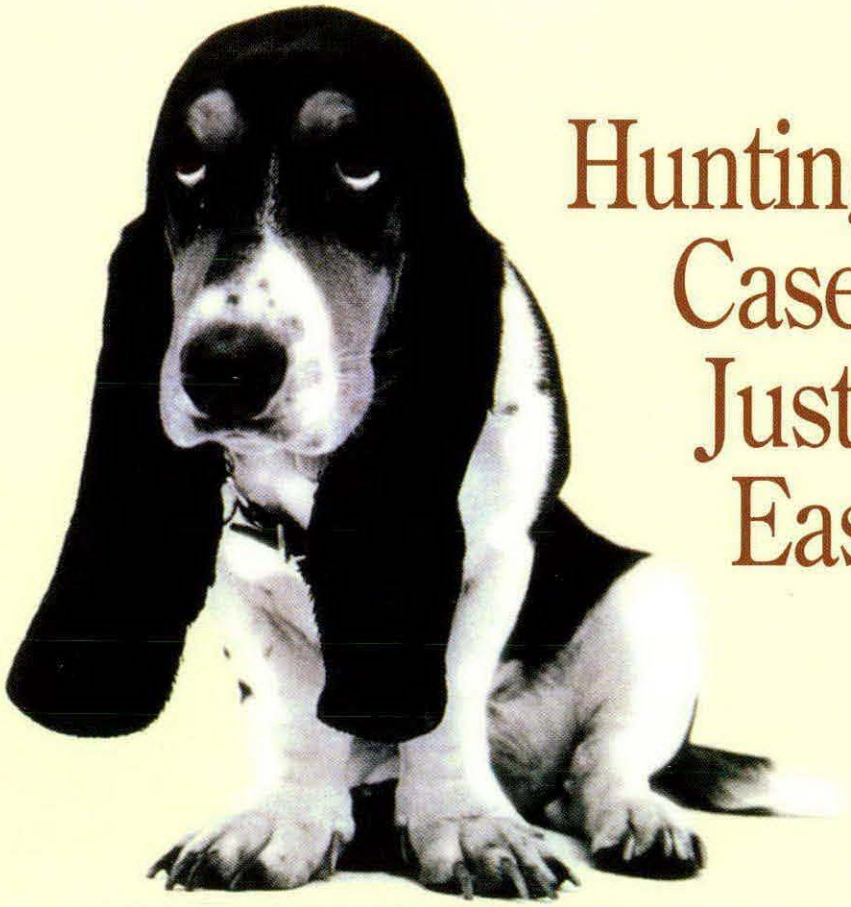

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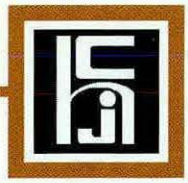

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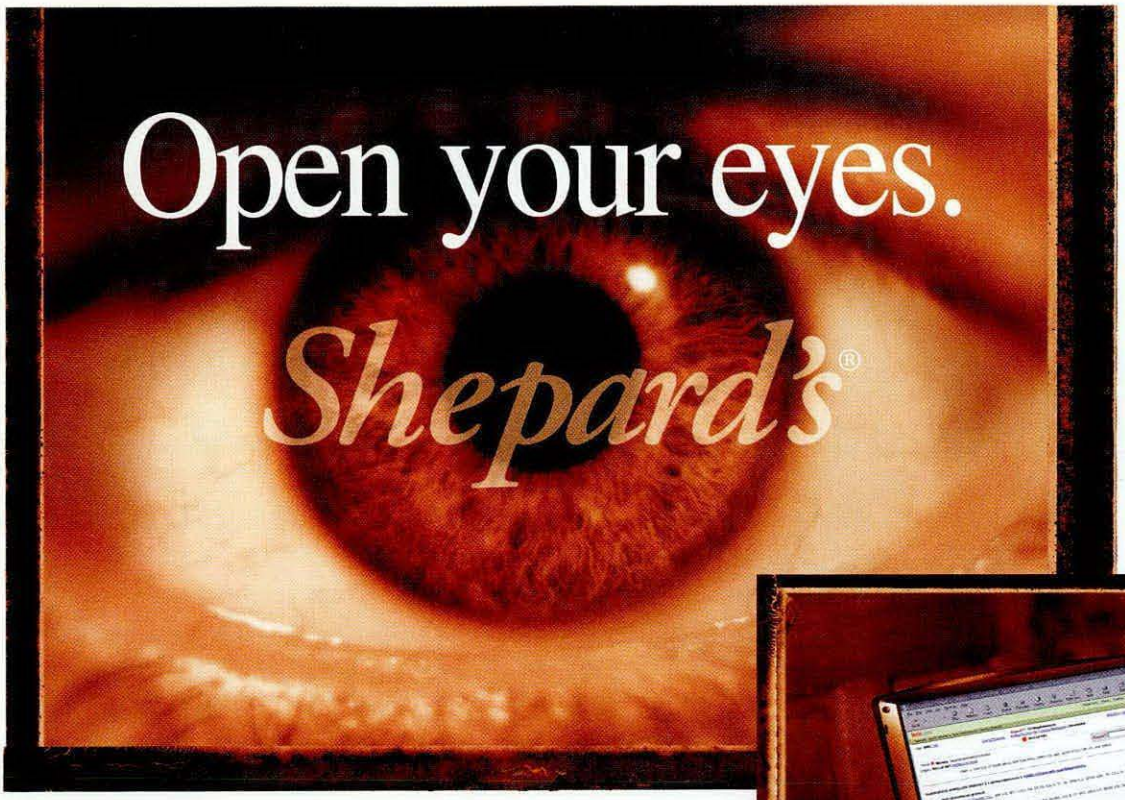

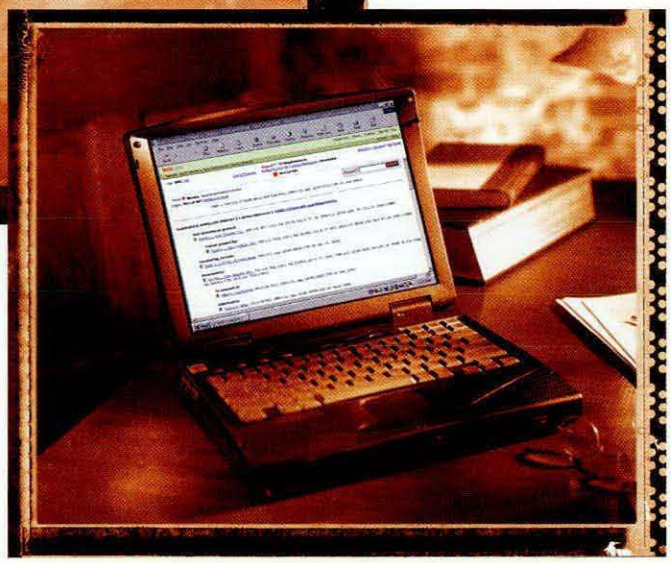

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Washington State
BAR NEWS
OCTOBER 1999

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The Changing of the Guard

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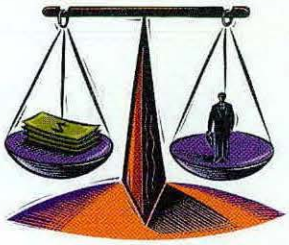

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Listings

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Washington State Bar News (ISSN 886-5213) is published monthly by the Washington State Bar Association, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330, and mailed periodicals postage paid in Seattle, WA. $10.51 of a regular member's dues is used for a one-year subscription. The annual subscription rate for inactive members is $15. Nonmember subscription rate is $24 a year. Washington residents add 8.6% sales tax.

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Correction to McCarthy Article

Editor:

By my inadvertent omission of a footnote, I overstated the extent of tribal exclusion from federal full faith and credit mandates. "Native Justice: A Look at Tribal Court Jurisdiction in Washington State" [*Bar News*, August 1999]. Tribal courts are included in neither the Full Faith and Credit Clause of the United States Constitution, art. IV, sec. 1, nor the implementing statute, 28 U.S.C. sec. 1738. See *Wilson v. Marchington*, 127 F.3d 805, 809 (9th Cir. 1997). Through subsequent statutes, however, Congress has extended full faith and credit to tribes for certain types of actions, such as child support orders. See, e.g., 28 U.S.C. sec. 1738B. I apologize for any inconvenience.

Robert J. McCarthy
Northwest Justice Project
Seattle

Share Gordon Article with Tasteless Japers

Editor:

For the most part, I appreciated Randolph I. Gordon's article, "The Lawyer as Hero: A Pride of Lions, a Justice of Lawyers" [*Bar News*, June 1999], a piece valuable for its potential to enlighten lawyer bashers who are receptive to "truth, justice, and the American way." I was gratified that Mr. Gordon did not dwell too long in the turbid waters of joyless duty. We have no duty to placate envy-ridden churls who, in Ayn Rand's words, "hate the good for being the good." And if we derive pleasure from our charity, we deserve that pleasure as richly as any other earned reward. Honest lawyers, like any other honest citizens, deserve the rewards of their efforts, even if they choose not to give their services without compensation. Mr. Gordon is refreshing because he modulates the noblesse oblige mien the Bar Association promotes ad nauseam of our "privileged" position and our "duty" to others as a means of justifying that position.

Lawyers work in a marketplace of values as all businessmen do. Mr. Gordon's historical notes and data are superb; however, pro bono work is not the principle reason lawyers deserve respect. Charity should not be invoked as a moral defense. If charity is a moral defense, then lawyers become the slaves of their invidious detractors in order to procure esteem that will never be forthcoming. If charity is compelled, it is no longer charity. It is a form of exculpation for success.

Lawyers originated and continue to defend the rule of law, without which we would enjoy none of the benefits of western civilization, which translates effectively into life itself. We endure certain rigors to do this: law school, the bar exam, and demanding work; our moral standing certainly should be no lower than that of, say, a college professor, who is not asked to give away his services in order to deflect his community's scorn. Certainly all individuals deserve respect for their virtues, but there will always be haters who renounce virtue. We can hope that individuals also exist who, when presented with palatable evidence, are willing to acknowledge the integral alliance between lawyers and a free society based on the

rule of law. I intend to share Mr. Gordon's article with several tasteless japers.

Lauren S. Bain
Vashon Island

Re: Proposed Changes to RPC 8.4

Editor:

Bigotry in all of its forms is wrong and always has been, but the theory of our Constitution is that citizens can express bigoted views. Certainly, in the conduct of our profession, we can penalize those who act and speak in a bigoted manner and brand their speech or conduct unprofessional. However, any such penalties must meet constitutional scrutiny. Lawyers are advocates of views popular and unpopular. Lawyers themselves hold views which are as varied as their personalities. The Bar cannot constitutionally force lawyers to think and act in a certain manner unless a lawyer's conduct actually interferes with the administration of justice. In other words, even a lawyer can be a bigot. Many of us wish no lawyer was, but it's a free country.

Lawyers have a duty of zealous representation to their clients, even clients who hold bigoted views. If such representation is viewed by a "reasonable person" as "manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status," the lawyer will be in violation of RPC 8.4 (h).

Justice Holmes reminds us, "we should be eternally vigilant against attempts to check the expression of opinions that we loathe and believe to be fraught with death, unless they so imminently threaten immediate interference with the lawful and pressing purposes of the law that an immediate check is required to save the country." (Justice Holmes' dissenting opinion in *Abrams v. United States*, 250 U.S. 616, 630 (1919).) To apply Holmes' dissent in Abrams to the present matter, a lawyer's use of speech viewed as manifesting prejudice or bias on the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status, must pose so imminent an "interference with the lawful and pressing purposes of the law that an immediate check is required" to protect the interests of the state, *not* the sentiments of some members of the bar. Justice Holmes' dissent in *Abrams* is consistent with the position taken by the Supreme Court in *Gentile v. State Bar of Nevada*, 501 U.S. 1030, 1075 (1991): A lawyer's speech related to a pending lawsuit may only be sanctioned "if the speech is 'substantially likely to have a materially prejudicial effect' on the fairness of the trial." (Cited in *Washington Advocates for Constitutional Legal Ethics Brief.*)

Will a reasonable person interpret "conduct manifesting prejudice or bias on

the basis of sex, race, age, creed, religion, color, national origin, disability, sexual orientation, or marital status," like David Howard's co-workers did? Mr. Howard was head of the Washington, D.C. Office of Public Advocate, and used the word "niggardly" while speaking about budgetary matters. Niggardly means stingy, miserly. Nevertheless, Howard was forced to make a public apology and resign for using a "racist" term. Columnist Tony Snow wrote: "David Howard got fired because some people in public employ were morons who (a) didn't know the meaning of 'niggardly,' (b) didn't know how to use a dictionary to discover the meaning, and (c) actually demanded that he apologize for their ignorance."

The proposed change to Rule 8.4 is an attempt by the hyper-sensitive few to impose their tiny tyranny on those who are oath and duty-bound to speak freely and to defend others' rights to do likewise. Speech can be coarse or comforting, but unless it actually, demonstrably, "poses a clear and present danger to the administration of justice," it cannot and must not be restricted. The proposed changes to Rule 8.4 must be rejected as unconstitutional. I would be ashamed of my profession if its members consented to such a rule.

To paraphrase Justice Janice Rogers Brown of the California Supreme Court, a truth we hold to be self-evident is that a bar association that tells its members what they may say will soon dictate what they may think. "Indeed, I can conceive of no imprisonment so complete, no subjugation so absolute, no debasement so abject as the enslavement of the mind." (Dissenting opinion in *Aguilar v. Avis Rent a Car, et al.*, August 3, 1999.)

The foundation of RPC 8.4 (g) and (h) is inimical to our constitutional heritage. The Bill of Rights guarantees all Americans, even lawyers, certain freedoms. RPC 8.4 (g) and (h) seek to quash these rights for lawyers. Charlton Heston rightly referred to law students at Harvard as those "[w]ho . . . defend the core value of academia [freedom of thought and expression]," and asked them who would defend those freedoms, "if you supposed soldiers of free thought and expression lay down your arms and plead, 'Don't shoot me?'" (*Winning the Culture War*, a speech by Charlton Heston to Harvard Law School, February 16, 1999.) Lawyers must plead to be shot, rather than lay down their arms in the face of foolish and fascist rules.

Ronald E. Doty, Jr.
Hemet, California

Get Your Free CLE CD

Editor:

Earlier this year the *Bar News* carried my letter announcing that the Washington

Digital Law Library's 16-hour free CLE CD had been placed in law libraries and regional public library systems. However, as CLE "crunch time" approaches, it appears likely that the circulating library copies may become unavailable due to the last-minute rush.

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Commonly asked questions concerning the free CLE CD include the the following:

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Q. Can I get all of my ethics requirement from the CD?

A. Yes, the CD contains in excess of six accredited ethics hours. Under the MCLE rules, the entire ethics requirement may be fulfilled by means of audio/visual materials such as those on CD. You still have to report at least 30 hours of "live" CLE credits. However, all 30 of these hours may concern topics other than ethics.

Q. Does the Washington Digital Law Library offer any other CLE programs?

A. You can also get an accredited trial practice CLE featuring Tom Chambers, that includes on-line access to two ethics CLE programs from the Library's website at www.freecle.com.

Q. As Dennis Harwick always used to say: "There ain't no such thing as a free lunch." So is this CD really free?

A. Yes, Virginia. The CD really, really, really is free. There are no hidden charges. It contains no advertising. All donations are returned. And no salesman will call. The CD is intended to demonstrate how the WSBA itself might someday use CD and Internet technology to provide free CLEs to WSBA members.

Edward V. Hiskes
Richland, WA

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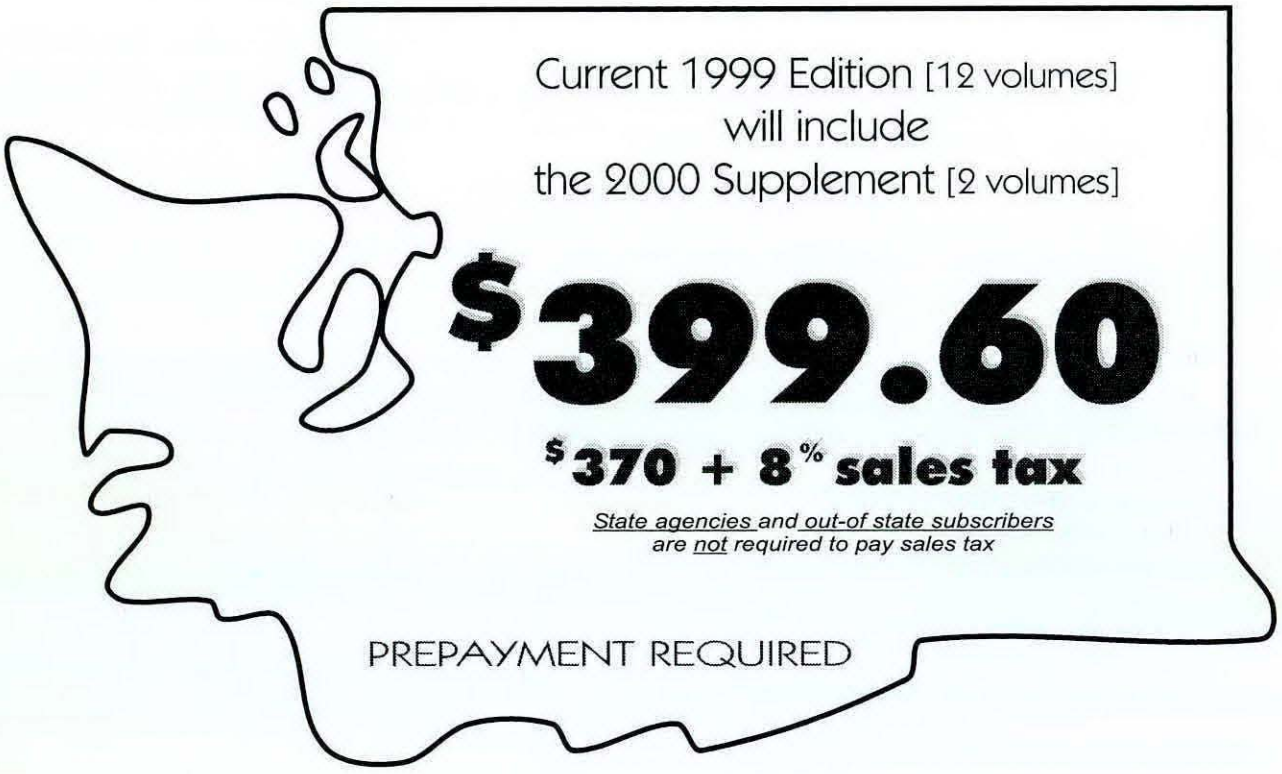

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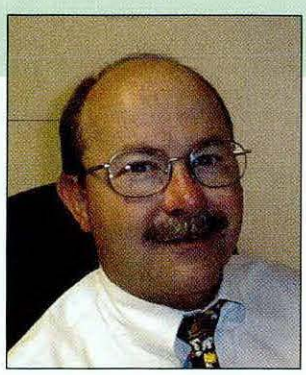

Tolman Law Library (Not)

by Jeff Tolman
Guest Editor

Recently, one of the area law schools developed a catalog to fund their new building. For donations of certain amounts you can get parts of the new law school facility named after you. For a $2.5 million gift, for example, the library will be named after you. A lesser amount will get you a classroom or building or restroom bearing your name. No professional or locale requirements. Just money.

Initially, I was appalled. While this merchandising of the law may be the wave of the future, how would Lady Justice take this? Is nothing sacred?

Usually I am late to come on board with any new trend. What if these legal educators are right about combining product advertisement and the law?

Think of the morning announcements:

"Good morning, law students. The John Gotti Criminal Procedure class will be cancelled today so that you can attend the Notorious BIG lecture series at noon in the Howard Stern Library.

"The Bob Guccione First Amendment seminar will be moved from the Nike Room to Budweiser Hall for today's class only.

"Remember, the Copenhagen Moot Court Finals will take place Saturday at 1 p.m. in Costco Auditorium.

"Have a good day."

Usually I am late to come on board with any new trend. What if these legal educators are right about combining product advertisement and the law?

Just think, my Poulsbo court could be on the cutting edge:

"Ladies and gentlemen, please rise. Poulsbo Municipal Court is now in session. This announcement is sponsored by Lancome. We'll help you look good in front of the judge. The Honorable Jeff Tolman presiding."

My robe would look quite nice with an Adidas logo on it. Hardly anyone would notice subtle golden arches on my gavel. Like Dave Niehaus and Rick Rizzs, I could throw in ads in the course of my dialogue:

"Good evening, ladies and gentlemen. I am Jeff Tolman, the Poulsbo judge. Tonight we have three calendars. First is the arraignment calendar. That is where we make sure you understand the nature of the charge against you and your constitutional rights. Tonight's advice of rights form is sponsored by American Express: 'Like our card, never leave home without these rights.'

"After making sure you understand those things we will have you enter a plea of guilty or not guilty. If you enter a plea of guilty, I will review the police report to see if there are sufficient facts to accept that plea. We will then proceed with sentencing. So long as I sentence you within the limits of the law, you have no right to appeal. If you enter a plea of not guilty we will set a pre-trial hearing.

"Sentencings tonight are sponsored by Miller: 'If you do some time, we've got some beer.'"

And off we would go, interspersing advertising sound bytes into the court procedures. Our payment plan, for example, could naturally be sponsored by Burger King ("We Do It Your Way"); our community service by Nike ("Just Do It ").

Maybe this *is* the wave of the future.

On second thought, I think I'll stick to the old way — justice uncluttered by commercialism. Call me old-fashioned. With all of these changes on the horizon, Lady Justice may be glad she is blind. Seeing how far law schools have to go to get donations would be painful.

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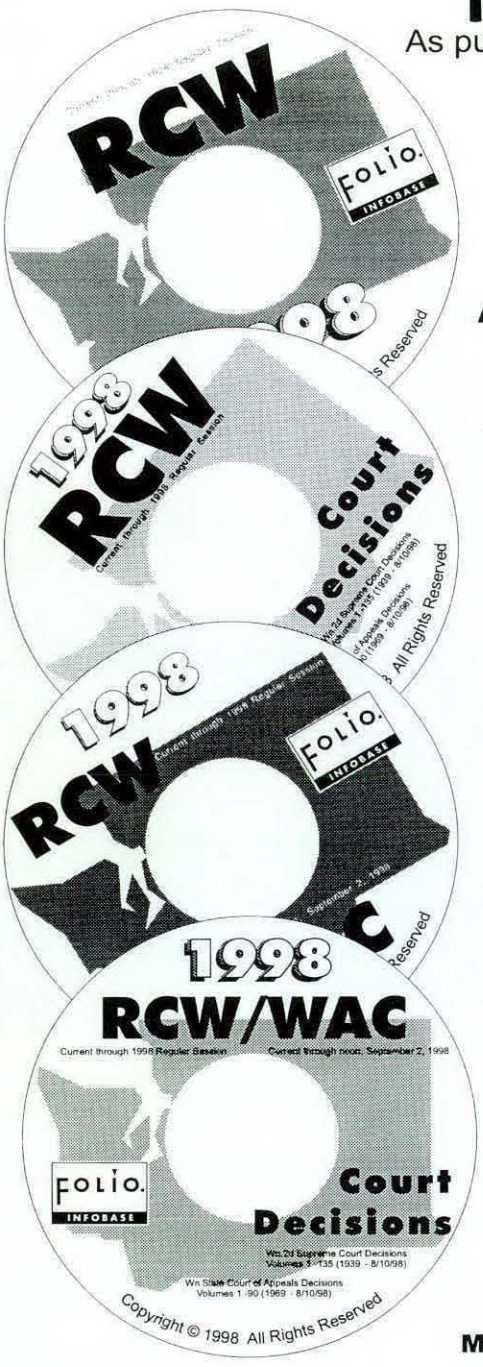

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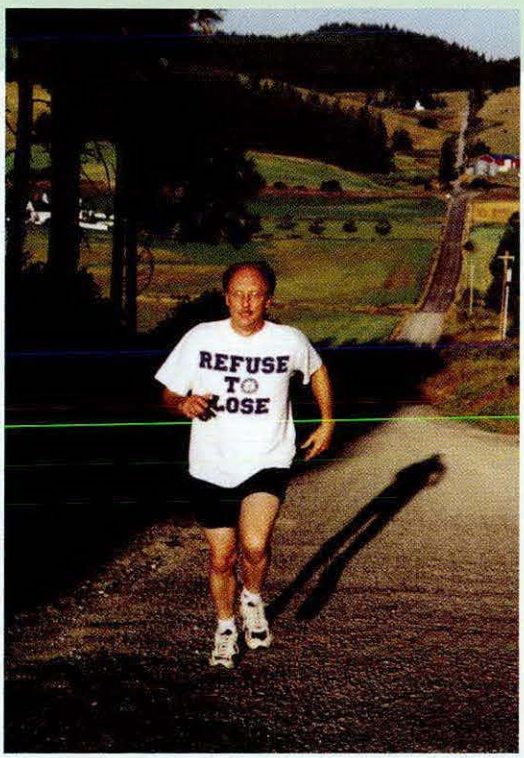
Step Up to the Plate and Smack a Home Run for Your Profession

by Richard Eymann
WSBA President



It is an honor, a high honor, to be the 109th President of the Washington State Bar Association. It being rodeo season, I am reminded that I have felt like the Brahma bull waiting for that gate to open. Having now been officially sworn in, the gate is open, so let's get started.

Nearly all of us have been proud to be attorneys, as we should be. Numerous surveys indicate that clients like and respect their own lawyer. And according to a University of Chicago survey of 700 job categories, attorneys ranked fifth in the most respected of occupations.

Nevertheless, bashing of lawyers, judges and the entire profession abounds. In these days of news as entertainment, radio talkshow hosts, in a frenzy for ratings and all of the other sensational reporting, often paint our legal profession, including judges and attorneys, in a distorted bad light. It is ironic that lawyers led the fight to eliminate the cheap laughs, jokes and outright racism that ethnic minorities, women and gays endured and still endure. Ironic, indeed, that it is now lawyers who are the target of these below-the-belt punch lines, cheap laughs, unjustified attacks and criticism.

Personally, I am particularly sick and tired of radio talkshow hosts with pea-brain mentalities who brainwash listeners into thinking that lawyers and judges are all bad...

It has been, and it is, time for lawyers and judges to stand up and be heard when unfair criticism is cast at our noble profession. This is a battle that we must REFUSE TO LOSE!

The source of hostility has always been there — lawyers represent parties in contested cases — and we must expect that some litigants will bear grudges against their opponent's counsel. It is simply an inherent occupational reality. But in these times, when cynicism is a popular recreation, too many in society have lost sight of the lawyer's pivotal role in bringing out the best that America has to offer.

We, as lawyers, courageously represent both unpopular and popular parties in all types of court cases. We are the lawyers who breathe life into the Bill of Rights. We are the judges and justices who make the difficult legal rulings. We are the prosecutors in all of the federal and state criminal cases who protect the public. We are often the lonely advocates for citizens' civil rights. Our criminal and civil justice system and, indeed, our form of American democracy, are the most respected in the world. It is the lawyers and judges who are among the most important guarantors of the inalienable right to democratic freedom. And ironically, it is the lawyers who toil the longest and the hardest to ensure that citizens are free to ridicule all authority figures, including ourselves. Each of us endures the disgust and humiliation of the distortion, unfair accusation and unwarranted attacks.

Personally, I am particularly sick and tired of radio talkshow hosts with pea-brain mentalities who brainwash listeners into thinking that lawyers and judges are all bad, always greedy, often deceitful, and the like. Every major metropolitan area has one or more of these blathering radio jocks who put their "ratings" above all ethics in commentary, opinion and fact. A good example is a radio host in Spokane who twice daily is allowed by a once-proud TV/radio news station to carry out vicious and sometimes cruel personal attacks on all kinds of people, lawyers being the highest on his hit list. There are many more in this state who could qualify as his clones.

It is time to take these media tyrants to task and the TV/radio owner cowards who hide behind their despicable disclaimers.

Another source of unjustified criticism of lawyers and judges is the insurance industry. Some insurance companies are honorable, but a majority of them would have the public believe that all cases filed against their insured are frivolous, brought by ambulance-chasing lawyers. Whereas they lobby for the regulation of big business in a free market, they are quick to seek protection for their immense profits. In every legislature in the land, they ask for regulation and protection *from* victims who seek damages from the wrongdoing of their insured. This one-sided concept of responsibility projected in advertisements pollutes the jury pool, pollutes justice itself, and exacerbates the anti-lawyer tilt to negative public perception. It is much easier for them to sell the notion that lawyers must be blamed because without lawyers, victims would not be able to bring their lawsuits. Here again, the truth itself becomes a victim because no one is critically examining the allegation. It seems the public is now conditioned to accept whatever bad things are said about lawyers, judges and our system of justice.

Lawyers and judges alike must do a much better job of explaining their roles in resolving conflicts in our complex society. We must explain that conflict resolution is our stock in trade and that we produce solutions to seemingly insolvable problems and conflicts in everyday life. We must convey that we negotiate all of the treaties and all of the settlements among all of the interest groups and individuals in American society. We must educate the victims of misinformation that we take thousands of cases without pay, that lawyers and judges alike work long hours and still find time to support our schools, churches and many community civic and charitable projects and organizations.

We need to say good things about our profession to our friends, our clients, our fellow professionals (real estate and investment brokers, bankers, doctors, builders, educators, etc.). We need to speak to students at all levels and emphasize public legal education.

In the face of all the jokes, ridicule and misinformation about lawyers, judges and juries, we need to step up to the plate and smack a few home runs for our profession. We need to remind the public and the media of all the things that work because lawyers applied their expertise, their courage, their sweat and their caring to make them work. We should do this because we have respect for ourselves and for all lawyers who zealously serve the needs of their clients day by day (and often night by night), year in and year out. We must remind everyone that our self-regulating and discipline does not mean monopoly or protectionism. It means extremely high ethical standards. It means that we methodically weed out our bad lawyers and thrive on our good ones. *It means that we should rise with one voice and say that we are proud to be in a noble profession and put our mindless critics on notice that enough is enough — back off — get a life!*

Next month:
- Goals for the Year
- Celebration 2000

Happy New Year!

by Jan Michels
WSBA Executive Director

October 1, 1999 marks the new Bar year – Bar Year 2000 (B.Y. 2000). I've completed my first full cycle as your Executive Director, we've sworn in our new Governors and President, and my circadian rhythms "feel" a *New Year.*

Auld Lang Syne

What a year! My learning curve was as steep as when I pumped my bicycle up Rainy, Washington, Loop Loop, Wauconda and Sherman Passes! The WSBA is a complex, multifaceted, sui generis organization. I've called on just about every learning experience I've ever had, from social work to court management, to being President of the County Clerks and Washington Association of County Officials, to raising kids, to academic writing. I hope you feel I have met my commitment to you to improve member services, share information freely, better support the many Bar leaders and enliven the energy of our 24,000 members. I have been able to visit over half of the WSBA's committees and sections, and have been informed and inspired by the town meeting and member survey input. I finally feel grounded in what members want and expect from their Bar, and the dynamic and sometimes conflicting opinions about some of what the WSBA does. When I first started working with you, I was embarrassed at my sometimes halting and uncertain explanations and presentations, but after this year my "bar association talk" is much more fluent and informed. I credit the Board, WSBA staff and member input for "filling me up." As a spiritual mentor once told me, "fill up on information, then speak from the overflow."

"Ring Out the Old, Ring in the New"

The "new" we ring in is a strong member statement and Board-endorsed summary about what matters to the WSBA in the future. Here are some WSBA New Year's resolutions:

1 The WSBA will implement and follow the Long-Range Strategic Plan (LRSP).

The LRSP statement will frame our activity in the coming years (the plan is posted on the WSBA website, www.wsba.org). The 11 strategic goals are clear, simple statements about what the WSBA commits to in B.Y. 2000-2003 and beyond. The aspirational "outcome" that accompanies each goal describes what the WSBA hopes to see if we are able to fully meet the goal. These outcome statements become the beacon we point to. In 2000, the WSBA will set many new courses in support of our profession, our members and our Association.

2 The WSBA will leverage our networks and affiliations in the service of the public good.

In Washington, compared to many states, we have good working relationships with the legal service community, Supreme Court, judicial associations, other bar associations, sections, and state and local governments. These relationships are the commodity of our future and our goals of serving the public. We need to nurture these relationships with respect, cooperation and personal contact.

3 The WSBA will celebrate Year 2000.

We plan an "event of the millennium" — Celebration 2000 — September 13-16, 2000. The Bar, Judiciary, Access to Justice community and Bar leaders will present a four-day event filled with CLEs, collegiality, receptions, a vendor fair and some remarkable plenary events. We'll have a semi-final program by December and open early registrations. We hope for broad and enthusiastic participation.

4 The WSBA will continue to enhance member services and benefits.

Watch for discussion forums on subjects of interest to members, simplified license renewal and MCLE reporting procedures, more immediate news, and easier ways for members to participate in the work of the Bar from remote locations. These are things that can help us maximize WSBA programs and services at minimal expense.

5 We will all lead a more balanced life.

This is a personal option, but whether we set recreational, social service and/or family goals, we will lead a better life if it includes our human side, too. So Happy New Year to you and to me — B.Y. 2000 will be a good one!

by Sherrie Bennett

See Dick Run, Watch Dick Go:
The Wiring of Our New Bar President

As the new President of the Washington State Bar Association, Dick Eymann is taking on the challenge of improving the public's perception of lawyers.

His perpetual movement strikes anyone watching Richard "Dick" Eymann sit through a meeting. When he is not moving his hands around to emphasize a point, he shifts in his seat, tapping his leg up and down to some inner beat. An observer is left wondering — what is this man thinking about that leaves him with such kinetic energy? Judging from his long list of accomplishments, his thoughts might be on organizing his next project or case.

A partner in the Spokane firm of Eymann, Allison, Hunter & Jones, Dick is a past President of the Washington State Trial Lawyers Association (WSTLA), was WSTLA's 1995 Trial Lawyer of the Year, and has served in numerous offices and committee chairships for WSTLA and the American Bar Association. His extremely successful trial practice emphasizes personal injury, wrongful death, fire loss, sexual abuse and assault, products liability, business torts and medical negligence. He is best known professionally for taking difficult cases to trial with little or no offer from defense counsel, and achieving surprising verdicts.

As the new President of the Washington State Bar Association, Dick is taking on the challenge of improving the public's perception of lawyers. He believes the public sees lawyers as "dishonorable, hard, cold, greedy leeches on society." Eymann is sure that the opposite is true, that most lawyers' hearts are "in the right place, not advocating for the almighty dollar, but advocating for their clients." He cites as proof many lawyers who have purposely downscaled in order to do more volunteer and community-service work. During his year as Bar President, he hopes to emphasize public legal education as much as possible, urging lawyers to do even more volunteering and pro bono work and finding new ways to counteract what he calls the "irresponsibility of the state legislature and Congress to fund legal-services programs."

Eymann's access-to-justice roots run deep. Dick grew up on a farm near Mohawk, Oregon — the oldest of eight siblings and the only son of the former Speaker of the Oregon House of Representatives. He remembers his father as being a staunch defender of "have nots," fighting hard to keep state sales tax out of Oregon. His parents raised chickens, sheep, pigs and various crops. Every morning before school, he and his siblings collected approximately 4,000 eggs from the resident chickens, a chore Eymann blames for

his continuing lack of appetite for eggs. Money was tight for the large family, especially every other year when his father would spend four to five months in Salem as a legislator. With no family money for college, Dick began his working career doing heavy physical labor on the short end of a Weyerhaeuser "green chain." A work scholarship with Oregon Senator Wayne Morse took him to Washington, D.C., where he moonlighted with the police department, helping to block demonstrators in the capital city even though he "believed in what they were doing."

Eymann graduated from the University of Oregon and was one of the youngest delegates at the 1968 Democratic Convention. He recalls seeing army jeeps and wire in front of his hotel, and being arrested for attempting to walk with fellow delegates to the convention hall as a protest to what he calls a police riot. He also has particularly vivid memories of watching a pre-teen boy being knocked off a small bridge by police, and himself being tear-gassed while in Eugene McCarthy headquarters. With the thought that his political science degree was "worthless" and with the military draft staring him in the face, he enlisted and became an intelligence officer for the U.S. Army. His orders to go to Vietnam were cancelled two days before he was supposed to leave, when President Nixon announced troop withdrawals.

After his Army stint, Eymann became a consumer fraud investigator in Washington, D.C., poking into every type of consumer fraud imaginable. He found the prosecutors handling the cases to be very overworked. But his enthusiasm for law as a career grew, and he started law school at Gonzaga University in 1973. While there, he and other students organized a very successful environmental law symposium, and the following year he was elected national vice president of the ABA's Law Student Division.

Steve Jones, who has practiced with Dick in Spokane since 1979, describes him as being extremely creative in his practice and focused during trials, always knowing what's important and what isn't in trial preparation and presentation. Attorney Jim King, who has frequently been on the other side of court battles with Eymann, describes him as "damn good at what he does." King makes an extra effort to gear up for trial when Dick is the adversary. Jones cited as an example of Dick's tendency to become absorbed during trials an occasion when Dick, heeding the call of nature, locked himself out of the office in the middle of the night while in his underwear. He had been practicing his closing argument at 3 a.m., sans most of his apparel, because a malfunction in the heating system had pushed the temperature into the 90s. Fortunately for all concerned, Dick was able to regain access (break in) to the office two hours later, before he was discovered by building security. Dick's long-time assistant, Diane Latta, agrees that Dick gets tunnel vision while in the throes of trial preparation and tends to lose track of personal items, such as his checkbook and keys.

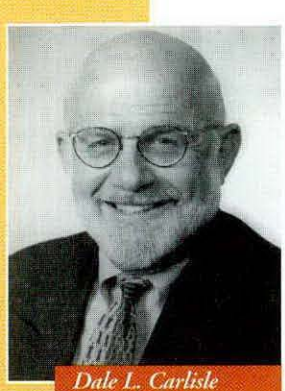
Another trait many who know him speak of is his thriftiness and eye for good value. He shops discount warehouses, stockpiles magazines until he has time to read them, buys used vehicles and makes MacGyver-like toys for his children out of common household objects. His wife, Susan, says he even insists that the family's garbage be confined to one garbage can per week in order to save money and recycle as much as possible.

With all of Eymann's concentration and focus on the practice of law, does he ignore the joys of everyday living? *Au contraire.* He manages to squeeze in 30 to 40 miles of running every week, and has one of the nicest gardens (including fruit trees) in his Spokane neighborhood. He enthusiastically clears away brush and weeds on his farm property and builds fires large enough to alarm the neighbors. He has also been a long-time volunteer with the Bloomsday Run in Spokane, coordinating all the media vehicles used during the race.

Clearly central in Dick's busy life, though, is his young family. At the age of 54, he has a five-year-old daughter, Taylor Marie, and a three-year-old son, Houston. They are full of energy and obviously well attached to their father. While he jokes that at least at his age, he can finally *afford* children, his family obviously brings Dick the balance and perspective that is sometimes missing from a roller-coaster trial practice. He involves his children in planting and harvesting the large vegetable garden every summer, and enjoys playing with them indoors and out. He describes reading bedtime stories to his children and says it is the most relaxing and rewarding part of his day. At least there is one moment during each day when Dick's mind is not racing faster than everyone else's.

With the thought that his political science degree was "worthless" and with the military draft staring him in the face, he enlisted and became an intelligence officer for the U.S. Army.

Welcome to the WSBA's Four New Governors


Dale L. Carlisle


Jenny A. Durkan


Stephen J. Henderson


Victoria L. Vreeland

Four new governors have taken their seats at the WSBA Board of Governors' table.

Dale L. Carlisle represents the 6th Congressional District. Carlisle lives in Tacoma, where he has practiced real estate and business law with Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim 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. Carlisle has been a member of many county bar, WSBA and ABA committees, and recently served as chair of the WSBA Business Section. He is currently a member of the VLS Committee for the Pierce County Bar. He has regularly participated in lobbying efforts for the Bar and the Access to Justice Board. He frequently speaks at seminars and has been an adjunct professor at Seattle University Law School.

Jenny A. Durkan represents the 7th Congressional District (East). A Seattle native, Durkan has an active trial practice, with broad experience in civil and criminal cases. She is an adjunct professor at the University of Washington Law School, has taught at NITA, is a frequent CLE lecturer, and has served on various Bar committees. Durkan was named by Attorney General Christine Gregoire to chair a statewide task force now examining the issue of consumer privacy. She also served on the Mayor's Citizen Review Panel, which reviewed Seattle Police Department policies and procedures in the wake of recent misconduct allegations. Durkan has also served on the Governor's Executive Counsel and as the Citizen Observer on the Police Firearms Review Board. She recently co-chaired the merit selection committee for U.S. District Court judge.

Stephen J. Henderson represents the 3rd Congressional District. Practicing in Olympia since 1975, Henderson has handled workers' compensation, personal injury and estate-planning cases. He served as President of the Thurston County Bar Association in 1992 and was twice voted Boss of the Year by the Legal Secretaries Association. Community activities include service as president of the West Olympia Rotary Club (1991) and membership in the Olympia Highlanders Bagpipe Band.

Victoria L. Vreeland represents the 8th Congressional District. She is a partner at Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim in Seattle. Before entering private practice in 1983, she clerked for Judge Dale M. Green, at Division III of the Washington State Court of Appeals, and served as Assistant Attorney General, Consumer Protection/Anti-Trust and Crime Victims Compensation Divisions. Vreeland is a past member of the WSBA Disciplinary Board and has served as Special District Counsel. She has also served on the WSTLA Board of Governors and on the SKCBA Judicial Selection Committee, in addition to numerous other Bar committees and task forces. She was recently profiled in *Trial News* as "one of the leading trial lawyers in the state."

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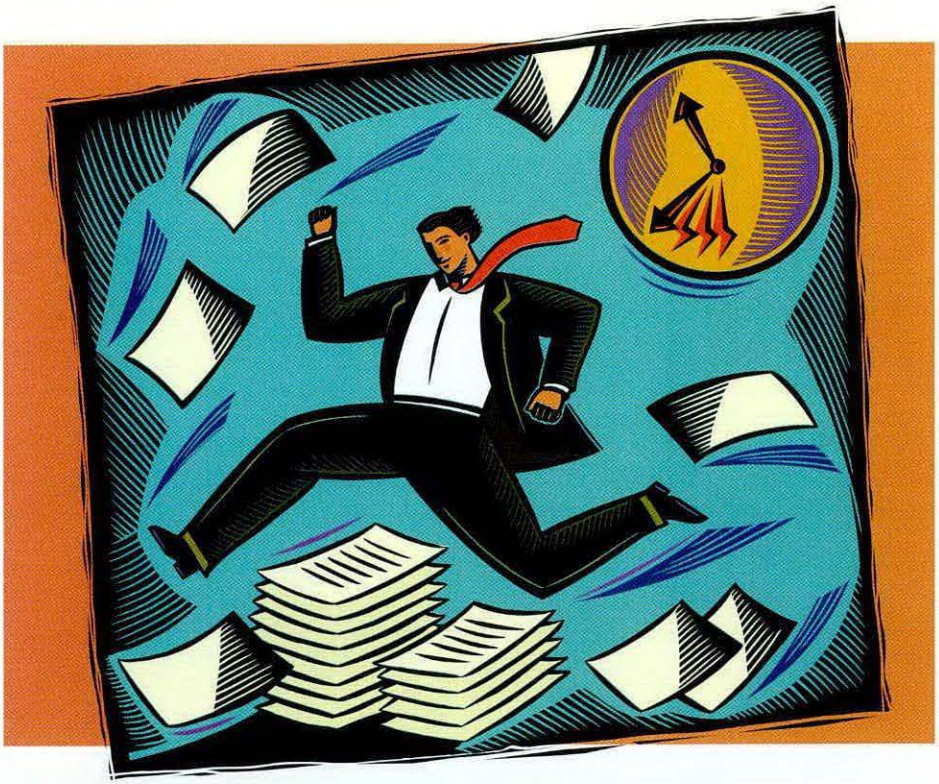

The Y2K Act: Notification Tricks and Traps

On July 1, 1999, the United States House of Representatives and Senate approved an amended version of HR 775 (the Y2K Act), which will affect lawsuits arising from Year 2000 (Y2K) problems.[1] President Clinton has signed the Y2K Act into law. The Act is intended to provide uniform legal liability standards and encourage remediation and nonlitigious solutions to Y2K problems.

by Steven C. Bennett

The State of Washington is now offering an exhaustive toolbox for diagnosing and fixing potential Y2K problems, accessible online at http://www.wa.gov:80/dis/2000/links/menu1.htm. Topics include business checklists, contingency planning tips, insurance resources, legal-issue discussions, readiness updates by local governmental entities, and an extensive list of related links.

The Y2K Act, as enacted, differs from the prior versions of the bill, passed first by the House of Representatives on May 12, 1999, and in amended form by the Senate on June 15, 1999. A significant feature of the Y2K Act, both as originally proposed and as finally enacted, concerns the establishment of a notification system which would require a prospective plaintiff to notify a potential defendant before filing suit.[2] A similar provision was recently signed into law in Texas.[3] This article briefly examines the notification system outlined in the Y2K Act, noting differences between the Act as originally proposed and as finally enacted. The article further suggests potential difficulties that both plaintiffs and defendants may encounter in dealing with these notification requirements.

Basic Notification Features of the Y2K Act

The Y2K Act requires that a prospective plaintiff who wishes to file a Y2K action (except an action that seeks only injunctive relief) must first provide notice to each prospective defendant. The notice must include a description of the material defect that has caused the claimed harm, information concerning the harm or loss suffered, the basis for any claim against the defendant, a request for a remedy from the defendant, and identification of a person with authority to negotiate a settlement on behalf of the plaintiff.

Within 30 days after receipt of such a notice, a defendant must respond, in writing, with an acknowledgement of receipt of the notice and a description of the actions it has taken or will take to address the problem identified by the prospective plaintiff. If the defendant does not respond to the notice, or if it does not describe the action taken (or to be taken) in response to the alleged problem, the plaintiff may immediately file suit. If the defendant properly responds, the plaintiff must wait an additional 60 days before filing suit. If a plaintiff initiates a Y2K action without following the notice process, a defendant may treat the plaintiff's complaint as a Y2K notice, and the court will stay all discovery and time for filing answers or other pleadings in response to the complaint.

Differences Between the Bill and the Final Version

The Y2K Act, as finally enacted, differs in several regards from the versions of the Act that were originally proposed. The House version of the bill contained a broad definition of the term "Y2K failure." That basic definition included any failure of a device or system to process, calculate, compare, sequence, display, store, transmit or receive Y2K date-related data. The definition in the final enacted version was even broader and included any failures as a result of 2000's status as a leap year, and other failures that may result in 1999, 2000 or 2001. The final version of the Act also included a sunset provision: the Act will apply only to problems that occur *before* January 1, 2003. The protections in the original House version of the bill were not limited in time. The final version of the Act, moreover, reconciled a number of other differences on such issues as proportionate liability, punitive damages and liability caps.[4]

The notification provisions of the Act, in particular, differ on several points from the earlier bills. First, the final version of the Act specifies that the response to a pre-litigation notice must state whether the defendant is willing to engage in alternative dispute resolution (ADR). If the defendant indicates willingness to engage in ADR, then the stay of litigation will continue for an additional 60 days from the end of the 30-day notice period. The House bill merely provided that either party could request that the other side agree to an ADR process, and that the parties could also agree to an extension of the 90-day pre-litigation period for that purpose.

Second, the final version of the Act permits a defendant, if presented with more than one notice of alleged Y2K failures, to give priority to notices that involve health- or safety-related failures. The original House bill contained no equivalent provision.

Third, the original House bill would have provided for Rule 11 sanctions for invocation of the pre-litigation notice and stay provisions of the Act if the defendant's invocation of the Act was frivolous and made for the purpose of causing unnecessary delay. The final Act contains no such provision.

Lastly, the final version of the Act contains several procedural provisions that were not contained in the bill as originally passed by the House. For example, the Act provides for tolling of statutes of limitations during the notice and remediation period. It also provides that the federal Act will not preempt state laws or rules of civil procedure regarding ADR.

Because of the significant benefits of characterizing a lawsuit as a Y2K action, defendants will have great incentives to invoke the protections of the Y2K Act even if the plaintiff does not, in the first instance, provide the required pre-litigation notice.

Potential Problems for the Plaintiff

The initial problem for the plaintiff will be to determine whether its prospective litigation is a "Y2K action" within the meaning of the Y2K Act. The Act provides that the term applies both to state and federal lawsuits where "the plaintiff's alleged harm or injury resulted from a Y2K failure." As noted above, the term "Y2K failure" is broadly defined (indeed, the definition was intentionally broadened in the final version). The Act applies, in particular, where "a claim or *defense* arises from or is related to an actual or *potential* Y2K failure." It is relatively easy to conceive of problems that appear to be within the core concept of a "Y2K failure." Where, for example, a business has purchased a computer system and discovers, shortly after January 1, 2000, that it no longer functions properly (apparently as a result of a Y2K problem), the Y2K Act probably would apply.

But other forms of losses may be more difficult to characterize as Y2K failures. For example, if the plaintiff is a customer with a long-term supply contract for raw

materials, and shortly after January 1, 2000 learns that its supplier can no longer deliver (allegedly as a result of some Y2K-related system failure), it is unclear whether the Y2K Act would apply. Presumably, the defendant would claim that the suit is a Y2K action because its defense arises from a Y2K failure.

Even within the core definition of a Y2K failure, moreover, technical problems may arise. In the first scenario outlined above, for example, the mere fact that a computer system failed shortly after January 1, 2000 will not necessarily establish that the failure was "caused" by a Y2K problem. It could be caused by a host of other problems (human error, format incompatibilities or bad date inputs, to name just a few).

Because of the significant benefits of characterizing a lawsuit as a Y2K action, defendants will have great incentives to invoke the protections of the Y2K Act even if the plaintiff does not, in the first instance, provide the required pre-litigation notice. The Act provides that if the defendant elects to treat a complaint in that fashion, the court "shall stay all discovery," and the time for responding to the complaint "shall be tolled" during the 60-day period for remediation. In the event that the plaintiff considers the defendant's invocation of the Act to be improper, the plaintiff could presumably file an appropriate motion for relief from the Act's stay of litigation. But bringing such a motion would raise its own problems.

A less risky gambit for the defendant might be to insist that whatever particularized summary the plaintiff provides in its pre-litigation notice be duplicated in the actual complaint filed.

The best that the plaintiff could reasonably hope to achieve is the opportunity to proceed immediately with the lawsuit, instead of waiting 60 days. The plaintiff might, however, have to invest substantial resources to accomplish that modest goal. At a minimum, the motion would require some basic effort to summarize the facts and law applicable to the case. If the defendant resists the motion, those efforts could be increased. Indeed, the court might well determine that conflicting factual assertions on such a motion would require discovery, and perhaps even a mini-trial, all of which would concern a collateral proceeding. The prospective plaintiff might well conclude that it is not worth fighting on this issue, so long as the stakes are only a brief delay in litigation.

Invocation of the Act would, however, also have a vast array of other consequences. A defendant in a lawsuit characterized as a Y2K action would generally enjoy punitive damages limitations, proportionate liability protections, a statutory duty-to-mitigate defense and other benefits. Thus, even though the plaintiff might conclude that a 60-day delay is not particularly onerous, and even though the plaintiff may be uncertain whether its action does or does not come within the terms of the Act, the plaintiff may be forced to litigate the question of the applicability of the Act, simply because the stakes are so high.

If the plaintiff concludes that the Y2K Act applies to its prospective lawsuit, then the pre-litigation notice requirements must be addressed. The Act requires "particularity" or "specific and detailed information" about any "material defect" that has allegedly caused harm or loss, the nature of the harm or loss, the remedy the plaintiff seeks, and the basis upon which the plaintiff seeks its remedy. Although the original House version of the bill would have provided that the plaintiff need not provide "technical" details about the alleged failure, that provision was eliminated from the final Act. If the problem involves multiple computer systems, programs and operators, for example, it may be extremely difficult to provide such a summary, absent a comprehensive investigation (including, perhaps, discovery) to sort out the various potential causes.

Defendants may also conclude that they can gain a tactical advantage by emphasizing the particularity requirement. Although the Act does not expressly provide for court intervention to assess the quality of a pre-litigation notice, a defendant might make use of the particularity requirement in various ways. A defendant could, for example, respond to a pre-litigation notice by claiming that it has not been given enough information to respond to the plaintiff's notice. If the plaintiff then seeks to file its lawsuit, claiming that the defendant has not properly described the actions it has taken or will take in response to the problem, the defendant might ask the court to rule on whether its response was proper. If the court agrees with the defendant, then arguably the stay of discovery and litigation should continue until the defendant has had an opportunity to respond.

A less risky gambit for the defendant might be to insist that whatever particularized summary the plaintiff provides in its pre-litigation notice be duplicated in the actual complaint filed. The Act requires the plaintiff to plead specific information about the defect, and the nature and amount of the alleged damages. Whatever specific information is provided in the pre-litigation notice should arguably also be plead in the complaint. Additionally, the defendant might use the pre-litigation notice as evidence in connection with the lawsuit. Although the Act provides that a defendant's response to a pre-litigation notice will not be admissible in evidence,[5] the Act would apparently not provide the same protection for the plaintiff's pre-litigation notice. Even if the plaintiff did not duplicate the pre-litigation summary of facts in the complaint, the defendant might make use of the statement, either on a motion to dismiss the complaint or at later stages in the proceedings.

The plaintiff could be whipsawed by these potential defense strategies. If the plaintiff does not provide enough detail

in its pre-litigation notice, it may be forced to wait even longer to pursue its claim. If the plaintiff provides such detail, it may be forced to litigate its case based on a premature understanding of the facts.

Potential Problems for the Defendant

The defense under the Y2K Act notification regime may also encounter a number of uncertainties. Suppose, for example, that the plaintiff has not sent a pre-litigation notice before commencing a lawsuit. If the defendant considers the suit to be a "Y2K action," it may so inform the court, and the Act provides that the court "shall" stay discovery and "shall" toll the time for filing pleadings. But what if the court does not respond to the defendant's notice? Can the defendant simply assume that the litigation and discovery are stayed unless the court otherwise rules? What if the plaintiff serves discovery requests? Can the defendant simply ignore them? Under the Federal Rules of Civil Procedure, failure to at least object to such discovery might be considered a waiver. Failure to respond to the plaintiff's complaint, moreover, might constitute an admission of facts in the complaint, or waiver of defenses to the complaint. Thus, even though the purpose of the Act is to reduce unnecessary litigation, a defendant may be forced to take steps (such as a motion to dismiss and for stay of discovery) to preserve its position in litigation, despite the apparent protections of the Act.

What happens, moreover, if the defendant guesses wrong in its invocation of the Y2K Act? Under the original House version of the bill, if the court subsequently found that the defendant's invocation of the Act was "frivolous and made for the purposes of causing unnecessary delay," the court would be expressly authorized to award sanctions, in accordance with Rule 11 of the Federal Rules of Civil Procedure. That provision was removed from the final version of the Act. Arguably, the same kind of sanctions could be applied even without that express provision. Although Rule 11 sanctions are relatively rare at present, widespread, indiscriminate invocation of the Act by defendants might cause some courts in the post-millennium environment to issue Rule 11 sanctions with less restraint. At the very least, defendants who wish to invoke the Act will be well-advised to monitor the developing caselaw interpreting the Act's definition of a "Y2K failure" and develop a solid factual basis for their invocation of the Act.

The defendant's response to a pre-litigation notice and demand for remedy will also present a number of challenging strategic decisions. Under the terms of the Act, failure to respond within 30 days allows the plaintiff to commence its litigation. Defendants thus have a powerful incentive to say *something* in response to a plaintiff's pre-litigation notice. But what? If the defendant responds and proposes specific remedial action, that proposal arguably constitutes a binding settlement offer. Even though such an offer might be directed solely at the plaintiff's circumstances, if the defendant engages in mass marketing there may be many more potential plaintiffs who will be keenly interested in such an offer. The Act does not provide any confidentiality protection for such an offer. Thus, even though such an offer may not be used to prove liability in a pending case or subsequently filed cases, the defendant must consider the practi-

cal business effects of publicly offering to compromise a claim.

One option available to the defendant in response to a prospective plaintiff's pre-litigation notice is to offer to engage in ADR. That term is broadly defined in the Act to include early neutral evaluation, mediation, mini-trial and arbitration. Rather than propose a specific form of remedy for the Y2K failure, a defendant might well propose its preferred form of ADR, perhaps before a favored forum. Like arbitration, however, binding ADR processes can have negative consequences. A safe alternative aimed at invoking the protections of the Y2K Act with a minimum of commitment might be to offer a non-binding alternative, such as mediation.[6]

Conclusion

The Y2K Act will pose significant challenges for litigants and, ultimately, for the courts. Counsel in Y2K actions will be well advised to think through the implications of the Act with an eye toward offering practical interpretations and solutions. If a tidal wave of Y2K litigation hits (as many experts predict), courts will be searching for the fair, efficient, non-litigious solutions to Y2K disputes which the framers of the Act intended.

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NOTES

1 The full text of the Act is available at www.senate.gov/^commerce/issues/y2k.htm.

2 A White House-supported alternate bill, sponsored by Senator Kerry, contained a pre-litigation notice provision, but omitted various other features, such as punitive damages caps. Consideration of that bill was tabled before the entire Senate could consider it. *See Senate Begins Debate on Y2K Measure*, (BNA) Daily Report for Executives, A-45 (June 10, 1999); *Senate Readies Anticipated Vote on Y2K Bill*, www.news.com/news/item/0,4,37549,000html (June 8, 1999); *White House Statement Brightens Outlook for Y2K Tort Limit Action*, Nat'l L.J., May 24, 1999 at A7.

3 *See Gov. Bush Signs Bill to Protect Texas Businesses from Y2K Litigation*, (BNA) Daily Report for Executives A-3 (May 20, 1999) (law requires claimants to notify defendants 60 days prior to bringing suit).

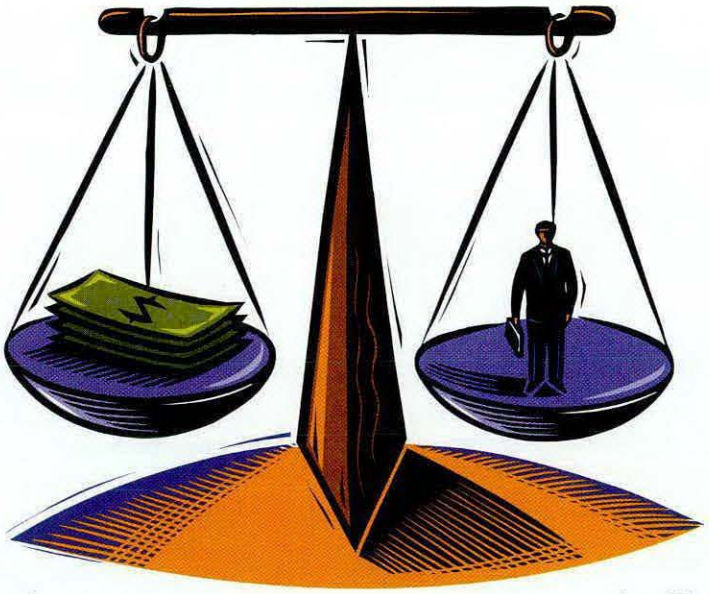
4 For summaries of important provisions of the Act, *see, e.g., Deal Reached on Bill to Limit Y2K Liability*, Wash. Post, June 30, 1999, at A-1; *White House, Congress Reach Accord on the Details of Year 2000 Legislation*, Wall S.J., June 30, 1999, at B-2; *Vexing Party, Clinton Backs Year 2000 Law, N. Y. Times*, June 30, 1999, at A-1.

5 Both versions of the bill refer to Rule 408 of the Federal Rules of Evidence, or any analogous state rules of evidence.

6 *See* Steven C. Bennett, *Millennium Mediation: A Practitioner's Perspective*, forthcoming in the Y2K Advisor.

The Right to Counsel as Developed In The United States Supreme Court

by Leonard Schroeter



The thesis of last month's article was that not only is access to justice a *fundamental* right, but that it encompasses a right to counsel in civil cases, since our historic heritage of English constitutionalism, the Common Law, Magna Carta, and other charters of freedom, were adopted and incorporated into American jurisprudence. These were enhanced by the great American Scriptures: The Declaration of Independence and the Gettysburg Address, and by the essential concurrences of our more than 50 constitutions and declarations of rights, including the U.S. Constitution and Bill of Rights.

There have always been differences of views as to what is fundamental and what are current political compromises on policy, but the Supreme Court must give fealty to the constitutionalism it applies. The best explanation as to why, for well over a century, the court paid so little attention to claims of right to attorney representation is that the Federal Constitution assumed that trials involving people's rights occurred in state courts. Virtually all civil litigation was in the states. Most criminal cases also occurred under state criminal law. It has only been in recent years that there has been a burgeoning of federal criminal cases, where the Sixth Amendment guaranteed right to counsel in federal courts. Supreme Court constitutional challenges of rights to counsel began after the Fourteenth Amendment was adopted. Thus, the Court developed its jurisprudence around the language and tests of Fourteenth Amendment phrases such as "due process," "privileges or immunities of citizens," and "equal protection," rather than the fundamental right of access to justice. These issues were impacted by the politically sensitive issues of federalism and separation of powers. Those structural constitutional provisions made it far easier for the Court to avoid the most fundamental constitutional principles — the rights of individuals: race (slavery), women's rights, class and caste (money power). The Court's avoidance became difficult only when the political pressure of the times compelled the long overdue recognition of fundamental rights.

The Scottsboro Boys' Case — *Powell v. Alabama*

The pioneer right-to-counsel case in American jurisprudence arose from one of the most shocking and outrageous criminal cases of the century, known as the Case of the Scottsboro Boys. On March 25, 1931, two young white girls claimed to have been raped on a freight train by six different "Negro" young men, in turn. At Scottsboro, Alabama, a posse seized the men, who were taken to the county seat. An angry crowd threatened lynching the blacks, who were all young, ignorant and illiterate. The trial judge stated that he had appointed "all the members of the bar" for arraigning the blacks and assumed they would help. No counsel appeared. Six days after indictment the trials began, but no one appeared to represent the defendants. Each trial was completed within a single day. Under Alabama's statutes, punishment for rape was fixed by the jury with discretion from ten years' imprisonment to death. The juries found all accused guilty and imposed the death penalty. The trial court overruled motions for new trials and sentenced the defendants to death. The Alabama Supreme Court affirmed the judgments.

Public-interest constitutional lawyers represented the defendants in the U.S. Supreme Court, claiming denial of due process and equal protection under the Fourteenth Amendment. The *Powell v. State of Alabama*[1] court held that the duty of the trial court was to ensure that there was no denial of any necessary criteria for a fair trial. The right to counsel was acknowledged by Alabama, as its constitution provided that in all criminal prosecutions the accused had the right to assistance of counsel. Furthermore, the statute required the court, in a capital case, to appoint counsel.

The Court's historic review found that "if recognition of the right of a defendant charged with a felony to have aid of counsel depended upon the existence of a simi-

lar right at common law, as it existed in England when our Constitution was adopted, there would be great difficulty in maintaining it as necessary to due process. Originally, in England, a person charged with treason or felony was denied the aid of counsel except in response to legal questions which the accused himself might suggest." Justice Sutherland noted that the rule of common law prevailing when the state and federal constitutions were written, in the late eighteenth century, was that "parties in civil cases and persons accused of misdemeanors were entitled to the full assistance of counsel." It was not until 1836 that full rights of counsel were granted in respect to felonies in England. He wryly observed:

> An affirmation of the right to the aid of counsel in petty offenses, and its denial in the case of crimes of the gravest character, where such aid is most needed, is so outrageous and so obviously a perversion of all sense of proportion that the rule was constantly, vigorously and sometimes passionately assailed by English statesmen and lawyers.

Sutherland documented that *before* the adoption of the Federal Constitution, the constitutions of Maryland, Massachusetts, New Hampshire, New York, Pennsylvania and Delaware had all declared "that in all criminal prosecutions every man hath a right to be allowed counsel." Similar provisions were extant in the rest of the Colonies and new states by constitution or statute. The federal constitution replicated this constitutional consensus as to basic rights of criminal defendants. Thus Sutherland reasoned that earlier precedent laid the basis for the incorporation into the Fourteenth Amendment of provisions in the Bill of Rights, stating that:

> If this is so, it is not because those rights are enumerated in the first eight Amendments, but because they are of such a nature that they are included in the conception of due process of law. While the question has never been categorically determined by this Court, a consideration of the nature of the right and a review of the expression of this and other courts makes it clear that the right to the aid of counsel is of this fundamental character....

The Court held that the right to aid of counsel is not a right limited to criminal proceedings, let alone capital offenses. In civil courts, notice and hearing and an opportunity to be heard had consistently been described as "among the immutable principles of justice which inhere in the very idea of free government which no member of the Union may disregard." And

> the rule that no one shall be personally bound until he has had his day in court was as old as the law, and it meant that he must be cited to appear, and afforded an opportunity to be heard.... What, then, does a hearing include? Historically and in practice, it has always included the right to the aid of counsel when desired, and provided to the party asserting the right. 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.

The Court's analysis, historic research and clear language made it clear that as of 1932, the right to counsel in both criminal and civil proceedings appeared to be beyond jurisprudential dispute.

From *Powell* Through *Gideon*

A quarter of a century passed with little jurisprudential change except constitutional recognition in contexts other than criminal capital cases. In 1938, Justice Black, for a unanimous court, held in *Johnson v. Zerbst*[2] that the right to assistance of counsel was not limited to criminal capital cases. A unanimous Court reversed and remanded a federal prisoner who had sought a writ of habeas corpus because of his claim that he had been denied the right of counsel, guaranteed to him under the Sixth Amendment, after a finding that he had waived that right.

But it was not until *Griffin v. Illinois*[3] in 1956 that major attention was again riveted on issues of justice and poverty. Griffin had been convicted of armed robbery. He moved for a stenographic transcript of the proceedings to be furnished to him without cost, alleging no funds

were available to pay for the documents. The United States Supreme Court reversed the Illinois denial of Griffin's appeal, holding that the petitioner's constitutional rights were violated. Justice Black held that the denial of the transcript violated both the due process and equal protection clauses of the Fourteenth Amendment.

Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal. This hope, at least in part, brought about in 1215 the royal concessions of *Magna Carta*: 'To no one will we sell, to no one will we refuse, or delay, right or justice.' ... Both equal protection and due process emphasize the central aim of our entire judicial system.... Surely, no one would contend that either a State or the Federal Government could constitutionally provide that defendants, unable to pay court costs in advance, should be denied the right to plead not guilty or defend themselves in court. Such a law would make the constitutional premise of a fair trial a worthless thing. Notice, the right to be heard, and the right to counsel would under such circumstances be meaningless promises to the poor.

What is essential to the *Griffin* decision is the Court's clear determination that meaningful access to justice is a fundamental right. That access includes the appellate process in circumstances where that process is seen as essential for fairness. Equal justice under law requires that government must not deny access available to others simply because of poverty.

Seven years elapsed between *Griffin* and *Gideon v. Wainwright.*[4] Gideon was charged with breaking and entering a poolroom to commit a misdemeanor. He had no funds and requested the court to appoint a counsel for him. He was denied by the judge because under Florida law counsel was appointed only in capital offenses. He was found guilty and sentenced to five years in the state prison. His habeas corpus petition claimed he had been denied rights guaranteed by the Constitution and Bill of Rights. Certiorari was granted. The question certified was: "Should this Court's holding in *Betts v. Brady* be reconsidered?" Justice Black amplified the statement of the issue by quoting *Betts,*[5] holding:

> Asserted denial [of due process] is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may in other circumstances, and in the light of other considerations, fall short of such a denial.... Since the facts and circumstances of the two cases are so nearly indistinguishable, we think the *Betts v. Brady* holding, if left standing, would require us to reject Gideon's claim that the Constitution guarantees him the assistance of counsel. Upon full consideration we conclude that *Betts v. Brady* should be overruled.

Where and When Is Civil Representation a Fundamental Right?

The linkage between the rights of criminal defendants and those in the civil justice system is evident under certain hybrid circumstances. One such a hybrid situation involved the rights of children. In *In re Gault,*[6] a 15-year-old was taken into custody after a complaint that he had

made lewd telephone calls. A juvenile court judge ordered him committed as a juvenile delinquent until majority to the state industrial school in Arizona. His parents challenged the constitutionality of the Arizona juvenile code. The state court dismissed and was reversed by the United States Supreme Court. Although juvenile proceedings in Arizona are not considered part of the criminal justice system, the constitutional guarantees of due process were applicable. The entire proceeding was informal, yet punitive. The juvenile judge conducted it in chambers, questioned the child, discussed issues with the witnesses, and made his decision. Gault's father was not there. The complainant who had reported the so-called lewd telephone calls was not there. No one was sworn. No transcript or recording was made. No memorandum or record of the proceeding was prepared. No notice of the hearing where Gault was committed to an institution until he was an adult was given. The "referral report" by the probation officers was filed with the court, although never disclosed to Gault or his parents. Immediately after the hearing, Gault was committed to the state industrial school for the next six years. No appeal was permitted by Arizona law in juvenile cases. At the habeas corpus hearing, there were essentially no records available, and most reliance was on what the juvenile judge had to say.

Providing equal justice for poor and rich, weak and powerful alike is an age-old problem. People have never ceased to hope and strive to move closer to that goal.

The juvenile was taken from the custody of his parents and committed to an institution where the court had virtually unlimited discretion, under circumstances where the basic rights of notice of the charges, counsel, confrontation and cross-examination, non-self-incrimination, transcripts of proceedings and appellate review were denied. If this had been done to an adult, the violations would be clear. Yet the child was "a person," and "a citizen," and Justice Fortas, for the Court, noted initially that the Supreme Court had already held that the Fourteenth Amendment applied to juvenile proceedings, and that parental and child rights had been recognized. He traced the history of the juvenile court, where the idea of crime and punishment had been abandoned and the child was to be "treated" and "rehabilitated." This was to be achieved because the proceedings were not adversary, and the State was proceeding as *parens patrii*. But Fortas noted that juvenile court history had "demonstrated that unbridled discretion, however benevolently motivated, is frequently a poor substitute for principle and procedure."

On each of the deprivations of rights claimed, the Court ruled in favor of the fundamental character of the right. It could not be denied simply because Gerald Gault was a child. Justice Fortas's extensive scholarly decision is a handbook not only of children's rights, but rights of any *person*, because they have the protective panoply of our constitutional protections. Justice Black's concurrence is equally powerful. He stated:

Where a person, infant or adult, can be seized by the State, charged, and convicted for violating a state criminal law, and then ordered by the State to be confined for six years, I think the Constitution requires that he be tried in accordance with the guarantees of all the provisions of the Bill of Rights made applicable to the States by the Fourteenth Amendment. Undoubtedly this would be true of an adult defendant, and it would be a plain denial of equal protection of the laws, an invidious discrimination to hold that others subject to heavier punishments could, because they are children, be denied these same constitutional safeguards....

Justice Black's comment referable to "a *person*, infant or adult" reminds us that the rights protected in the Bill of Rights are explicitly defined in terms of "person" (in the Fifth Amendment, "no person" and "any person"; and in the Fourteenth Amendment, "all persons"). With respect to the right to counsel, Justice Fortas ruled that as to the child, there is a "right" to be represented by counsel, a right extended to inmates, criminal defendants and others, as protected persons in the clear language of our Constitution.

In *Goldberg v. Kelly*,[7] the Supreme Court determined that when a state terminated public assistance payments to a recipient without affording him the opportunity for an evidentiary hearing, it was unconstitutional. Justice Brennan held that plaintiffs receiving financial aid under welfare programs have protectable constitutional rights that were violated by city administrative officials. The character of those rights was seen as substantially identical to that of those rights claimed by *Gault*. Goldberg had also relied upon a 1969 case which held that a garnishee had the right to be heard in garnishment proceedings, and that his rights were protected under Fourteenth Amendment procedural due-process requirements which were seen as fundamental principles.[8] The court stated, "Relevant constitutional restraints apply as much to the withdrawal of public-assistance benefits as to disqualification for unemployment compensation, *Sherbert v. Verner*;[9] or to denial of a tax exemption, *Speiser v. Randall*;[10] or to discharge from public employment, *Slochower v. Board of Higher Education*."[11]

For Justice Brennan, the test for the court's analysis of constitutional protection is not who the right bearer is (the criminal defendant in a capital case or a misdemeanor, a "person" in an institution, a child, or a person whose interests are simply economic), but *who* is embroiled in an administrative structure that deprives him of his constitutional rights to due process or equal protection of the law. He explained the extensive reach of that right and stated that, "Moreover, important government interests are promoted by affording recipients a pre-termination evidentiary hearing. From its founding, the Nation's basic commitment has been to foster the dignity and well-being of all persons within its border." Welfare recipients and wealthy owners of property are entitled to constitutional protection. The question analyzed by Brennan was whether the competing governmental interests, for example, "in conserving fiscal and administrative resource," outweigh the constitutional rights of welfare recipi-

ents. He held that "these governmental interests are not overriding in the welfare context. There can be no differentiation as to right bearers because the interests being protected are economic or welfare." This is because "the fundamental requisite of due process of law is the opportunity to be heard." Hearing must be "at a meaningful time and in a meaningful manner... and in an effective opportunity to defend by confronting any adverse witnesses and by presenting his own arguments in evidence. Often, that basic justice right will require an attorney. Since in almost every setting, where important decisions turn on a question of fact, due process requires an opportunity to confront and cross examine adverse witnesses."

One year after *Goldberg v. Kelly*, the Supreme Court decided *Boddie v. Connecticut*.[12] This was a class action brought on behalf of all female welfare recipients residing in Connecticut and wishing divorces but prevented from bringing such suits by Connecticut statutes requiring payment of court fees and costs for service of process as a condition precedent to access to the courts.

Plaintiffs sought in U.S. District Court a judgment declaring the statutes invalid, and requested an injunction requiring the state to permit members of the class to sue for divorce without payment of fees and costs. The Court's decision was by Justice Harlan. It held that a state denies due process of law to indigent persons by refusing to permit them to bring divorce actions, except on payment of court fees or service of process costs which they are unable to pay. The fee and costs barrier restricted their access to the courts and violated their constitutional rights. They were unable to gain access to the courts to obtain a divorce simply by reason of their indigency. The Court ruled that:

> given the basic position of the marriage relationship in this society's hierarchy of values and the concomitant state monopolization of the means for legally dissolving this relationship, due process does prohibit a State from denying, solely because of inability to pay, access to its courts to individuals who seek judicial dissolution of their marriages.

Justice Douglas's concurring opinion is based "upon the principles developed in the line of cases marked by *Griffin v. Illinois*." He sees that view as one of affording equal justice to all, and special privileges to none in the administration of the law. He repeats like a worthy mantra that "there can be no equal justice where the kind of a trial a man gets depends on the amount of money he has." He sees the *Griffin* lines of cases as constitutionally correcting the evils of discrimination against the indigent. For him, the equal protection clause is the constitutional instrument for vindication of constitutional rights that have been denied. He is wary of the due process clause on which the Court relied in *Boddie*, because

it "has proven very elastic in the hands of judges."[13]

Justice Warren was replaced by Justice Burger as Chief Justice in 1969. By 1972, Justices Black and Harlan were replaced by Justices Powell and Rehnquist. In a sense, *Goldberg* and *Boddie* were the high point of recognition of the fundamental right of access to justice. In several cases, narrow Court majorities rejected constitutional challenges based upon access to justice principles, where indigent litigants were denied hearings because they were unable to pay bankruptcy fees,[14] or filing fees for appeal of an administrative old-age assistance denial.[15] One exception was *Bounds v. Smith*,[16] which arose from a § 1983 civil rights suit by inmates in North Carolina correctional facilities. They alleged they were denied access to the courts, in violation of Fourteenth Amendment rights, and specifically by the state's failure to provide them legal research facilities and legal assistance. The district court approved plans to achieve those goals, and the Fourth Circuit affirmed. In the Supreme Court's affirmation, it was held that the fundamental constitutional right of access to the courts required state prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing adequate law libraries and adequate assistance from persons trained in law. The Court recognized that "original actions seeking new trials, release from confinement, or vindication of fundamental civil rights" are an essential part of meaningful access, and habeas corpus and civil rights actions are of "'fundamental importance.... in our constitutional scheme' because they directly protect our most valued rights."

Only two recent Court cases are helpful additions to the armamentarium of those lawyers and judges whose commitment to protection of fundamental constitutional rights still burns brightly. On May 20, 1996, the Supreme Court, in an opinion of Justice Kennedy, decided *Romer v. Evans*.[17] Justice Kennedy in his opinion stated clearly:

> 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.' ... 'The guaranty of 'equal protection of the laws is a pledge of the protection of equal laws.'

Romer powerfully enunciated the central thrust of the idea of access to justice — the government's protection of the rights of the people by ensuring equal protection of the law.[18]

Romer powerfully enunciated the central thrust of the idea of access to justice — the government's protection of the rights of the people by ensuring equal protection of the law.[18]

M.L.B., Petitioner, v. S.L.J.19 was the first parental rights termination case decided by the Court in almost 15 years, and one of a few that discussed access-to-justice principles or rights to counsel. In her extensive opinion, Justice Ginsburg cited, almost without exception, cases already discussed here, most probably because the political and judicial climate of hostility (on both the Burger and Rehnquist Courts) to the claims of the rights of poor people had precluded recent decisions in that field. The opinion carefully followed earlier precedents and picked its way through controversial minefields, securing consensus from the full Court.

History is on the side of equal justice under law and the fundamental right of access to justice. There is no meaningful question that the right to counsel in all civil actions is as jurisprudentially correct as it is in criminal ones. But how can we understand what meaningful access to justice is? And how do we achieve it and keep it? In next month's article, we will attempt to see where we are in this state and hopefully suggest where we should be going in the new millennium.[20]

NOTES:

1 287 U.S. 45 (1932).
2 304 U.S. 458 (1938).
3 351 U.S. 12 (1956).
4 372 U.S. 335 (1963).
5 316 U.S. at 462.
6 387 U.S. 1 (1967).
7 397 U.S. 254 (1970).
8 Sniadach v. Family Finance Corp., 395 U.S. 337 (1969).
9 374 U.S. 398 (1963).
10 357 U.S. 513 (1958).
11 350 U.S. 551 (1956).
12 401 U.S. 371 (1971).
13 Boddie is well worth re-reading. The constitutional viewpoints surfacing there continue to complicate the development of an appropriate jurisprudence today and played a key role in the subsequent right to counsel/access to justice cases in years ahead.
14 United States v. Kras, 409 U.S. 434 (1973).
15 Ortwein v. Schwab, 410 U.S. 656 (1973). *See* Schroeter, *Civil Gideon: If Not, Why Not?* for a detailed analysis of the Supreme Court's bitter internecine quarrels over these "poverty" cases, pp. 40 ff.
16 430 U.S. 817 (1977).
17 507 U.S. 620 (1996). *See*, for further description of Romer, Schroeter, *ibid.* ("The Jurisprudence of Access to Justice: From Magna Carta to Romer v. Evans via Marbury v. Madison," *Trial News*, June 1998).
18 The importance of superb appellate advocacy, and constitutional jurisprudence was evident here. The majority opinion was based upon the amicus brief of Laurence Tribe, rather than the constitutional grounds of the Colorado courts, or the attorneys directly representing the challengers. They had essentially relied on a conventional equal protection argument of disparate insular minorities. Tribe ingeniously changed it to the access to justice issue of the right to protection of government.
19 519 U.S. 102 (1996).
20 This is the second of three articles on the "Civil Gideon" issue. *See* Schroeter, *Attorney Representation, An Essential Right*, WSBA *Trial News*, August 1999. Next month's article will survey the Washington State Supreme Court decisions on this subject. *See also* Schroeter, *Civil Gideon: If Not, Why Not?* (Access to Justice 1999 Annual Conference, Wenatchee, Washington). *See also* Footnote 1 in last month's article for further details on this subject. The WSBA website (www.wsba.org) can be visited to see earlier Schroeter articles on access to justice.

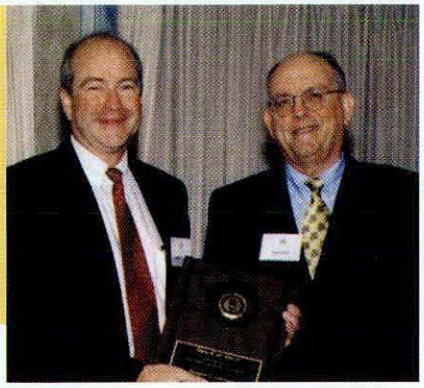
A Tribute to WSBA's 50-Year Members

Marshall D. Adams
Eldon Willmar Anderson
Leo A. Anderson
John W. Baird
Lloyd G. Baker
Jack Bennett
Clifford C. Benson
Robert C. Bibb
Philip E. Biege
Alexander Paul Bitar
Daniel C. Blom
William Lewis Brown
Sidney Russell Buckley
Stimson Bullitt
Gordon McLean Campbell
Keith H. Campbell
Robert Cornelius Carter
Richard Alvin Clark
Clifton Wallace Collins
Paul R. Cressman
George Harris Davies
Arthur R. Eggers
James Reed Ellis
Philip Henry Faris
Herbert H. Freise
Elmer Robert Fristoe
Benjamin J. Gantt
William Richard Garland
John M. Harding
Richard D. Harris
Ray Hayes
Dan F. Henderson
Jack Eugene Hepfer
Neil J. Hoff
Frederick Robert Hokanson
Robert Smith Ivie
Lewis Henry Johnson
Jack M. King
Frank R. Kitchell
Hugh A. Knapp
Harvey H. Krell
Edward Eldridge Level
John C. Lombard
Michael Stanley Manza
James B. McCoy
George Edward McIntosh
Arthur F. Mickey
Don Miles
James Paul Moceri
Charles Thomas Morbeck
Edwin Albert Morrison
John Edward Morse
Patricia Shanahan Mucklestone
Norman Ray Nashem
Russell William Newman
Daniel O'Leary
Stuart Gregory Oles
Claude Meredith Pearson
John Arthur Petrich
Wayne Donald Purcell
William A. Roberts
John S. Robinson
Charles Layton Sayre
John W. Schumacher
Richard W. Seed
Frank A. Shiers
Philip P. Skok
James J. Solan
Michael James Sterbick
Peter Lawrence Sterbick
Waldo F. Stone
Herbert A. Swanson
John Chester Vertrees
Griffith Way
William Wesselhoeft
Charles S. Wheeler

We honor the 76 individuals who were admitted to the Washington State Bar Association in 1949 and are still members of the Bar. These 50-year members represent more than 3,800 years of service to the people of our state.

Washington State Bar Association
1999 Awards Presentation

Douglas C. Lawrence *receives the WSBA's highest award, the Award of Merit, from President M. Wayne Blair.*



President M. Wayne Blair presents the Courageous Award to ***Faye von Wrangel****.*

Sheryl J. Willert *accepts the Affirmative Action Award on behalf of* ***Williams, Kastner & Gibbs****.*

The Angelo Petruss Award for Lawyers in Public Service is presented to ***Joseph S. Montecucco*** *by President M. Wayne Blair.*

The Honorable ***William G. Knebes*** *receives the Outstanding Judge Award from President M. Wayne Blair.*

President M. Wayne Blair presents the Professionalism Award to ***Jane Seymour****.*

*President M. Wayne Blair presents the Pro Bono Award to **Susan Daniel**.*

***Fred Diamondstone** accepts the President's Award from President M. Wayne Blair.*

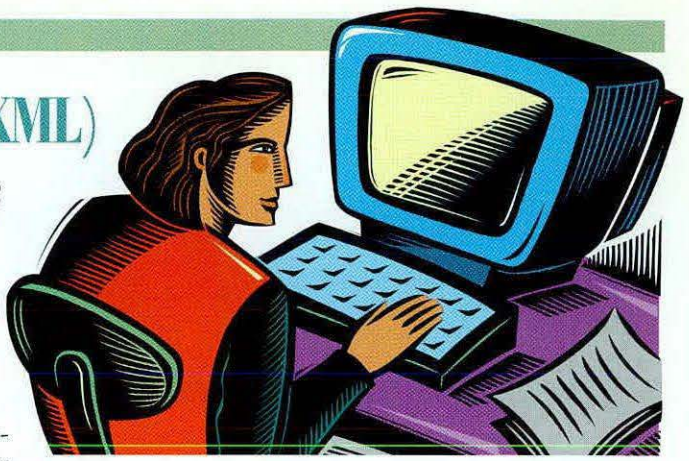
*ABOVE: President M. Wayne Blair presents WSBA Access to Justice Manager **Joan Fairbanks** with a special award.*

*ABOVE RIGHT: **Anne Blair**, wife of outgoing President M. Wayne Blair, receives a bouquet from incoming President Richard C. Eymann.*

***M. Wayne Blair** passes the gavel to **Richard C. Eymann**.*

Extensible Markup Language (XML)

A Persistent Universal Encoding Scheme



Part II of II: by Robert S. Apgood • roba@sidlon.com

It's rare, anymore, that I get really excited about a new technology. Over the years, I have become somewhat inured to the impact of technological innovations due in no small part to a natural inclination to take them for granted. I *expect* sophisticated change as integrally as I *expect* to breathe in and out on a consistent basis. So, when a new technology is introduced that holds the potential to have a profound impact, I take notice.

E-commerce (the sale of goods and services on the Internet) has been, as predicted by many, embraced at an explosive rate. Arguably one of the most prolific companies to use e-commerce (their entire business model is based on it) is Amazon.com. Beginning with the online sale of books, Amazon.com has recently expanded its scope to include auctions, electronics and toys. We are seeing online offerings of all types of goods and services, from groceries to automobiles and motorcycles. Some real estate agencies now provide pictorial tours through homes offered for sale. Although we can't finalize the sale of some items (particularly "titled" property), we are getting closer — home and automobile loans are being negotiated and approved online, eliminating the need for traditional visits to lending institutions. Similarly, many of us conduct our banking completely online via the Internet.

While the use of online services for our consumer and financial needs is growing at a significant pace, it is hindered by the inability of most computer applications to communicate easily with each other. Sure, communications "bridges" have been and are being created that allow the Amazons and Homegrocers to "talk" to credit-card approval agencies and, ultimately, to financial institutions. Each of these bridges, however, is generally a "cobbled together as needed" bridge that services only a small subset of businesses that have this need. Think of the problem in terms of delivery of an order document that moves from one entity to another. The creator of the document (the "purchaser" of the good or service) wants to order a chrome-plated framus. He fills out a framus order form and sends it to the framus dealer, who accepts orders only by first-class mail. The dealer accepts the order and places a drop-ship order with the framus manufacturer, who accepts orders only in blue 8 x 11-inch envelopes. The manufacturer runs a credit check on the creator by sending a copy of the order to the credit-card company specified on the order. The credit-card company accepts only faxed credit requests. Once the credit is approved, the manufacturer is notified and the credit-card company sends an advice to the creator's bank, which accepts advices only on its own form. At each step in the transaction, some specific "need" by a party requires a "change" in the handling of the document to satisfy its internal requirements. The optimal solution is, obviously, for all parties to agree on a standardized format of the "order" and a standardized method of communicating the order to each other. It is this standardization that is provided by Extensible Markup Language (XML).

XML has its roots in both Standard Generalized Markup Language (SGML) and HyperText Markup Language (HTML, the language used to create web pages). Leveraging off SGML's ability to create specialized document types and HTML's ability to communicate easily over the Internet, XML's use of constructs from both languages creates a vehicle whereby information can be easily created, manipulated, stored, transferred and displayed over the Internet. Recalling our earlier discussions of the need for persistent media for the storage of data, XML provides a standardized method for *describing* what it is that is being stored so that it can be understood long after its creation (and, quite probably, long after the software that created it is used or even available). Simply put, XML requires and provides a document descriptor that enables non-creating software to read and understand the content of the stored document. These descriptors (called Data Type Definitions, or DTDs) provide a structure definition to the information that is not available for documents created by word processors and text editors. It is this structure that ensures persistency.

An XML-enabled document, containing a predictable structure, is readily processable by software. The significant aspects of an "order" created in the example above do not require human review to ascertain the purchaser, manufacturer, dealer, creditor or bank, or part

To learn more about XML, see:
http://xml.org
http://www.xml.com
http://www.w3.org/XML/
http://pdbeam.uwaterloo.ca/~rlander/Introduction_XML/
http://www.xml-zone.com/

For a look at Legal XML efforts, see:
http://www.legalxml.org
http://gsulaw.gsu.edu/gsuepc/LEGXMLL

For a look at what *not* to do with foodstuffs, see:
http://www.sci.tamucc.edu/~pmichaud/toast/
http://www.sci.tamucc.edu/~pmichaud/grape/

numbers of goods being purchased. Further, information typed once does not require re-typing into other software applications, thereby reducing the chances of transcription error. Rather, pre-defined DTDs that are commonly available to all the parties to an "order" allow each party to garner the information it needs to handle the portion of the transaction that affects it. A common set of DTDs, then, could be used for conveying and processing orders of most goods and services in portable, cross-platform environments, all based on commonly accepted standards. Additionally, transaction parties are not required to create custom programs to communicate electronically with each other, since common tools are being developed for "off-the-shelf" use. Neither is XML "new" and subject to evolutionary disruptions common to new technologies. Established as an International Standards Organization standard in 1986, many of the shortcomings inherent in new technologies have been overcome in XML's maturation of 13 years. What *is* new is the now cost-effective vehicle for XML's implementation afforded by the household availability of digital communications provided by the Internet.

Certainly, e-commerce is changing the way we do business, both as providers and consumers. And just as certainly, the legal disputes that arise in consumer and business affairs as a matter of course will arise in the use of this new medium. Whether we represent plaintiffs or defendants in these disputes, we must become more knowledgeable about the technologies utilized in this commerce in order to effect competent representation.

But the need to know about this emerging technology isn't limited to the knowledge of how it's used in e-commerce. Just as a framus manufacturer or repair-service provider will be forced into the use of this technology as a matter of economic survival, we, as legal service providers, are subject to the same pressures. The escalating costs and inefficiencies of handling high volumes of large documents (our "goods in trade") are demanding that we develop alternatives to the historical and traditional processes of creating paper documents and delivering them to a courthouse for filing (a labor-intensive process), where they are received by a clerk and logged (again, labor-intensive), and then filed by hand, hopefully in the correct file. Simultaneously, a copy is sent to opposing counsel (either by hand delivery, or through the mail, where it is handled by multiple hands), received by hand, and routed and filed to the appropriate person by hand. Not only is this process labor-intensive, it is time-intensive as well.

Now envision: you create a document on a computer using a "smart" (e.g., XML-savvy) word processor. When completed, you click the "Save as XML and Send" button that parses the document and "wraps" XML tags around the relevant discreet aspects of the document by referencing the File-In-County-Superior-Court DTD, and then applies your digital signature to the document. The document is instantly whisked via the Internet to the County Court Clerk's computer, which then "reads" (or assigns) the case number, records the receipt, stores it in the electronic case file, routes a copy to the judge's e-mail box, and then sends an electronically conformed copy to opposing counsel's e-mail box. The process takes a grand total of five minutes. No human is required to handle the "document" for purposes of delivery and/or "filing." Opposing counsel can add the pleading to the electronic case "file," where it is automatically indexed for future key-word search (which has significant upside, particularly in large, complex litigation cases). Cited cases can be automatically and electronically Shepardized (again saving labor costs and, more significantly, time). Woe be unto the attorney who still insists on "hard copies" of documents, or is unable to receive electronic "soft copies." His day is quickly passing.

While this may sound a little fanciful, it isn't. Serious efforts are currently underway in the King County courts, mirroring similar efforts throughout the country. The sheer volume of documents in increasing numbers of cases demands these changes, giving the slow-turning wheels of justice a much-needed shot of grease.

Top Ten Law Office Management Tips

by Marty Potter
Law Office Management Assistance Program Advisor

1. Return telephone calls promptly.
A leading cause of complaints about lawyers is that phone calls are not returned. Establish an office procedure that schedules the time for a return call when the message is taken. This will reduce the amount of frustrating telephone tag we are all forced to play.

2. Use plain language.
If clients understood legalese they might not have to hire a lawyer. In communicating with clients, use easily understood terms and save the legalese for your briefs.

3. Hire intelligence and initiative — teach skills.
When hiring staff, look for intelligence, common sense, and the ability to take the initiative in office problem-solving. Secretarial, computer and paralegal skills can be taught.

4. Automate as many standardized documents as possible.
Technology allows us to eliminate many repetitious office tasks. Get into the "type it once" mode for any standard letters, forms or notices.

5. Calendar everything.
Use your calendar to schedule appointments, deadlines (promised as well as statutory), time to actually do the work, and personal commitments. This will let you see at a glance when your workflow is headed for trouble, and allow you time to make adjustments.

6. Remember — it is your *client's* case.
Do not get so wrapped up in a case that you forget it is the client's case. The client decides on the scope of representation, settlement offers and other questions.

7. Store computer backups off site.
The best backup system in the world is useless in a natural disaster if data is stored in the office. Make sure a current backup is maintained in another location.

8. Do not keep original client documents.
Trying to return original client documents 10 years after a matter is closed is time-consuming, frustrating and sometimes impossible. Make the safeguarding of original documents the client's responsibility and keep copies in your files.

9. Learn to say no.
Say no to potential clients that set off your internal alarm system.

10. Under promise — over deliver.
Never make promises you cannot deliver for the sake of obtaining a new client. Be frugal in your estimate of results, and make sure the client always feels he or she got more than expected.

The WSBA Lawyer Services Department offers these four programs:

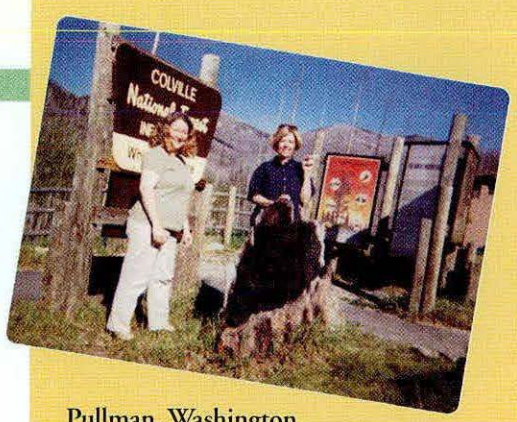
The Lawyers' Assistance Program (LAP) – 206-727-8268: Confidential assistance for lawyers with emotional, drug/alcohol or other personal problems.

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.



Pullman, Washington
August 27, 1999

Having a great time. Wish you were here.

We are wrapping up the final day of the second part of our Law Office Management Assistance Program traveling seminar. The reception we have received has been gratifying. Life east of the mountains is thriving.

Over 300 people have attended the Annual Law Office Check-up in the 10 cities we have visited so far. Chris Sutton, one of the presenters, described our seminar as performance art, since every presentation has been different, based on the interests of the attendees. We have tried to respond to the concerns of the individual communities we visited. Most attendees indicated they really felt the seminar was worthwhile. Unanimously, everyone was happy we came to *them* for a change.

While we have not yet completed our tour, we have received some great ideas for topics for the next set of seminars. The Annual Law Office Check-up was designed as a general review of law office procedures. Next we will get down to the basics on individual subjects.

We have given awards to the following sites for their participation:

The **Procrastinators' Award** goes to **Richland** for having so many late registrants that the room was packed.

The **Overwhelming Interest Award** goes to **Colville** for its attendees being so interested that we could not get them to leave when the seminar was over.

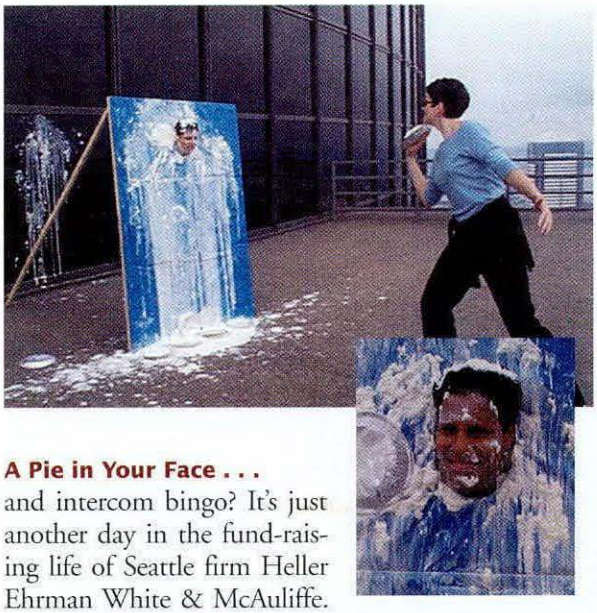
The **Reticence Award** goes to **Moses Lake**, since we had to bribe the attendees to ask questions.

We still have six more sites to visit, so the remaining awards will be given out when we finish the tour.

Thanks to everyone who made us feel so welcome. We look forward to seeing you all next summer!

Marty and Kaitlin

Changing Venues



A Pie in Your Face . . .

and intercom bingo? It's just another day in the fund-raising life of Seattle firm Heller Ehrman White & McAuliffe. The firm recently raised enough money to feed 25 families for six months in Food Lifeline's Food Frenzy event, with attorneys subjecting themselves to pies in the face, Pictionary games and intercom bingo. Seattle accounting, brokerage and law firms collected approximately $92,000 and nearly 4,000 pounds of food during the two-week event.

Honors and Awards

The Washington Defense Trial Lawyers have elected **Andrew G. Cooley** as president of the organization for the coming year. Other new officers include vice-president **Roy Umlauf**, secretary **Bradley A. Maxa** and treasurer **Karen Bertram**.

Washington State Attorney General **Christine Gregoire** has received Good Housekeeping's "seal of approval" as the recipient of the magazine's Award for Women in Government for her work during the tobacco settlement negotiations.

Seattle attorney **Daniel M. Caine** has been appointed by Governor Locke as Chair of the Governor's Small Business Improvement Council, which makes recommendations to the Governor and legislature for enhancing the business climate for small business in Washington state.

John A. Gose of Seattle has been selected as a member of The Counselors of Real Estate (CRE), a by-invitation-only group of real-estate professionals who have made significant contributions to the real-estate vocation.

Patricia H. Wagner has been elected to the American Law Institute, a select membership of legal academicians and practitioners chosen on the basis of professional achievement and demonstrated interest in the improvement of the law.

The Defense Research Institute has added **Michael H. Runyan** to its Board of Directors. Runyan, who will join 35 other board members, was elected by the Northwest Region, which includes Washington, Oregon, Alaska, Idaho, Montana and Wyoming. His term will last three years.

Movers and Shakers

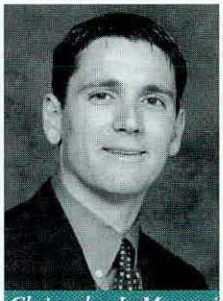
Wells, St. John, Roberts, Gregory & Matkin, P.S. in Spokane has added **Keith D. Grzelak** and **David G. Latwesen** as partners. Grzelak holds Masters' Degrees in electrical engineering and engineering mechanics, and counsels clients in a broad range of high-technology intellectual property areas, including electrical, computer, telecommunications, e-commerce and medical technologies. Latwesen has degrees in biochemistry and biophysics, and counsels clients in a diverse set of technological areas, including chemical, biotechnological, medical and semiconductor processing technologies.

Christopher L. Marzetti has joined the Seattle firm of Lane Powell Spears Lubersky LLP as an associate. He concentrates his practice in tort and insurance defense litigation including employment and professional malpractice, premises liability and products liability. Also joining the firm as a labor and employment law associate is **Carllene M. Placide**.

Graham & Dunn in Seattle has added **Michael E. Lapin** as an associate and member of the firm's Corporate Service Group. His practice focuses on advising businesses about corporate, partnership, and limited liability company taxation, tax controversies and general corporate matters. Also joining the firm as an associate and member of the firm's Litigation Service Group is **David M. Byers**, who will continue to focus his practice on a variety of commercial litigation issues including contract disputes, land use and antitrust matters.

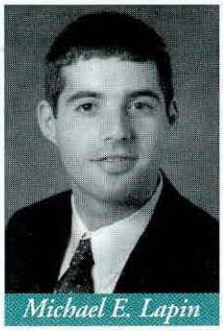
Betts Patterson & Mines P.S. has announced the addition of three new associates. **Natalie S. Adams**' areas of practice include business transactions, corporate law and commercial litigation. **Jessica J. Fleck** practices primarily in commercial litigation. **Andrew C. Cratsenberg, Jr.** focuses on real estate litigation and land use.

Michael H. Runyan

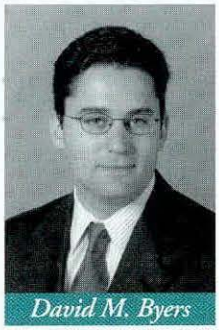


Christopher L. Marzetti

Carllene M. Placide



Michael E. Lapin



David M. Byers

In Memoriam

Barbara R. Patterson, Vice President of Human Relations at Edmonds Community College, recently passed away at the age of 54. Ms. Patterson was also active with United Way, the League of Women Voters and the Snohomish County Democratic party.

Former Judge **Story Birdseye**, a long-time Boy Scout volunteer, passed away July 31, 1999 at 93 years of age. Birdseye served as King County Superior Court Judge from 1955 through 1972.

by Sherrie Bennett

Defining Moments

In an historic move, the Board of Governors, in its September 9-10 meeting in Seattle, unanimously approved the Final Report of the Committee to Define the Practice of Law. The Board will be recommending the following definition of the "practice of law" to the state Supreme Court:

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) which require the knowledge and skill of a person trained in the law. 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 fees or other 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 in a formal administrative adjudicative proceeding or other formal dispute resolution process or in an administrative adjudicative proceeding in which legal pleadings are filed or a record is established as the basis for judicial review.

(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:

(1) Practicing law authorized by a limited license to practice pursuant to Admission to Practice Rule 8 (special admission for: a particular purpose or action; indigent representation; educational purposes; emeritus membership; house counsel), 9 (legal interns), 12 (limited practice for closing officers), or 14 (limited practice for foreign law consultants).

(2) Serving as a courthouse facilitator pursuant to court rule.

(3) Acting as a law representative authorized by administrative agencies or tribunals.

(4) Serving in a neutral capacity as a mediator, arbitrator, conciliator or facilitator.

(5) Participation in labor negotiations, arbitrations or conciliations arising under collective bargaining rights or agreements.

(6) Providing assistance to another to complete a form provided by a court for protection under RCW chapters 10.14 (harassment) or 26.50 (domestic violence prevention) when no fee is charged to do so.

(7) Acting as a legislative lobbyist.

(8) Sale of legal forms in any format.

(9) Activities which are preempted by Federal law.

(10) Such other activities that the Supreme Court has determined by published opinion do not constitute the unlicensed or unauthorized practice of law.

(c) Nonlawyer Assistants:
Nothing in this rule shall affect the ability of nonlawyer assistants to act under the supervision of a lawyer in compliance with Rule 5.3 of the Rules of Professional Conduct.

(d) General Information:
Nothing in this rule shall affect the ability of a person or entity to provide information of a general nature about the law and legal procedures to members of the public.

(e) Governmental Agencies:
Nothing in this rule shall affect the ability of a governmental agency to carry out responsibilities provided by law.

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

Long-Range Strategic Planning Goals Approved

Culminating a year-long process of gathering information from members and strategizing over the Bar Association's future, the Board approved a Long-Range Strategic Plan, including goals (which can be accessed at www.wsba.org/c/lrsp/1999/goals1.htm or on page 58 of the September issue of *Bar News*) and potential outcomes associated with each goal. The Long-Range Strategic Planning Committee will present a proposed implementation plan at the Board's October 22-23 meeting. The Committee will be reconstituted, with Governor Krueger serving as chair and Governor Deno as vice-chair. The Board emphasized the importance of a continuous planning process in the years to come.

MCLE Implementation Committee Guidelines

The Board adopted general guidelines regarding MCLE changes that will be required if the state Supreme Court adopts recommended amendments to APR 11.

These guidelines include:

1. The MCLE mandatory regulatory functions should be revenue neutral.
2. Attorneys should not have to pay extra to the WSBA for regulatory services.
3. Fees and fines should be intended to cover the additional time and expense by the WSBA. It is better to charge more for the things that will cost the WSBA more to implement.
4. Providers may need to pass on the additional costs if the reporting fee is based per-attorney, per-credit hour. Several other states charge per attorney rather than per-attorney, per-credit hour.
5. The sponsor reporting fee should be stepped according to how much effort it takes the WSBA to implement.
6. Accreditation fees may need to be ad-

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- Defense in Addition to Liability Limits
- Prior Acts Coverage for qualifying firms
- Annual Aggregate Deductible
- Mutual Selection of Defense Counsel
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justed since, once accredited, an entity can sponsor unlimited courses. There should be an annual renewal fee for accreditation.

7. No accreditation or reporting fees will be charged for courses offered without charge, except programs approved pursuant to Regulation 103(g) (pro bono legal services, private law firm education), and Regulation 104 (f) (governmental agencies).

The Board also approved the Accreditation Subcommittee's recommendations, as follows: Accredited sponsors should have sponsored CLE programs for a minimum of three years with an average of nine programs per year, and should renew their accreditation annually. The MCLE Board should establish quality control and audit procedures. There should be a program of sponsor orientation and education presented by the WSBA MCLE staff.

The Board also approved a written statement clarifying the relationship between the CLE Board and the WSBA Board of Governors regarding the CLE Board's budget and personnel issues.

The Board of Governors is now recommending that any CLE offered by the WSBA should include an ethics component.

Insurance Underwriting Negotiations Continue

After much discussion and with apparent reluctance, the Board authorized Kirke Van Orsdel, a division of Seabury & Smith (with whom the WSBA has an exclusive insurance brokerage contract into 2001), to pursue concrete negotiations with Tamarack American, a division of Great American Insurance Company, to underwrite the WSBA-sponsored insurance program.

Legislative Committee Appointments

New Legislative Committee appointees include **Elizabeth Castilleja**, **Nicholas Corning**, **Peter Karademos**, **Marta Lowry**, **Todd Nichols**, **Dave Rubens**, **Gail Smith** and **Edward Wolfe**.

Legal Foundation Predicting Income Downturn

After a record revenue year in 1998, the Legal Foundation of Washington is expecting a drop in income for the coming year, due to lower interest rates. The Board received the Foundation's annual report, presented by **Barbara Clark**, **Jerry Doss**, **Judge Cynthia Imbrogno**, **David Tang**, **Judge Gregg Tripp** and **Dwight Williams**.

Lawyers' Fund for Client Protection Annual Report

Barbara Selberg presented the annual report of the Lawyers' Fund for Client Protection, which received 95 applications during the past year and paid $132,856 to applicants who had been financially damaged by lawyers in Washington state.

BARPAC on the Move

Governor Manning discussed the ongoing operations of BARPAC, a political action committee dedicated to attorney issues. Large law firms and previous contributors have been targeted as potential donors, and $25,000 has been raised to date. The money will be used primarily for contributions to prospective legislative candidates.

Keller Deductions for Fiscal Year 2000

Based upon calculations provided by General Counsel Robert Welden, the Board approved the following Keller (political activities) deduction schedule for the Fiscal Year 2000, prorated by the amount of license fees paid by various categories of WSBA membership:

Amount of Fee Paid	$290	$238	$145	$51	$68	$38
Amount of Deduction	$2.22	$1.82	$1.11	$.40	$.51	$.28

Lawyers' Fund for Client Protection Annual Report

The Lawyers' Fund for Client Protection has filed its Annual Report with the Supreme Court. During FY 1999, the Lawyers' Fund for Client Protection Committee reviewed 95 applications concerning 30 lawyers. This is more than twice the number ever considered in any previous year. Of those 95 applications, 56 concerned two lawyers, Melinda Monet and Dennis Brouner. Fifty-nine (59) applications were approved. Of the denials, 17 were deemed fee disputes, malpractice, or there was no evidence of a dishonest taking of funds; three had received full restitution; 11 were withdrawn for various reasons; and two were deferred. The following applications were approved:

Roland Foster Balloun (#20884; disbarred) – two applications. An application for $250 involved charging unauthorized fees from the opposing spouse in a marriage dissolution; the other application involved advanced fees and costs to file a bankruptcy petition which were not returned when Balloun closed his office without performing the services for his client.

Malcolm Bell (#3780; resigned with discipline pending) – three applications. All applications involved parties in an auto accident who were represented by Bell. Bell received a $10,000 settlement on their behalf, but did not pay his clients $6,933 owed to them.

Dennis M. Brouner (#8859; disbarred) – 15 applications. Brouner maintained a bankruptcy practice that was co-owned by a suspended Arizona lawyer. Brouner placed his law firm in bankruptcy, and was eventually prohibited by the bankruptcy court from filing bankruptcy proceedings on behalf of others. Fourteen (14) of these applications involved failure to refund fees and costs (ranging between $149 and $1,070) after he ceased practicing. The other involved failure to pay $6,000 he was holding in trust for payment to a third party.

James R. Graettinger (#14975; disbarred) – Graettinger represented a restaurant owner in a labor dispute with a former employee. Graettinger told his client that she had to post a $1,250 bond to proceed with an appeal. He converted the funds to his own use. He was disbarred following a federal criminal conviction for forging a bankruptcy court judge's signature.

Claude K. Irwin, Jr. (#5206; disbarred) – Irwin was trustee of an estate he had drafted for grantor, deceased. The trust originally contained $60,000. Irwin paid $4,000 to the beneficiary, plus some "interest" payments. Eventually, beneficiary learned that Irwin, as trustee for the trust, had loaned the trust funds without beneficiary's knowledge or consent, to a real-estate development of which Irwin was president. The development projects failed. Irwin never paid the funds back to the trust or to the beneficiary.

Michael L. Jacob (#11622; discipline pending) – Client paid Jacob $595 to prepare a bankruptcy petition. At that time, Jacob was suspended from practice for failure to pay his annual licensing fee. Jacob never prepared the petition nor refunded the unearned fee.

Melinda Monet (#25676; discipline pending) – 28 applications. Monet maintained a high-volume bankruptcy practice. In a number of instances, she filed bankruptcy petitions either with NSF checks or without paying the filing fee. She was enjoined from practicing in bankruptcy court. She abandoned her practice and advised some or all of her clients to make application to the fund. Twenty-seven (27) of these applications (ranging between $200 and $900) were for unearned fees and costs which were not refunded after Monet abandoned her practice. The other application was for failure to deliver $350 to be paid to a third party.

Sally J. Murray (#24851; disbarred) – two applications. One involved probate of an estate for a 75 year-old personal representative. The estate consisted of $900,000 in bank accounts and cash. Murray told the client that the standard fee in such matters was 10 percent of the value of the estate, but that she would only charge 5 percent. Client gave Murray checks for $28,000 fees and $2,000 costs. Murray gave client incorrect legal advice, and tried to induce client into a scheme to defraud the IRS. Murray was eventually paid $45,000 in fees. Client obtained a new lawyer after talking with a care worker at the assisted care facility where she resided. Murray eventually refunded all but $16,000 to the estate and the client.

The other application concerned settlement of a personal injury claim for $12,000. Murray gave client a check for $5,000, which was returned NSF. Murray blamed the missing funds on bank error, and gave client a second check for $8,500, which was refused by the bank. Murray never paid the $8,000 owed to the client.

Jeffrey Spence (#4598; disbarred) – Spence was guardian in a number of matters in which he misappropriated funds from the guardianship accounts. Seattle attorney Barbara Coster was appointed by the court to attempt to recover assets on behalf of the estates. She spent many hours recovering from bonds that had been exonerated based on Spence's fraud, and from other sources. The Fund paid $20,613.89 to one estate for which no other source of funds was available. The Lawyers' Fund for Client Protection Committee specifically thanks Barbara Coster for her many hours of uncompensated time in recovering funds on behalf of these victims of dishonest conduct. The Committee also thanks Seattle attorney Craig S. Sternberg for assisting with this matter when Spence filed for bankruptcy.

Terry Watkins (#2333; inactive) – Watkins was paid $1,000 for representation in a criminal proceeding. Watkins then disappeared, did not represent the client, and did not return his unearned funds.

William J. Wigen (#2305; deceased) – three applications. In the first case, Wigen was hired to obtain patent and distribution rights and to retain trademark counsel. Clients paid Wigen $15,000 to be held in trust. Wigen deposited the funds to his office and personal accounts. Wigen paid $500 to a second lawyer on client's behalf, refunded $1,000 to client, and failed to account for the balance of the funds.

In the second case, Wigen was employed to obtain a patent and to defend a lawsuit brought by a competitor. Client paid $5,000 payable to his IOLTA account, but which Wigen deposited to his office account. He misrepresented to client that he paid $3,500 to trademark counsel. Those funds remain unaccounted for.

In the third case, Wigen was hired to investigate client's interest in her father's estate. She paid $5,000 payable to Wigen's IOLTA account, which was deposited into his personal account. He misrepresented to client that he paid $1,800 to a lawyer in another state where the estate was located. He did not do so and never accounted for those funds.

For a copy of the 1999 Annual Report of the Lawyers' Fund for Client Protection, call 206-727-5954, or e-mail your mailing address to license @wsba.org.

Finally, as noted before, the victims of dishonest lawyers who receive some compensation from the Fund on occasion send thank-you notes. A recent one reads:

Thank you so much for your work on my case. My faith is indeed restored. Please thank the Bar for me as well.

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

Losing or Damaging the License to Practice Law

by Barrie Althoff
WSBA Chief Disciplinary Counsel

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

When we think of the ethical standards applicable to lawyers, we usually think of the Rules of Professional Conduct (RPCs). Even if we comply with all of the RPCs, however, we can still be subject to lawyer discipline, because violation of the RPCs is only one of the many grounds for lawyer discipline. We also can lose our license to practice law for conduct that is not ethical misconduct under the RPCs. This article surveys the grounds for imposing discipline and reviews various non-disciplinary conduct which may result in the interim or permanent loss of a lawyer's license to practice law.

The rules setting out the ethical standards for lawyers are principally found in the RPCs. The RPCs require us to be competent and diligent, to charge only reasonable fees and to avoid conflicts of interest, to maintain client confidences and secrets and yet be candid with courts and others, and so on. The "Preliminary Statement" to the RPCs observes that the RPCs state the minimum level of conduct below which no lawyer can fall without being subject to disciplinary action. While failure to comply with the RPCs is the primary reason lawyers are subjected to discipline, such failures are only one of many grounds for lawyer discipline.

I. Grounds for Discipline

The principal rules governing lawyer discipline are the Rules for Lawyer Discipline (RLDs). Since they principally describe the procedures governing lawyer disciplinary investigations and prosecutions, we might assume we can ignore them as irrelevant to our practices, unless, of course, we become involved in the lawyer discipline system by having a grievance filed against us. On the whole, this assumption is correct: most of the RLDs are not relevant to lawyers unless they have a grievance filed against them, disciplinary proceedings are pending, their trust accounts are being audited, they have overdrawn their trust accounts, or they become so seriously mentally or physically disabled as to raise questions about their ability to practice law. There is one provision of the RLDs, however, of which no lawyer should be ignorant: RLD 1.1. This provision sets out 16 different grounds for discipline, only one of which is a violation of the RPCs. Those 16 grounds are the following:

While failure to comply with the RPCs is the primary reason lawyers are subjected to discipline, such failures are only one of many grounds for lawyer discipline.

Moral Turpitude, Dishonesty, Corruption, Criminal Acts. RLD 1.1(a) subjects a lawyer to discipline for committing any act involving moral turpitude, dishonesty, or corruption, or any unjustified act of assault or other act which reflects disregard for the rule of law. It does not matter whether the act was committed in the course of a lawyer's conduct as a lawyer, or otherwise, or whether the act constitutes a felony or misdemeanor. Further, if the act does constitute a felony or misdemeanor, conviction thereof in a criminal proceeding is not a condition precedent to disciplinary action, nor does acquittal or dismissal thereof preclude the commencement of a disciplinary proceeding. A recent Washington Supreme Court opinion on this provision found that a lawyer who engaged in a sexual relationship with a brain-injured personal-injury client committed, under the circumstances of that case, an act of moral turpitude under RLD 1.1(a). *In re Discipline of James A. Heard,* 136 Wn.2d 405 (1998). Another recent Washington Supreme Court case held that the standard of proof under RLD 1.1(1) for proving conduct alleged to be criminal is the standard for lawyer disciplinary cases, namely, a "clear preponderance of the evidence" as specified in RLD 4.11(b), and not the "beyond a reasonable doubt" standard generally applicable to criminal violations. *In re Discipline of James Huddleston*, 137 Wn.2d 560 (1999).

Willful Disobedience of Court Order. RLD 1.1(b) provides that a lawyer is subject to discipline for the willful disobedience or violation of a court order directing the lawyer to do or cease doing an act which he or she ought in good faith to do.

Violation of Oath of Admission. RLD 1.1(c) subjects a lawyer to discipline for violating his or her oath as an attorney, which is set out at Admission to Practice Rule 5(c). In the oath the lawyer declares that he or she will, among other things, abide by the RPCs; maintain the respect due to the courts of justice and judicial officers; not counsel or maintain any suit or proceeding which shall appear unjust, or any defense except as the lawyer believes is honestly debatable under the law, and will employ only means consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement. The lawyer also declares that he or she will maintain client confidences and secrets, and will not accept compensation from third parties without the knowledge and approval of

the client or of the court. The lawyer also declares he or she will "abstain from offensive personalities," and not advance a fact prejudicial to the honor or reputation of a party or witness unless doing so is required by the justice of the client's case. Finally, the lawyer declares that he or she "will never reject, from any consideration personal to the lawyer, the cause of the defenseless or oppressed, or delay unjustly, the cause of any person."

Unauthorized Representation. RLD 1.1(d) subjects a lawyer to discipline for willfully purporting to act as a lawyer for any person without the authority of that person.

Lending Name or Fronting for Another. RLD 1.1(e) subjects a lawyer to discipline for permitting his or her name to be used as a lawyer for another person who is not a lawyer authorized to practice law in Washington. In effect, it prohibits a Washington lawyer from fronting for another person who is not authorized to practice law in Washington.

Misrepresentation/Concealment in Bar Admission. If a lawyer misrepresents or conceals a material fact in his or her application for admission to the Bar, or to take the Bar Exam, or for reinstatement, the lawyer is subject to discipline by RLD 1.1(f).

Reciprocal Discipline. RLD 1.1(g) subjects a lawyer to discipline in Washington under the RLD 12.6 reciprocal discipline provisions if the lawyer has been subject to discipline in another jurisdiction. By the reciprocal discipline provisions Washington only needs to prove the fact that the lawyer was disciplined in another jurisdiction and does not need to prove the underlying misconduct. For example, if a lawyer were admitted in New York and in Washington and was suspended in New York, Washington would usually also impose a suspension on the lawyer even if the conduct occurred entirely in New York. Alternatively, Washington could institute a new disciplinary proceeding on the basis of the underlying misconduct.

Practice Related to Suspended or Disbarred Lawyer. RLD 1.1(h) subjects a lawyer to discipline for "practicing law with or in cooperation with a disbarred or suspended lawyer, or maintaining an office for the practice of law in a room or office occupied or used in whole or in part by a disbarred or suspended lawyer, or permitting a disbarred or suspended lawyer to use his or her name for the practice of law, or practicing law for or on behalf of a disbarred or suspended lawyer, or practicing law under any arrangement or understanding for division of fees or compensation of any kind with a disbarred or suspended lawyer." The purpose of the provision is to protect the public by assuring that a disbarred or suspended lawyer does not circumvent the lawyer discipline system by continuing to practice law directly or indirectly while disbarred or suspended. The effect of the provision is to prohibit hiring a disbarred or suspended lawyer in any capacity related to the practice of law. See *WSBA Formal Opinion 184* (1990).

Violation of the Rules of Professional Conduct. Under RLD 1.1(h), a lawyer may be subjected to disciplinary sanctions or actions for any violation of the RPCs. This provision is the primary and most widely used basis for lawyer discipline.

Violation of the Rules for Lawyer Discipline/Trust Account Provisions. Under RLD 1.1(i), a lawyer may be subjected to discipline for failing to meet his or her duties under the RLDs, including, for example: failing to respond to a grievance, or to answer a formal disciplinary complaint, or to cooperate with disciplinary discovery, or to appear to receive a reprimand, or to notify clients and others of inability to act when suspended or disbarred, or to cease practice when disbarred or suspended or placed on disability status. A lawyer may also be disciplined for failing to cooperate with examinations of the lawyer's trust account, or to notify the WSBA of trust account overdrafts, or to file the lawyer's annual trust account compliance certificate. A lawyer failing to file such certificate may also be subjected, at the lawyer's cost, to an audit of the lawyer's books and records. In each case, discipline may arise for the violation without regard to the underlying conduct in question. For example, if a lawyer was asked to respond to a wholly frivolous grievance filed by a disgruntled client against a lawyer, but failed to do so, the lawyer may be disciplined for the failure to respond even though the underlying grievance was without merit and did not give a basis for discipline.

Violation of the Code of Judicial Conduct. Lawyers who run for judicial office or who serve as judges, either full-time or part-time, are subject to all or part of the Code of Judicial Conduct. RLD 1.1(k) then subjects them to lawyer discipline for any violation of that Code. Subject to this Code, the WSBA and the Commission on Judicial Conduct have concurrent jurisdiction over conduct of lawyers who are judges and of lawyer-candidates who win a judicial election; the WSBA has exclusive jurisdiction over the conduct of lawyers who are not judges who run unsuccessfully for judicial election.

...the WSBA has exclusive jurisdiction over the conduct of lawyers who are not judges who run unsuccessfully for judicial election.

Unauthorized Practice of Law. RLD 1.1(l) subjects a lawyer to discipline for engaging in the practice of law while the lawyer is an inactive member of the WSBA, or while the lawyer is suspended from the practice of law for any cause.

Failure to Satisfy Probation or Stipulation Conditions. RLD 1.1(m) subjects a lawyer to discipline for failing to satisfy any condition of probation or any stipulated condition in connection with a disciplinary case. RLD 5.2 authorizes a lawyer found to have committed misconduct to be placed on probation under various conditions, such as required alcohol or drug treatment; medical, psychological or psychiatric care; or professional office-practice or management counseling. RLD 4.14 authorizes stipulated settlement of disciplinary cases, including imposition of terms and conditions of probation.

Failure to Pay Ordered Restitution/Costs. RLD 1.1(n) subjects a lawyer to discipline for willfully failing to pay restitution or to pay costs of disciplinary proceedings when required to do so under the RLDs.

Indirect Violations of the RLDs. RLD 11.1(o) subjects a lawyer to discipline for attempting to commit an act, or assisting another in committing or attempting to commit an act, which if completed would be prohibited by RLD 1.1. For example, if a lawyer's partner were suspended from the practice of law, and the lawyer sought to assist his or her suspended partner to continue practicing law by allowing the partner to continue to use their office to practice law, both lawyers would be subject to discipline.

Unfitness to Practice Law. RLD 11.1(p) is a general provision that subjects a lawyer to discipline for engaging in any "conduct demonstrating unfitness to practice law."

II. Non-Disciplinary Grounds for Loss of Ability to Practice Law

In addition to the above-listed grounds for discipline under RLD 1.1, which, depending on the severity of the misconduct in question, may lead to the suspension or disbarment of a lawyer from the practice of law, or to some lesser form of disciplinary action or sanction (such as an admonition, censure or reprimand), there are several other situations, not necessarily involving any ethical misconduct, which may lead to a lawyer's loss of ability to practice law. These include:

Voluntary Relinquishment of Right to Practice Law. A lawyer not involved in disciplinary proceedings may voluntarily resign from the WSBA or transfer to inactive or judicial membership status, with the result that the lawyer may not practice law in Washington thereafter unless he or she returns to active membership status.

Failure to Pay License Fees. Under Supreme Court rules and RCW 2.48.160 of the State Bar Act, a lawyer who fails to pay annual license fees is to be suspended from the active practice of law. A lawyer continuing to practice law while suspended for nonpayment is subject to discipline under RLD 1.1(l).

Failure to Pay Assessment for Lawyers' Fund for Client Protection. The Supreme Court annually assesses each lawyer an amount for the fund. Although the assessment is usually thought of as part of a

lawyer's license fees, failure to pay the assessment is, by reason of APR 15(d), grounds for suspension of a lawyer's license to practice law.

Failure to Satisfy CLE Requirements. Admission to Practice Rule 11.2(a) imposes on each lawyer the duty to complete 45 hours of approved continuing legal education every three years, of which six hours must be devoted to legal ethics, professionalism or professional responsibility. APR 11.6(b) provides that a lawyer failing to do so may, after various notices and orders, be transferred to inactive status. The actual order implementing the transfer suspends the lawyer from the active practice of law pending compliance with APR 11. Although this suspension is not a disciplinary suspension, it results in the lawyer being unable to practice law, and a lawyer's practice of law while so suspended subjects the lawyer to disciplinary action under RLD 1.1(l).

Noncompliance with Child Support Orders. RCW 2.48.166 provides that the Supreme Court may by rule provide for the suspension of a lawyer who has been certified by the Department of Social and Health Services as a person who has failed to pay required child support or who has failed to comply with child residential/visitation orders. The Court's recently adopted APR 17, effective September 1, 1999, provides for suspension or failure to pay child support. Although RCW 2.48.165 provides for a similar suspension for failure to repay student loans, the Supreme Court has declined to adopt specific rules providing for such suspension.

Interim Suspension for Conviction of a Crime. RLD 3.1 provides that the WSBA shall file a petition with the Supreme Court for the interim suspension of a lawyer convicted of a felony or other serious crime. If the crime is a felony, the lawyer is then suspended; if the crime is not a felony, a show-cause hearing is held to determine whether the crime is a serious crime. If it is, the lawyer is suspended; if it is not, the lawyer remains able to practice law pending resolution of any disciplinary proceedings arising from the alleged criminal conduct. Interim suspensions under this provision are not disciplinary suspensions and continue until the disciplinary proceedings based on the underlying conduct are concluded.

Suspension Due to Disability. Under RLD 3.2(a), a lawyer may be suspended from the practice of law, and thus lose the right to practice law, due to a disability where in disciplinary proceedings it appears there may be substantial harm, loss or damage to the public; or where the lawyer alleges he or she is unable to conduct a proper defense because of mental or physical incapacity.

Transfer to Disability Inactive Status. Under RLD 10.1, a lawyer will automatically be transferred to disability inactive status, and thus lose the right to practice law, upon receipt by the WSBA of appropriate documentation demonstrating that the lawyer (1) has been found to be

incapable of assisting in his or her own defense in a criminal action; or (2) has been acquitted of a crime on the ground of insanity; or (3) has had a guardian (but not a limited guardian) appointed for his or her person or estate upon a finding of the lawyer's incompetency; or (4) has been found to be mentally incapable of conducting the practice of law in any other jurisdiction.

Under RLD 10.2, a lawyer may also be transferred to disability inactive status, and thus lose the right to practice law, upon a finding that the lawyer is unable adequately to practice law because of insanity, mental illness, senility, excessive use of alcohol or drugs, or other mental or physical incapacity. If there are disciplinary proceedings underway against the lawyer, the lawyer may also be transferred to disability inactive status if there is a finding that the lawyer is incapable of conducting a proper defense to a disciplinary proceeding against him or her because of the lawyer's alleged disability condition. If the lawyer alleges during a disciplinary proceeding that he or she is unable to conduct a proper defense because of mental or physical incapacity, the WSBA will automatically initiate interim suspension proceedings under RLD 3.2, discussed above. Proceedings under RLD 10.2 are confidential and suspensions thereunder are not disciplinary in nature.

Suspension Due to Disbarment Recommendation. If the Disciplinary Board enters a decision recommending that a lawyer be disbarred, WSBA disciplinary counsel is to file with the Supreme Court a petition under RLD 3.2(b) for suspension of the lawyer pending conclusion of the disciplinary proceedings. The lawyer is thereupon suspended, and thus loses the right to practice law, unless the lawyer makes an affirmative showing to the Court that his or her continuing to practice will not be detrimental to the integrity and standing of the Bar and the administration of justice, or will not be contrary to the public interest.

Conclusion

To practice law in Washington a lawyer must be an active member of the WSBA and must comply with the RPCs, the RLDs, the APRs, and more generally, other laws. To avoid being subject to discipline the lawyer must comply with each of the RPCs, and must also avoid the other 15 grounds for discipline listed in RLD 1.1. In addition, to continue practicing law the lawyer must not engage in conduct which leads to the suspension of his or her license to practice law, or to the transfer from active to inactive or to disability inactive status.

Acquiring the right to practice law requires of lawyers very significant time, effort and expense. Lawyers should recall the pride they felt when they graduated from law school, when they were first admitted to the Bar, when they first wrote the word "lawyer" or "Esquire" after their name, and when they first introduced themselves as a lawyer. They should then assure that their conduct does not preclude them from continuing to practice the noble profession of law.

These 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.

Admonished

Hugh J. Kelly (WSBA No. 14616, admitted 1984), of Spokane, has been ordered admonished twice by a review committee of the disciplinary board. The two admonitions are based upon his failure to diligently represent a client in a criminal proceeding and his failure to cooperate in the disciplinary investigation.

In 1995, the U.S. District Court for the Eastern District of Washington appointed Mr. Kelly to represent a client on a criminal charge. He continued to represent the client in the post-conviction appeal. On October 25, 1995, the Court ordered Mr. Kelly to file the client's opening brief, which had been due October 10, 1995, within 14 days. Mr. Kelly then filed two requests to extend the time to file the client's brief. The Court granted both requests. On March 15, 1996, the Court sanctioned Mr. Kelly $500 for failing to file the client's opening brief, and again set a deadline for filing. On March 27, 1996, Mr. Kelly filed the client's brief, but it was deficient. The Court then ordered Mr. Kelly to correct the deficiencies. In June 1996, Mr. Kelly filed the corrected brief. In August 1996, the Court terminated his appointment and removed his name from the list of lawyers eligible to receive appellate appointments. Mr. Kelly stated that he suffered personal problems during this period of time. As of March 1998, Mr. Kelly had not paid the ordered sanctions.

Mr. Kelly's conduct violated RPC 1.3, which requires a lawyer to act with reasonable diligence in representing a client. Mr. Kelly's conduct also violated RPC 3.4(c), prohibiting a lawyer from knowingly disobeying an obligation under the rules of a tribunal, except for an open refusal based on an assertion that no valid obligation exists.

On October 4, 1996, Disciplinary Counsel requested that Mr. Kelly respond to a grievance within two weeks. Although Disciplinary Counsel wrote another letter and spoke with Mr. Kelly by telephone, he did not respond to the grievance. On February 9, 1995, Disciplinary Counsel served Mr. Kelly with a subpoena requiring his attendance at a deposition at the WSBA offices. Although Mr. Kelly stated that he would provide a response prior to the deposition, he did not. Mr. Kelly appeared for the deposition, and stated that he had not responded because he felt overwhelmed.

Mr. Kelly's conduct violated RPCs 2.8(a) and 2.8(b)(3), which require lawyers to provide prompt answers to requests for information regarding grievances and cooperate fully in disciplinary investigations.

Marsha Matsumoto represented the Bar Association. Mr. Kelly represented himself.

Opportunities for Service

ABA Alternate

Application Deadline: October 31, 1999

The Board of Governors of the WSBA is seeking applications to serve as an alternate to ABA House of Delegates. This term is effective immediately through the Annual Meeting in August 2000. There is no incumbent.

The control and administration of the ABA is vested in the House of Delegates, the policy-making body of the ABA. The House, which has approximately 500 delegates, elects the ABA Officers and Board, and meets out of state twice a year. Delegate attendance is required. The WSBA's allowance is $250 per year per delegate.

If you are interested in serving, please send a letter of interest and résumé to the Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Legal Foundation of Washington Board of Trustees – one position

Application Deadline: October 31, 1999

The Board of Governors of the WSBA is seeking applications to serve on the Legal Foundation of Washington Board of Trustees. This is a two-year term effective January 1, 2000. There is no incumbent eligible for reappointment.

The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for those who are very poor or vulnerable, through the administration of IOLTA and other funds. Trustees should have a demonstrated commitment to and knowledge about the need for legal services and how these services are provided in Washington.

If you are interested in serving, please send a letter of interest and résumé to the Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Limited Practice Board

Application Deadline: October 31, 1999

The Board of Governors of the WSBA will be nominating one attorney, who is appointed by the Supreme Court, to serve a four-year term (from January 1, 2000 through December 31, 2003) on the Limited Practice Board. The Board oversees administration of and compliance with the Limited Practice Office Rule (APR 12) and meets every other month. There are no incumbents eligible for reappointment.

If you are interested in serving, please send a letter of interest and résumé to the Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Northwest Justice Project Board of Directors – two positions

Application Deadline: October 31, 1999

The Board of Governors of the WSBA is seeking applications to serve on the Northwest Justice Project Board of Directors. This is a three-year term effective January 1, 2000. Incumbents are eligible for reappointment and must also send a letter of interest.

The Northwest Justice Project is a not-for-profit organization which seeks funding through the federal Legal Services Corporation to provide civil legal services to low-income people. Board members should have an interest in and knowledge of the delivery of high quality civil legal services to the poor.

If you are interested in serving, please send a letter of interest and résumé to the Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Reciprocal Admission of Lawyers

On September 3, 1999, the Washington State Supreme Court approved a new Admission to Practice Rule, APR 18, which provides a procedure for the reciprocal admission of lawyers without requiring that those lawyers pass the Washington State Bar Examination. Lawyers from other states, U.S. territories or the District of Columbia will be admitted to the Washington State Bar Association on the same terms and conditions that a Washington lawyer could be admitted in the other state. This new rule will also enable Washington lawyers to seek admission in those states which provide for some form of reciprocal admission, which includes, among others, Alaska, Illinois, New York, Oklahoma, Pennsylvania and Virginia. (Note that neither Oregon, Idaho nor California have reciprocal admission.)

The full text of APR 18 can be found at the WSBA website (wsba.org/wa/j/rules/proposal/1999/APR17.htm). Additional information can be found in the April 1999 *Bar News* "President's Corner" (pages 15-16).

Washington Young Lawyers Division Wins Awards

The ABA Young Lawyers Division announced the winners of its 1998-1999 Awards of Achievement at the ABA Annual Meeting in Atlanta. More than 200 programs nationwide were considered, as well as newspapers from cities, counties and states across the country. The Washington Young Lawyers Division won two awards.

De Novo, the official newspaper of the WYLD, took second place in the Outstanding Newsletter category. This is the second year *De Novo* has won this distinguished award. Additionally, LawTalk, the WYLD's public service television series received special recognition (third place out of four award spots) for Outstanding Public Service Program.

More About LawTalk

In 1997, in an effort to meet the growing demands for legal services to low- and middle-income people who cannot afford them, the Washington YLD created LawTalk, a television program which provides the general public with straight legal talk about issues that affect a broad base of society. Each LawTalk program provides specific names, numbers and references of programs and individuals who can assist those who need legal services but cannot afford them. Each program utilizes panelists, including judges, government attorneys, private attorneys, and representatives from legal organizations, who have expertise in a specific area of the law.

To date, the WYLD has produced 10 programs. Topics include sexual harassment, landlord-tenant law, criminal law, domestic violence, on-the-job injuries, social security, elder law and family law. There is also an interview with Jan Schlichtmann (on whom the book and movie "A Civil Action" were based), and a program about patients' rights, featuring Insurance Commissioner Deborah Senn. The programs are produced by Patrick Palace.

LawTalk programs have been distributed statewide through the TCI cable network, and through local affiliate bars, libraries, government agencies and community organizations. As a result, LawTalk is being aired statewide on a weekly basis. Additionally, more than 200 tapes of the programs have been distributed to organizations and individuals. For more information, please contact Patrick Palace at 253-627-3883.

Usury Rate: The average coupon equivalent yield from the first auction of 26-week treasury bills in September 1999 is 5.161 percent. The maximum allowable interest rate for October 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 January 1989 – June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears on the WSBA website at http://www.wsba.org/barnews/usuryrate.html.

Annual Committee Reports

Excerpted from the Committees' recently submitted Annual Reports. Sections' Annual Report excerpts are in the September issue of *Bar News*.

Amicus Curiae Brief

The Committee's goal is to develop an Amicus Brief Policy and Procedure. The Committee discussed, drafted, defined and submitted to the Board of Governors a written policy and procedure for the request and submission of Amicus Briefs by individuals, organizations and WSBA sections. To date, no requests have been made to the Committee, so there has been no opportunity to implement the policy and procedure.

Character and Fitness

The Board holds hearings concerning bar examination applicants whose character and fitness to practice law has been questioned as a result of past misconduct. It also holds hearings concerning petitions for reinstatement by disbarred attorneys. This 14-person Board includes three nonlawyers. The Board meets five to six Saturdays per year, and issues written decisions within 20 days of a hearing. This year, the Board was able to conduct all meetings as scheduled with a quorum present.

Court Improvement

The Committee addressed issues stemming from the Walsh Commission Report, including selecting and evaluating judges. It also addressed issues relating to the Mandatory Arbitration Bill. The Committee drafted a survey of court facilities and disseminated it among WSBA members for response; it jointly coordinated this project with the Access to Justice Board Status Impediments Committee. The Committee is also addressing calendar congestion issues, and the manner and method to expedite trial calendars. Additionally, it is examining the Trust and Confidence in the Courts Project and the Citizens for Independent Courts Project.

Court Rules and Procedures

Through serious and substantial work by Committee members, timely responses on diverse proposed court rules were submitted to the Board of Governors and then to the Supreme Court. The Committee had seven subcommittees, which worked on the following topics: general Rule 9, Guardian ad Litem rules, traffic infraction and criminal rule proposals, technology, "duplicate" rules proposals (civil), model local rules, and evidence rules.

Disciplinary

The Board is composed of 10 lawyers, who are appointed by the Board of Governors, and four nonlawyers, appointed by the Supreme Court. The Disciplinary Board members form four review committees. The Board carries out the functions and duties assigned to it according to the Rules for Lawyer Discipline established by the Board of Governors and approved by the Supreme Court.

Editorial Advisory

The Board reviewed all of its actions and the Board of Governors' actions since adoption of the *Editor's Handbook*, and is working on revising the *Handbook*'s appendix. Discussions relating to the frequency of *Bar News* publication were begun.

Electronic Communications (EC2)

The Committee amended its mission statement as follows: "Inform and assist lawyers on ways to use technology; make

available law-related data to lawyers and others at the lowest possible cost; facilitate the exchange of technological information among organizations within and without the WSBA; and make policy recommendations to the WSBA regarding the use of technology." Issues the Committee is addressing include public data access, electronic legal documents, policies regarding WSBA use of e-mail addresses, and other technological advances that impact Bar membership.

Judicial Recommendation
The Committee conducted background checks and evaluated candidates for appointment to the Court of Appeals and the Supreme Court and forwarded to the Board of Governors all candidates it found to be "well qualified." The Committee formed a task force to consider possible revisions in the guidelines or the candidate questionnaire.

Law Examiners
The Committee's main task is to prepare and grade each bar exam, and to streamline the bar exam training, preparation and grading process. The Committee continued its high-level training seminar and assigned new examiners to write questions for a question bank. The bank's purpose is threefold: (1) to complete the new-examiner training; (2) to have questions available in the event of a compromised examination; and (3) to provide backup in the event assigned examiners are unable to prepare a satisfactory question. Committee members visited Washington's three law schools to speak with students about the application and examination process; more than 100 students attended these presentations.

Law Office Management Assistance Program (LOMAP)
This new Committee adopted a mission statement: "In order to serve the WSBA members and the public, the mission of the Law Office Management Assistance Program Committee is to assist in marketing the program and exploring new services and methods of delivering services." The Committee sent letters to all new admittees, advising them of the program's availability. It also formed subcommittees on marketing and personnel management issues.

Lawyers' Assistance Program (LAP)
The Committee's goals are to strengthen LAP by exploring and implementing new avenues to publicize its programs and services; to continue an effective network of statewide peer counselors; and to encourage lawyers in distress to avail themselves of LAP's programs and services. A successful statewide annual conference was held in Chelan in April. A dialogue was started between LAP and the Disciplinary Committee with the view to better inform those in the disciplinary system of the availability of LAP and the limitations on how LAP can interact with lawyers in the disciplinary system.

Lawyers' Fund for Client Protection
The Committee's goals are to review and approve (or disapprove) applications for gifts from the fund; determine the adequacy of the budget for the fund; and publicize the Committee's work. In order to ensure the fund obtains sufficient sums to accomplish the Committee's objectives, the Committee recommended an increase in the assessment for the fund. Also this year, the Committee decided to publicize the names of attorneys whose clients receive gifts from the fund.

Legal Assistants
The Committee established connections with the Washington State Paralegal Association, the National Federation of Paralegal Associations (NFPA), and the King County Legal Support Professionals, inviting them to attend and participate in all of their meetings. NFPA's State Bar Liaison Coordinator is providing the Committee with information on certification and regulation of paralegals throughout the country. The Committee also is examining areas of mutual interest with the Access to Justice Board, to encourage cooperation and communication between the groups.

Legal Services to the Armed Forces
The Committee's primary goals this year were to increase its public profile and alert appropriate civil agencies as to the Committee's abilities to provide guidance on issues of military law and jurisdiction, and to create a means through which the Committee can interact with the courts to assist in cases involving military personnel.

Legislative
The Committee deals with proposals for state and federal legislation which relate to the improvement of justice. It also reviews proposed legislation of interest to the Bar and the general public and may draft proposed legislation for submission to the Board of Governors. The Committee maintains liaison with sections and committees in order to correlate its activities with studies being conducted by those entities. Committee information, including legislative positions, can be found on the WSBA website (www.wsba.org).

Mandatory CLE
The Board's goal is to improve the time it takes to process petitions from members and providers, and to help with the drafting and implementation of the new rules for the CLE Board. There will be significant changes brought on by the new rules for the MCLE Board, and the practical application of those rules will be the Board's next significant challenge.

Pro Bono and Legal Aid
The Committee continues to work to implement the Volunteer Attorney Legal Services Action Plan (VALS Plan), adopted by the Board of Governors in 1994. The Committee adopted the Law Firm Recruitment Subcommittee's model law firm pro bono policy and mailed it to all law

firms of 10 or more. At the request of the Committee, the Board of Governors declared May as "Pro Bono Month." In cooperation with the ABA, the Committee has initiated an innovative project which would encourage pro bono participation by corporate law departments in representation of low-income clients in rural areas using video conferencing technology.

Professionalism

The Committee's goal for the year was to identify, develop and implement a CLE seminar on professionalism, with the objective of raising awareness statewide for civility and cooperation between attorneys. The result was a very successful CLE seminar, "Ethics, Professionalism and Civility: The Hard Questions," presented in September in Seattle.

Resolutions

The Committee analyzes and makes recommendations with respect to resolutions properly submitted pursuant to WSBA Bylaws. The Committee had no activity, as no resolutions were referred.

Rules of Professional Conduct

The Committee responded to dozens of ethics inquiries during the year, and in order to do so, held all-day meetings every other month. Prior to full Committee meetings, Committee members conducted research on the ethics inquiries assigned to them, conferred with one another about those inquiries, and prepared written reports to the full Committee. Additionally, Committee representatives appeared at several meetings of the Board of Governors.

We regret that reports from the following committees were not received in time for publication: Civil Rights, Consumer Protection, Continuing Legal Education, Corrections, Committee for Diversity, Interprofessional and Law Clerk.

Defender Association Anniversary Dinner

The Defender Association will celebrate its 30th anniversary with a dinner to be held October 22, 1999, at the Washington State Convention and Trade Center. The keynote speaker will be Professor Barbara Allen Babcock from Stanford Law School.

The Defender Association, which began as a Model Cities project in 1969, is recognized nationally as a leader in providing effective and innovative representation for poor persons. Its attorneys have received numerous awards from the American Bar Association, the National Legal Aid and Defender Association, the Washington Association of Criminal Defense Lawyers and the ACLUW.

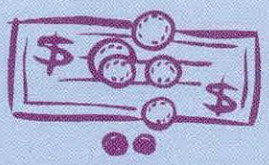
Please contact 206-447-3900, ext. 601 for more information on this event, or to offer assistance in the compilation of a mailing list of former Defenders.

Court Forms Available on Internet

The Office of the Administrator for the Courts recently published the 1999 Felony Judgment and Sentence form and accompanying memoranda, which are now available to download from the Internet.

Also available are the CrR4.2(g), JuCR7.7 and CrRLJ 4.2(g) Guilty Plea Statement forms, with corrections memorandum, and the CrRLJ 4.2(I) Petition for Deferred Prosecution form. Their website is www.wa.gov/courtsforms/. WSBA members may also contact Merrie Gough at 360-257-2128, merrie.gough@ courts. wa.gov, with any questions regarding the forms.

Credit Union Drop Box



The WSBA Credit Union now has a drop box in the WSBA office lobby for your convenience. You may drop off deposits, loan payments, loan applications or other credit-union mail. The mail will be picked up each day by 10 a.m., and deposits and payments will be credited to your account that day.

If you are not currently a WSBA Credit Union member and would like information, please call Glen Jackson at 623-5023, ext. 234.

Court Rules Committee to Reconvene in Fall

When it reconvenes this fall, the WSBA Court Rules and Procedures Committee is scheduled to review the Civil Rules (CR and CRLJ). The Committee traditionally also reviews the Mandatory Arbitration Rules (MAR) and Special Proceeding Rules (SPR) at this time.

Bar members are invited to submit suggestions for changes to these rules. Such suggestions should include a brief statement of the reasons the change is believed necessary. It is also helpful, though not required, for suggested changes to be in bill-draft format, showing language to be deleted in strike-through mode and proposed new language underlined.

Per General Rule 9, suggested changes should be sent to:

Honorable Richard P. Guy
Chief Justice
Washington Supreme Court
Temple of Justice
P.O. Box 40929
Olympia, WA 98504-0929

A copy sent to Steve Rosen, the Committee's staff liaison, at 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330, would be appreciated.

Susan M. Hammer

Formerly a partner at Stoel Rives LLP

is pleased to announce the opening of her office.

Ms. Hammer focuses her practice on mediation and arbitration of employment and business disputes.

25 NW 23rd Place
Suite 6, PMB 473
Portland, Oregon 97210-5599
Telephone 503-222-5948
Facsimile 503-827-6977
shammer903@aol.com

Ms. Hammer is a member of the Washington and Oregon Bar Associations.

Ball Janik LLP

is pleased to announce

Irene Ringwood

has become a partner of the firm.

Ms. Ringwood, located in the firm's Washington, D.C. office, focuses on federal law and public policy in the areas of energy and natural resources.

Ms. Ringwood is a member of the Washington State and District of Columbia Bar Associations.

•

Ball Janik LLP is also pleased to announce the opening of an office in Bend, Oregon, to continue client representation in the Central Oregon area. The office is located at

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541-617-8824 fax

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* *Mr. Martin, Of Counsel, is not admitted in Washington.*

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O'Brien and Associates, Inc. P.S.

is pleased to announce that

Fred Hopkins

has joined the firm as an Associate.

Mr. Hopkins joins our Issaquah firm after having practiced in Seattle for twenty-three years. His practice will continue to emphasize Employment law in federal and state court, concentrating on disability and age discrimination cases, as well as wrongful discharge issues. He also represents employers and employees in discharge hearing before the Employment Security Department.

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S. Russell Joe
Nancy Whitten
Fred Hopkins
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Issaquah, Washington 98027
425-391-7427
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*Also admitted to Alaska Bar

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is PLEASED TO ANNOUNCE that

Steven J. Hopp
Jon M. Schorr
and Donald S. Verfurth

have become PRINCIPALS in the firm

and

C. Craig Holley
and Kenneth S. Kagan

have joined the firm as OF COUNSEL

and

Edmund V. Caplicki III
Peter H. Dykstra
Diane Kownacki
and Jon A. Payne

have joined the firm as ASSOCIATES.

1999

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Calendar

CRIMINAL LAW

Show Me the Evidence: Evidentiary Issues in Criminal Cases
October 22 – Seattle. 6.5 CLE credits (incl. 1 ethics). By WACDL, 206-623-1302.

ESTATE PLANNING

44th Annual Estate-Planning Seminar
October 4-5 – Seattle. 15.5 CLE credits (incl. 1 ethics). By WSBA-CLE and Estate Planning Council of Seattle, 800-945-WSBA or 206-443-WSBA.

How to Draft Wills and Other Estate-Planning Documents
October 14 – Seattle. 7 CLE credits pending. By WSBA-CLE and Young Lawyers Division, 800-945-WSBA or 206-443-WSBA. **Note: Discount available if registering for both Wills and Probate (below).*

How to Probate an Estate and Handle Post-Mortem Matters
October 15 – Seattle; October 21– Spokane. 6 CLE credits pending. By WSBA-CLE, 800-945-WSBA or 206-443-WSBA. **Note: Discount available if registering for both Wills (above) and Probate.*

General Practice Series: Estate-Planning for Small Businesses
October 15 – Seattle. CLE credits pending. By UW-CLE, 206-543-0059.

Estate Planning for the Small to Medium-Sized Estate — Video Replay with Live Moderator
October 19 – Vancouver; October 28 – Port Hadlock. 7.25 CLE credits. By WSBA-CLE, 800-945-WSBA or 206-443-WSBA.

ETHICS

Rule 11: Its Use and Abuse and Implications for Professionalism
October 8 – Seattle. 3.25 CLE ethics credits pending. By King County Bar Association, 206-340-2578.

GENERAL

Trial Strategies
October 6 – Seattle. CLE credits TBA. By WSTLA, 206-464-1011.

Development in the Age of Endangered Salmon
October 7 – Seattle. 7 CLE credits pending. By WSBA-CLE and Environmental & Land Use Law Section, 800-945-WSBA or 206-443-WSBA.

Professional Mediation Skills Training Program
October 8-10, 16, 17 – Seattle. CLE credits pending. By UW-CLE, 206-543-0059.

This information is submitted by providers. Please check with providers to verify approved CLE credits. To announce a seminar, please send information 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 day of the month for placement in the following month's calendar.

The Courthouses in Seattle
October 11-14 – Seattle. 5 CLE credits. By King County Bar Association, 206-340-2578.

Identifying and Responding to Workplace Diversity Challenges
October 13 – Seattle. 6.5 CLE ethics credits. By WSBA-CLE, 800-945-WSBA or 206-443-WSBA.

Ethical Dilemmas for the Practicing Lawyer
October 14 – Spokane; October 21 – Tacoma; October 28 – Kennewick. 4 CLE ethics credits. By WSBA-CLE, 800-945-WSBA or 206-443-WSBA.

10th Annual Tort Law: Update
October 22 – Seattle. 6 CLE credits (incl. 1 ethics). By WSTLA, 206-464-1011.

LITIGATION

Probate Litigation and Ethics
October 15 – Seattle. 5 CLE credits (incl. 1.25 ethics). By King County Bar Association, 206-340-2578.

MEDICAL LAW

Neurolitigation: Brain Injury Cases
October 8 – Seattle. 7.25 CLE credits. By King County Bar Association, 206-340-2578.

Medical Negligence
October 14 – Seattle. 4 CLE credits (incl. .5 ethics) pending. By WSTLA, 206-464-1011.

Medical-Legal Issues for the New Millennium
October 15-16 – Seattle. CLE credits TBA. By American College of Legal Medicine, 414-276-1881.

REAL ESTATE

Real-Estate Litigation Issues
October 7 – Spokane; October 8 – Bellevue. 6.75 CLE credits (incl. .75 ethics). By WSBA-CLE and Real Property, Probate & Trust Section, 800-945-WSBA or 206-443-WSBA.

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The Law Offices of Ricardo A. Guarnero, P.S.
905 Hoge Building
705 Second Avenue
Seattle, WA 98104
206-381-1292
fax: 206-622-9190
Website: Guarnero.com
E-mail: rguarnero@aol.com

APPEALS

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

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

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Positions available are also posted by telephone at:
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$59.95: 1999 WA State Child-Support Worksheets and Financial Declaration computer program. Program calculates wages, FICA, taxes (schedule A, head of household, daycare credit, earned income credits, etc.), imputes income, residential-care credit and Arvey (split custody) allocation. 1999 update $17.95. Call Law Office of Frederick L. Hetter 253-759-6853.

Law practice for sale: successful, long-term probate, guardianship and estate-planning firm. Broad client base. Very good income, located in Shoreline (north King County). Please send inquiries to: WSBA *Bar News* Box 584, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

Established law practices available: Shoreline and South King County. Contact Louis M. Millman, Harper Bond, Inc. Commercial 425-688-0231; fax 425-688-8390.

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Laurelhurst: professional office-sharing arrangement. Share amenities with attorney, CPA, insurance and elder care professionals. NE 45th, great location, pleasant environment. Networking/marketing opportunities. Estate planning or elder law attorney would be a great fit. Space currently available. Please contact Carol at 206-523-6470.

Queen Anne Square: share space in professional building. Room for secretary and file storage. Law library, fax, copier, conference room, parking, telephone service. Reasonable. 206-282-1210.

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Downtown Seattle office-sharing: $175 per month. Also, full-time offices available on 32nd floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-term/long-term lease. Receptionist, legal word processing, telephone answering, fax, law library, legal messenger and other services. 206-624-9188.

Available September 1st: large premier law office with working alcove and incredible view from the 51st floor of the Washington Mutual Tower. Space includes professional reception, conference room facilities, connection to sophisticated telephone and Internet systems including voicemail and e-mail as well as messenger, copying, scanning and Westlaw availability. Contact Susan Ward at 206-621-6566.

Downtown Seattle office space: Bank of California building, choice of extra-large corner office with western and northern views ($1,350), or medium-sized office with western view ($900). Includes conference rooms, library, receptionist, voice-mail, kitchen. Available now. 206-623-5221.

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

Downtown Kirkland class A office-sharing: water/mountain view. One attorney and secretary. Conference room, library, receptionist, kitchen facility. Free parking. Call 425-822-2228.

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

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

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Auburn office space: available immediately. Conference room, library, kitchen, fax, copier, legal messenger, possible secretarial help and telephone answering. Call Dan at 253-833-2044.

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POSITIONS AVAILABLE

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

Entry-level attorney needed for medium-sized AV-rated Tacoma law firm. Experience as associate or Rule 9 intern preferred. Please send résumé and transcript to: Hiring Partner, PO Box 1533, Tacoma, WA 98401.

Litigation attorney: Karr Tuttle Campbell seeks an experienced litigation associate. Excellent written communication skills necessary. Current WSBA membership required. Qualified individuals should submit a cover letter, résumé outlining their qualifications, and a writing sample to Carol Anne Nitsche, Director of Human Resources, Karr Tuttle Campbell, 1201 3rd Ave., Ste. 2900, Seattle, WA 98101. Competitive salary DOE, comprehensive benefits. All inquiries confidential.

Family law attorney: successful, expanding Seattle firm looking for topnotch associate. Prefer at least three years' experience in family law. Salary plus bonus structure. Send résumé to: Hiring Partner, Goldberg, Fancher, & Jones, 2200 6th Ave., Ste. 1200, Seattle, WA 98121.

Three-person Seattle firm seeks mid-career attorney with established clientele for association/office sharing. Associate/paralegal assistance available. Send inquiry/résumé to 16149 Redmond Way, Ste. 305, Redmond, WA 98052.

Nike legal department seeks to add a lawyer to practice in the IT area. Current membership in Oregon State Bar or plan to seek admission is required. Excellent academic credentials also required. Seeking person with at least four years' practice experience in commercial transactions, with emphasis on matters relating to information-technology procurement, including software licensing, hardware acquisitions and leasing; and contracts relating to software development, support and maintenance. Responsibilities will include counseling and providing services to Nike's IT/Procurement group with respect to requests for proposals, negotiations, contracts, contract administration and dispute resolution. Salary commensurate with experience. Excellent benefits. Send résumé and cover letter, indicating job code LE10608, with salary expectations and any additional pertinent information immediately to: Nike, Inc., Employment Center, One Bowerman Drive, Beaverton, OR 97005-6453, or fax 888-767-9855 or e-mail jobs@nike.com. Please include job-code information. EOE.

Securities and corporate finance attorney: Karr Tuttle Campbell seeks a securities and corporate finance attorney to join our Business and Finance Department. At least two years' experience is preferred. An accounting degree or CPA would be helpful. Candidates must have superior academic credentials and excellent writing and communication skills. Competitive salary DOE, comprehensive benefits. Send application to: Carol Anne Nitsche, Karr Tuttle Campbell, 1201 3rd Ave., Ste. 2900, Seattle, WA 98101. All inquiries confidential.

To Place a Classified Ad:

Rates: *WSBA members:* $40/first 25 words; $0.50 ea. add'l. word. *Non-members:* $50/first 25 words; $1 ea. add'l. word. Blind-box number service: $12 (responses will be forwarded). Check payment (to WSBA) must accompany order. We are unable to bill for classified ads or accept payment by credit card.

Deadline: Text and payment must be received (not postmarked) by the 1st day of each month for the issue following, e.g., October 1 for November issue. No cancellations after deadline. **Mail to:** WSBA *Bar News* Classifieds, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

Qualifying experience for positions available: State and federal law allow minimum, but prohibit maximum, qualifying experience. No ranges (e.g., "5-10 years").

Questions? 206-727-8213; comm@wsba.org

Williams, Kastner & Gibbs, PLLC, is seeking an associate with a minimum of three years' real estate and business experience. Applicants should also have excellent communication and organizational skills. Please send résumé to: Patti Christiansen, Recruiting Administrator, PO Box 21926, Seattle, WA 98111-3926.

University of Idaho: the Office of University Counsel seeks nominations and applications for the position of associate university counsel. The individual selected will report to the university counsel and be responsible for advising and coordinating legal services for the vice president for finance and administration. Maintaining a collegial and communicative working style is central to this position. The University seeks an experienced attorney to perform complex professional legal work and provide authoritative legal advice. Areas of emphasis include real-estate transactions, contracts, taxation and construction. Responsibilities include supervising legal interns and overseeing outside counsel, as assigned by the University Counsel. Qualifications: JD with strong academic record; member of the Idaho State Bar or eligible to become a member within 12 months of appointment; substantial experience handling real estate and significant transactions for major corporations or governmental entities, or experience as an attorney advising either an institution of higher education or its board; strong, demonstrated written and oral communication skills; strong interpersonal skills; ability to work effectively on small legal team with a significant work load. Desired: BS or BA in business-related field. See http://www.uidaho.edu/hrs/new-hrs/president.htm for the official position description. To apply, submit a letter discussing work experience and accomplishments, a résumé, and a list of three references to: Randy Geller, Senior Associate University Counsel, University of Idaho, Moscow, ID 83844-3158; phone 208-885-6125; fax 208-885-8931; counsel@uidaho.edu. Applications will be reviewed beginning October 10, 1999, and accepted until a candidate has been hired. To enrich education through diversity, the University of Idaho is an equal opportunity and affirmative-action employer.

Davis Wright Tremaine LLP is seeking an experienced business transactions attorney at the partner level to join its Bellevue office. The successful candidate will have significant transactional and corporate experience, a strong commitment to client service, a healthy client base, and a desire to work as part of the team to build the existing office transactional practice. Leadership skills, community involvement and tax expertise are all a plus. Send résumé to: Ms. Christine Simpson, Recruiting Coordinator, Davis Wright Tremaine LLP, 10500 NE 8th St., Ste. 1800, Bellevue, WA 98004; e-mail christinesimpson@dwt.com.

Environmental attorney: Hawley Troxell Ennis & Hawley LLP seeks an attorney with a minimum of two years' experience to join our environmental and natural resources practice group in our Boise office. Environmental litigation and/or regulatory experience strongly preferred. Strong academic credentials required. Send résumé in confidence to: Hawley Troxell Ennis & Hawley LLP, Attn: Hiring Partner, PO Box 1617, Boise, ID 83701-1617; fax 208-342-3829; e-mail pvc@hteh.com.

Kamisar Legal Search, Inc.: Gordon Kamisar, President & CEO of Kamisar Legal Search, is a Seattle attorney who recruits and places associates, partners and contract attorneys on behalf of corporations and law firms throughout Washington state, nationwide and internationally. He is a Duke Law School graduate and a member of the Washington State Bar Association. Direct all confidential inquiries to: Gordon Kamisar, Esq., President & CEO, Kamisar Legal Search, Inc., 1509 Queen Anne Ave. N., Ste. 298, Seattle, WA 98109. Phone 425-392-1969; fax 425-557-0080; e-mail gkamisar@sprynet.com. See partial job listings at our website: http://www.seattlesearch.com.

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International legal reform: The American Bar Association Central and East European Law Initiative (CEELI) seeks experienced attorneys to work on criminal, environmental, commercial and/or civil law reform projects in Central and Eastern Europe and the former Soviet Union. Support includes all housing, transportation and living expenses. Call 800-982-3354 for an application.

Director/attorney: Legal Services, Nespelem, WA. Seeking an attorney to provide civil legal services for low-income members of the Colville Confederated Tribes. Work includes directing the day-to-day operation of the office, supervising and assisting attorney and paralegal in routine legal work and counseling on impact litigation, legal research, evaluation of cases, preparation and litigation of a variety of civil cases. Requires: membership of any state bar association, preferably the WSBA; at least three years' litigation experience; a working concept of the basics of Indian law; at least one year's legal office management or supervisory experience preferred. Must pass the Tribal Court Bar within two months of employment. Salary depending on experience. Indian preference will be given. Open until filled. Reply to: Colville Confederated Tribes, Legal Office, PO Box 150, Nespelem, WA 99155, 509-634-2405.

Business associate: dynamic, collegial Pacific Northwest law firm in Portland, OR, seeks mid-level associate with at least two years of general business/corporate finance/transactional practice experience. Applicants must have a strong background in business/corporate law and business transactions, including excellent writing and analytical skills. Superior academic credentials and a commitment to excellence required. Position offers opportunity for a challenging practice in a friendly working environment. Reply in confidence to: John San Fellipo, Garvey, Schubert & Barer, 121 S.W. Morrison, 11th Fl., Portland, OR 97204.

Excellent opportunity. Spokane AV-rated boutique insurance defense firm seeks associate attorney. Salary DOE. Health insurance, profit-sharing plan, and generous incentive bonus included. All inquiries will be kept confidential. Send résumé to *Bar News*, Box 581, 2101 Fourth Avenue., Fourth Floor, Seattle, WA 98121-2330.

Davis Wright Tremaine LLP is seeking a motivated, enthusiastic associate to join our environmental law practice group in the Washington office, where a majority of the firm's Washington environmental lawyers are located. Our lawyers represent regional, national and international clients on environmental issues and matters. We offer an opportunity to work on a broad spectrum of matters including: environmental and regulatory compliance; remedial actions; cost-recovery actions and litigation; and the environmental aspects of business and corporate transactions. The successful candidate will have a strong academic background, excellent communication and organizational skills, a commitment to client service and the demanding area of legal practice. Prior legal, business or academic experience in environmental science/engineering is a plus. For consideration, please submit a copy of your résumé, transcript and a writing sample to: Ms. Christine Simpson, Recruiting Coordinator, Davis Wright Tremaine LLP, 10500 NE 8th Street, Ste. 1800, Bellevue, WA 98004; christinesimpson@dwt.com.

Associate attorney, Eastern Washington: desired for sole-owned litigation practice, with two associates presently employed. Practice encompasses a variety of trial practice areas, including business, corporate, appeals, criminal, dissolution and discrimination issues. Applicant should have strong writing, analytical and financial skills; superior academic record and speaking skills; and should be motivated, reliable, autonomous and responsible. Experience preferred. Salary DOE. Please send résumé and references to Mary E. Schultz & Associates, PS, 660 Lincoln Building, 818 W. Riverside, Spokane, WA 99201.

Turnbull & Born, PLLC, a three-lawyer Tacoma firm seeks creditor bankruptcy associate with a minimum of three years' bankruptcy experience. Excellent salary and benefits package available. Applicants must have strong writing and analytical skills. Send a résumé and one writing sample to: Brian M. Born, 1019 Pacific Ave., Ste.1303, Tacoma, WA 98402.

Poulsbo law office seeking associate attorney with at least three years' experience in litigation, real estate, general business, estate planning. Salary negotiable. Submit résumé and a short description of client base, if any, to Michael Bohannon, Sherrard & McGonagle, PS, PO Box 400, Poulsbo, WA 98370; e-mail bohannon@silverlink.net.

Williams, Kastner & Gibbs, PLLC, is seeking an associate with a minimum of three years' litigation experience. Applicants should be motivated, hard-working individuals with a strong academic background. Applicants should also have excellent communication and organizational skills. Please send résumé to: Patti Christiansen, Recruiting Administrator, PO Box 21926, Seattle, WA 98111-3926.

Business transactions and tax associate attorney: Karr Tuttle Campbell seeks a tax and transactions attorney to join its Business and Finance Department. At least two years' experience is preferred. LLM in tax or CPA would be helpful. Candidates must have superior academic credentials and excellent writing and communication skills. Competitive salary DOE, comprehensive benefits. Send application to: Carol Anne Nitsche, Karr Tuttle Campbell, 1201 3rd Ave., Ste. 2900, Seattle, WA 98101. All inquiries confidential.

Egger Betts Austin, PLLC, a greater Seattle law firm with an office building in Bellevue, WA, seeks an attorney with preferably three years' experience to join a dynamic and challenging practice advising closely held business owners and individuals with taxable estates. Applicant should have graduated in the top 20 percent of his or her law school class, earned an LL.M. in taxation (or have practice experience equivalent), and possess superior written and oral communication skills. This full-time position includes a competitive package based on experience and qualifications. Qualified candidates should summit cover letter, résumé, and self-edited writing sample in confidence to: Egger Betts Austin, PLLC, Attn: Phil Egger, PO Box 53050, Bellevue, WA 98015-3050.

Irwin, Myklebust, Savage & Brown, PS, a full-service law firm located in Pullman, WA, seeks an associate for its business, estate-planning and probate practice. Applicants should have strong academic credentials and a desire to live and practice on the Palouse, a prime agricultural region which is home to Washington State University. The firm offers a competitive compensation package, a challenging professional work environment, and an excellent opportunity for career development. Admission to the WSBA by June 2000 is required; an Idaho Bar license is desirable. Please send introductory letter, law school transcript, résumé, writing sample, and not more than three letters of reference to: Irwin, Myklebust, Savage & Brown, PS, PO Box 604, Pullman, WA 99163.

Herrmann Law Firm: a six-attorney Tacoma law firm seeks litigation attorney with a minimum of five years' experience in personal injury. Experience in criminal law a plus. Excellent salary and benefits package available. Please send résumé to: Herrmann Law Firm, 1535 Tacoma Ave. S., Tacoma, WA 98402 or fax to 253-627-1835.

Small Seattle firm seeks associate or full-time contract attorney with at least two years' experience for busy civil litigation and business practice. High academic achievement and excellent writing skills required. We offer an interesting practice mix and opportunity for growth. Send or fax cover letter, résumé and writing sample to Adolph & Bintinger, PS, 701 5th Ave., Ste. 7100, Seattle, WA 98104; fax 206-682-3203.

The City of Kennewick, WA, is seeking an individual who, under general direction, enforces the Municipal Code through legal representation of the City in misdemeanor cases. Incumbent provides advice to police officers and City departments, reviews reports for charging decisions, conducts case-settlement negotiations, prepares cases for trial, and tries cases in court. Examples of work include charging crimes and infractions; representing the City in court for jury and bench trials; negotiating settlements of criminal and non-criminal cases; advising the Civil Service Commission; and receiving and responding to inquiries from citizens, victims, attorneys and defendants regarding City laws and policies. Minimum qualifications include Juris Doctorate, at least two years' previous criminal prosecution experience, or an equivalent combination of education and experience to provide sufficient evidence of successful performance of the essential elements of the job. Incumbent must be an active member of the WSBA. Salary: $3500-$4684/mo. To request an application call 509-585-4240, or email adminfo@ci.kennewick.wa.us. Completed application is required and must be submitted by 10/20/99.

The Wenatchee office of Ogden Murphy Wallace, PLLC has openings for the following positions: 1) associate attorney with a minimum of two years' litigation/trial experience and 2) associate attorney with a minimum of two years' experience in general business/tax/estate planning and probate. The Wenatchee office has eight attorneys with a general practice emphasizing the areas of litigation, business, employment, real estate, municipal, estate planning, wills and probate. Each successful candidate will have a proven track record, excellent written and oral communication skills, and have a strong desire to live and practice in Wenatchee. Please send your résumé, writing sample and salary requirements to: Hiring Coordinator, Ogden Murphy Wallace, PLLC, Riverfront Center, 1 Fifth St., Ste. 200, Wenatchee, WA 98801.

Practice opportunity: looking for attorney with at least five years' experience in business, estate planning, trusts, estates and related taxation to join central Washington practice. Send résumé to: WSBA *Bar News*, Box 585, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330.

Soha and Lang, PS, a seven-lawyer Seattle firm concentrating on complex insurance coverage litigation, seeks litigation associate or contract attorney with a minimum of three years' experience. Strong academic credentials and superior research and writing skills required. Previous experience in insurance law preferred. Reply to: Hiring Coordinator, Soha and Lang, PS, 801 2nd Ave., Ste. 1210, Seattle, WA 98104.

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Looking for original or copy of will or any information pertaining to a will of Carl Harry Theisen. DOD 6/2/99. Call John Keckemet 206-728-5858.

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Was your client injured or arrested in Las Vegas? Craig P. Kenny & Associates, a law firm committed to the client, practices primarily in the areas of personal injury, workers' compensation, medical malpractice and criminal defense. The firm consists of five attorneys with over 30 years of combined experience. Call Craig toll-free at 888-275-3369 or e-mail cpknassocs@aol.com.

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

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