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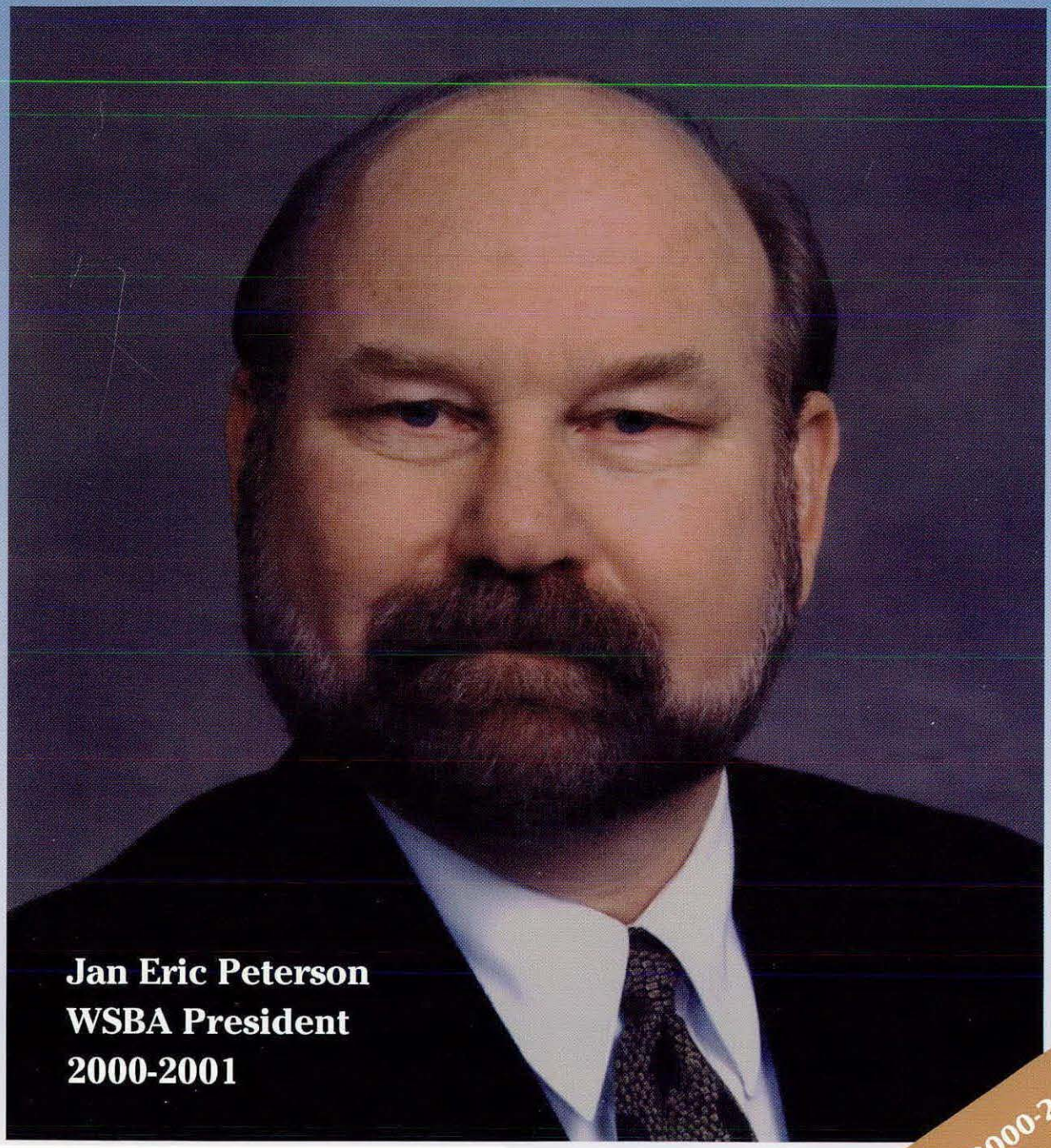

Jan Eric Peterson
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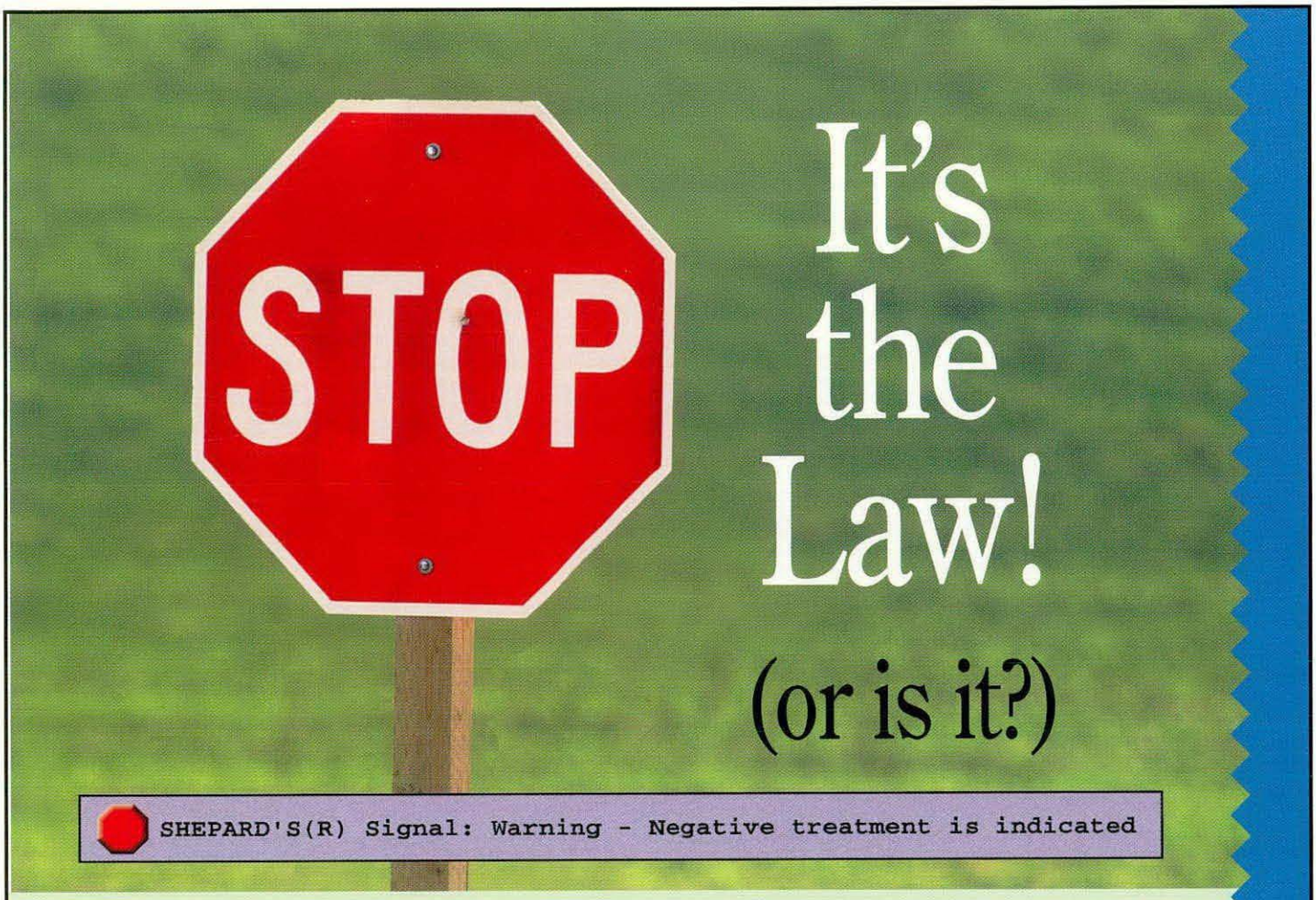

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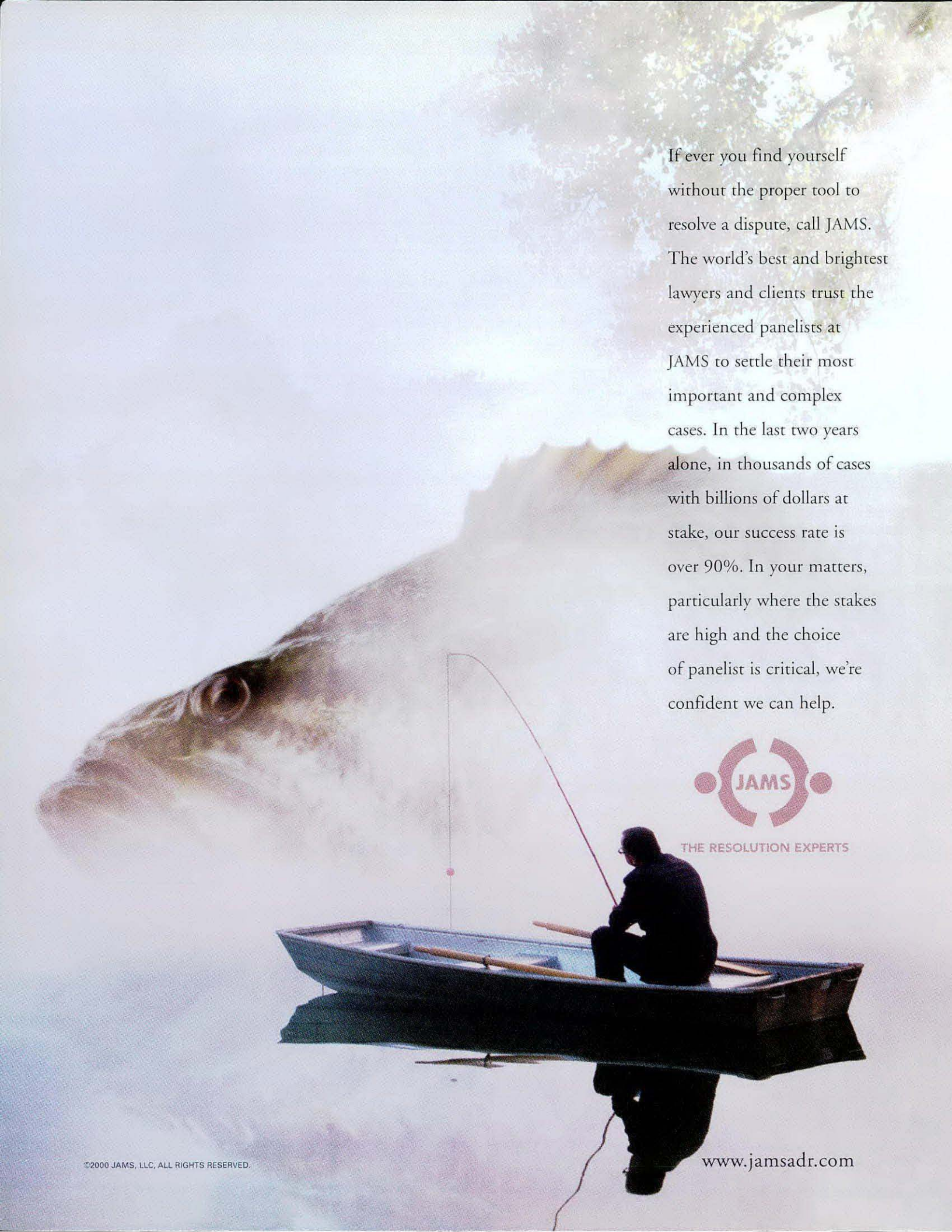

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Bar News
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M. Janice Michels
Executive Director

Judith M. Berrett
Director of Communications
206-727-8212; judithb@wsba.org

Amy Hines
Managing Editor
206-727-8214; amyh@wsba.org

Jack Young
Advertising Manager
206-727-8260; jacky@wsba.org

Allison Parker
Communications Specialist
206-733-5932; allisonp@wsba.org

Randy Winn
Bar News Online
206-733-5913; randyw@wsba.org

Amy O'Donnell
Professionals, Classifieds and Subscriptions
206-727-8213; amyo@wsba.org

Communications Department e-mail:
comm@wsba.org

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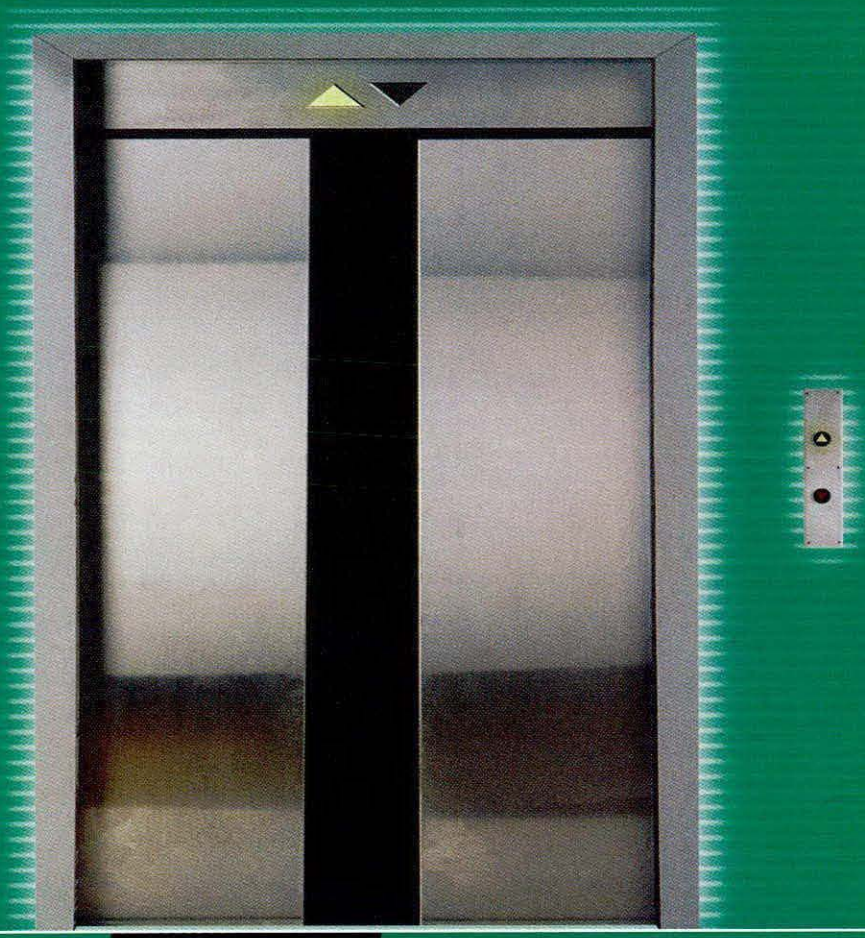

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Opposition to Tort Reform

Editor:

For the past 20 years, in its effort to place profit over safety, big business has waged a relentless propaganda war against the civil justice system, creating a false public impression that the tort system has run amuck and needs "reform."

The danger to the civil justice system is now greater than ever, as the country may choose a president beholden to corporate interests and whose number one priority is "tort reform." George W. Bush touts his own record as governor in Texas, where he successfully pushed for wide-ranging tort restrictions, including caps on non-economic damages, not just punitive damages. His notion of justice means protecting corporate wrongdoers by sacrificing the rights of injured families and consumers to seek legal redress.

For example, in 1993 Texas adopted a statute of repose giving companies blanket immunity from lawsuits for defective equipment more than 15 years old. Thus, a company that from the outset knowingly manufactures a dangerous product is off the hook. In 1993, Texas became the only state in which a sick smoker cannot sue a tobacco company. In 1995, Texas imposed a $750,000 cap on non-economic damages. No matter how horrific a citizen's injuries, a jury can no longer decide the merits of the case because George W. Bush and the Texas Legislature have decided that there is *no* injury worth more than $750,000. And even better than his proposed rollback of taxes on the wealthy, Bush has already convinced the Texas Legislature to make it so that accountants, doctors, lawyers, engineers and real estate agents can no longer be sued under the state's consumer protection laws.

If elected, Bush has vowed to push for similar "reforms" at the national level. He favors the replacement of substantive tort law with safety standards promulgated and voluntarily followed by his corporate cronies. He would federalize class-action lawsuits, ban federal agencies from paying lawyers with contingency fees, require any lawyer who rejects a pretrial settlement and later loses the case (or receives a much smaller settlement than the offer) to pay his opponents' legal fees as "punishment for continuing the case," and enact "three strikes" legislation that would bar a lawyer found to have filed three "frivolous" lawsuits (but not a lawyer who has filed three "frivolous" defenses) from federal court for three years.

Bush's so-called "tort reform" measures are shamelessly designed to tilt the legal playing field in favor of big business. Acting under the guise of "citizen" groups opposed to "lawsuit abuse," business interests have undermined consumer rights through a variety of insidious measures, including caps on damages and increased evidentiary burdens, and the abolition or corruption of traditional tort law doctrines such as joint and several liability. They have used their muscle and propaganda to convince people that it is a good thing for ordinary citizens to give up their rights, and that they should despise the trial lawyers who champion those rights. They have manufactured myths and substantially distorted the facts to further their agenda of getting the public angry about a civil justice system supposedly gone awry. See Marc Galanter, *An Oil Strike in Hell: Contemporary Legends About the Civil*

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Justice System, 40 Ariz. L. Rev. 717 (1998).

Notwithstanding the powerful corporate propoganda machine, American citizens reject efforts to strip away their rights when they are educated about the true motives of tort "reformers." We need look no further than the recent defeat of Ballot Measure 81 in Oregon to see this truth. Faced with an insurance industry-funded public referendum to reverse the effects of an Oregon Supreme Court decision striking down caps on personal injury damages, state voters by more than a 3-to-1 margin refused to strip juries of their decision-making power and citizens of their rights.

Efforts to expose the truth about "tort reform" get a boost from a recent report released by the Center for Justice & Democracy and Public Citizen, *THE CALA FILES: The Secret Campaign by Big Tobacco and Other Major Industries to Take Away Your Rights*. The report, co-authored by Carl Deal, an investigative journalist, and Joanne Doroshow, an attorney and CJ&D's executive director, exposes the big lie and those who tell it. The authors drew from the newly released industry papers uncovered in state lawsuits against the five major tobacco companies. They also reviewed other public documents and interviewed lobbyists, elected officials and paid consultants.

Their report finds that "lawsuit abuse" groups, typically called Citizens Against Lawsuit Abuse (CALA), Lawsuit Abuse Watch, or Stop Lawsuit Abuse (collectively referred to as CALAs), are part of a national, corporate-backed network of front groups that receive considerable financial and strategic help from the tobacco industry and some of the country's biggest corporations. The organizations masquerade as "grassroots" citizen groups angry about so-called lawsuit abuse. Their purpose is to generate public scorn for the civil justice system, juries and judges, and to pave the way for the enactment of laws that shield corporations from accountability. Among the report's findings are the following:

- Since 1991, "tort reform" advocates have set up dozens of tax-exempt groups in at least 18 states (currently there are 27 active groups) to plant their spurious "lawsuit abuse" message in the media and the public consciousness, and to influence legislation, the judiciary and jurors. These groups claim to speak for average Americans and represent themselves as "grassroots" citizen groups determined to protect consumer interests. But their tax filings and funding sources show that they in fact represent major corporations and industries seeking to escape liability for the harm they cause consumers.
- A huge cache of documents made public in the late 1990s during state litigation against the tobacco industry reveals that big tobacco spent millions of dollars annually supporting the American Tort Reform Association (ATRA), its grassroots lobbying firm, APCO & Associates, state CALAs and other activities to weaken tort laws in many states. ATRA and APCO supply the CALA groups with strategic guidance, media training and pre-produced radio, television, print advertising and billboards designed for maximum media exposure and legislative impact.

- Some CALAS, like the one in Louisiana, were virtually created by the tobacco industry. Tobacco money has gone directly to ATRA, APCO and state organizations, and has been indirectly funneled to the cause through trade associations, lobbyists and law firms, such as the Washington, D.C. firm of Convington & Burling. In the late 1980s, big tobacco's efforts were instrumental in the passage of legislation immunizing the industry against product liability claims in a number of states.
- The CALA blueprint was honed in South Texas in the early 1990s. Texas Gov. George W. Bush, who raised more than $4 million in his gubernatorial races from Texas "tort reform" groups, has been one of the Texas CALA's most prominent champions.
- A principal focus of CALA groups since the mid-1990s has been to ensure the election of pro-industry state judges and the defeat of judges who typically support plaintiffs' verdicts or have voted to strike down state tort law restrictions as unconstitutional.

The above campaign has generated the myth that corporate America is in desperate need of relief from runaway juries, who are compromised by complex issues and the emotional speeches of eloquent trial lawyers. This myth was dispelled in an unprecedented survey of nearly 1,000 state and federal trial judges conducted by the Southern Methodist School of Law. That survey revealed that judges overwhelmingly "believe that the system is in good condition, needing, at best, only minor work." As reported in the *Dallas Morning News*, 96 percent of the responding judges emphatically agreed with jury verdicts most or all of the time. An impressive 76.9 percent of the judges agreed with the premise that jurors do "very well" in reaching verdicts. A similar 76.4 percent had never seen a runaway verdict.

The Washington State Trial Lawyers Association is committed to fighting this misinformation campaign and educating people regarding the value and power of their legal rights. When they learn the truth, we believe that the citizens of our state, like those in Oregon, will overwhelmingly reject legislative efforts to strip them of their rights.

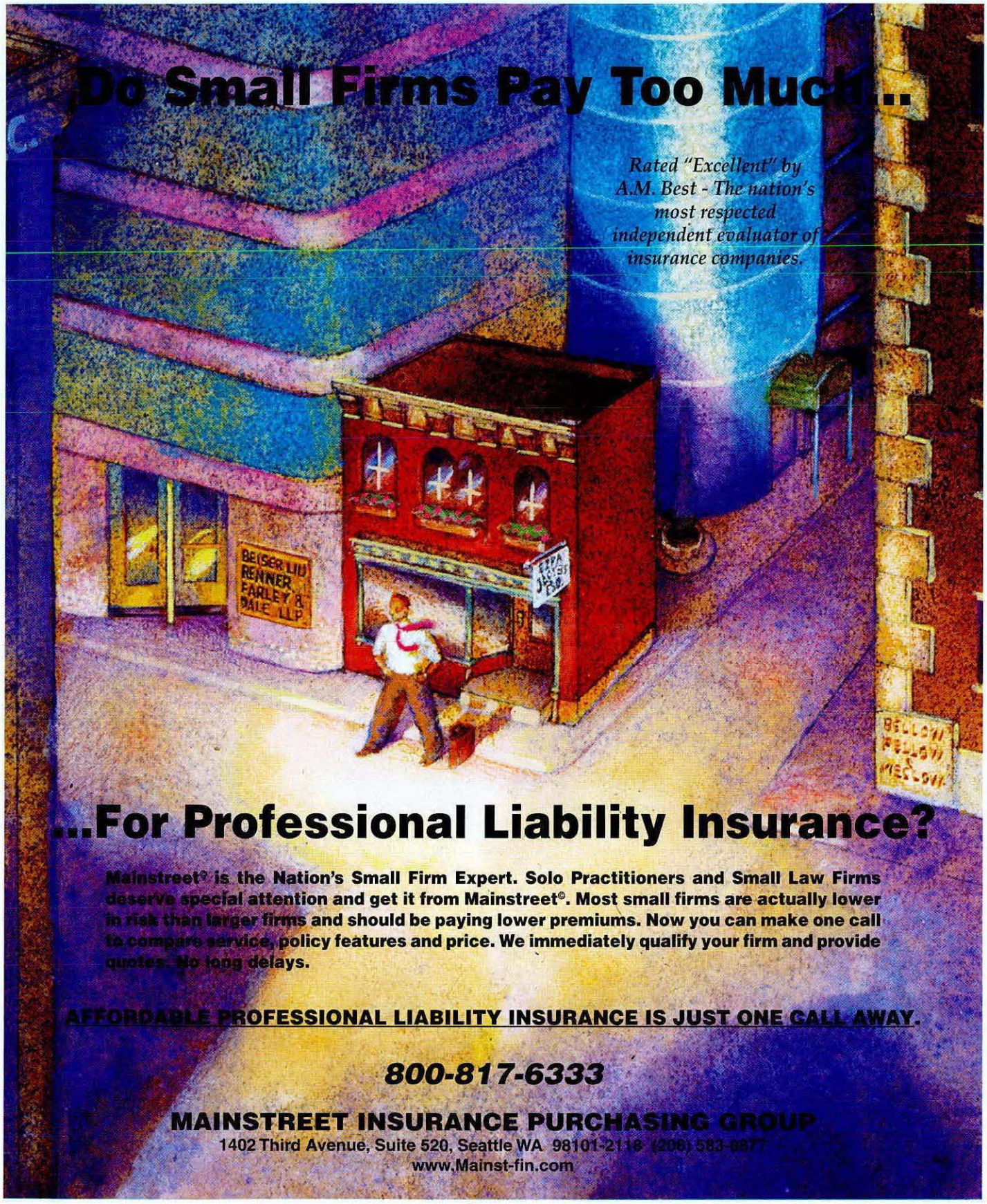
Maria S. Diamond
President, Washington State Trial Lawyers Association

Local Rules Are Necessary

Editor:

Across Washington, superior courts vary from 90 cases filed annually, heard by one judge who covers three counties, to 75,915 filings heard by 51 judges and 10 commissioners. Necessarily, courts in different counties will be organized very differently. We could hardly expect Garfield County to have a family law motions calendar five days a week, or King County to hear family law motions on only the first Friday of each month. Courts, to describe how they are organized, adopt local rules.

Local rules should tell users how to conduct business in that court: when calendars are heard, how to get a motion on a calendar, how to get papers to the judge, whether probate motions are heard on a civil motions calendar or a special calendar, and which cases are heard in Kent and which in Seattle. By explaining how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to use the court, local rules facilitate access to justice. They have become more complex for two reasons: to manage workloads that have grown faster than resources, and to describe more completely how a particular court operates.

Article 4, Section 5 of the state constitution and CR 83 expressly authorize local rules, but even without these provisions, a court would have the inherent authority to adopt local rules. Indeed, a court could not provide a fair and accessible court process without local rules.

Process is important in our judicial system; we are mandated to provide due process. Process promotes uniform treatment of all litigants and facilitates access. There may be a few attorneys willing to practice in a court without local rules, relying instead on guess and trial by error to figure out how the court operates, but most would not.

King County Superior Court rules are probably as complex as any, and far from user-friendly. But the adoption of our case management and individual calendar rules have reduced our time from filing to trial for civil cases by more that one-half. These innovations would never have been adopted if changes could only be implemented statewide.

The real source of frustration is variations in local court organization, something we will never escape. What we need as an antidote are clearer and easier-to-understand local rules.

Dale B. Ramerman
King County Superior Court Judge

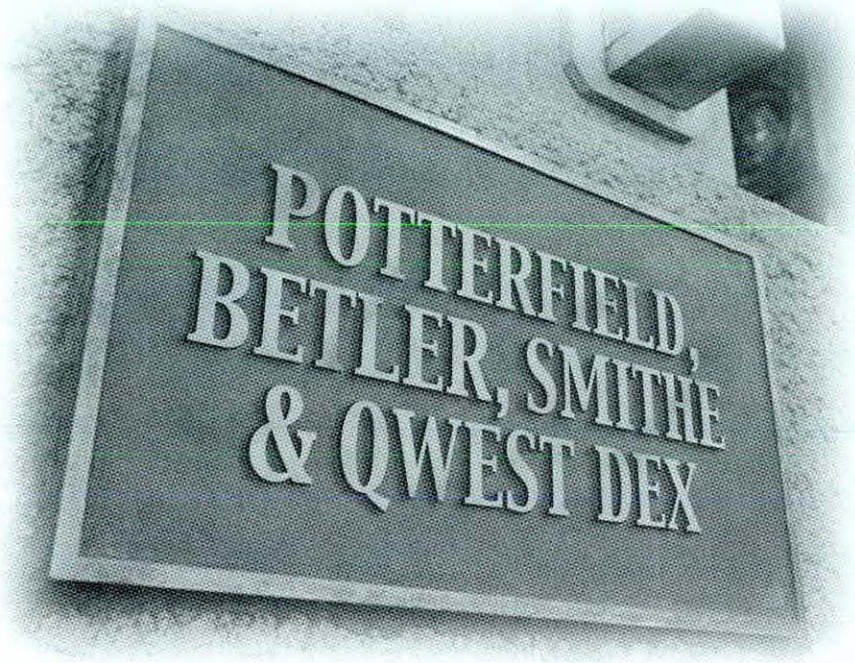
Judicial Impartiality in Campaign Endorsements

Editor:

The August *Bar News*, like some current campaign letters and media ads for upcoming judicial positions, contains endorsements from sitting judges.

At least in some zoning matters, Washington has for a long time, had a general doctrine of "appearance of fairness"—sort of shorthand for if it looks and smells lousy, it probably is.

An elderly client of mine, fortunately still blessed with a mind like a razor blade, asked me how her hypothetical case might come out in front of an endorsing judge when I had endorsed an opposing candi-



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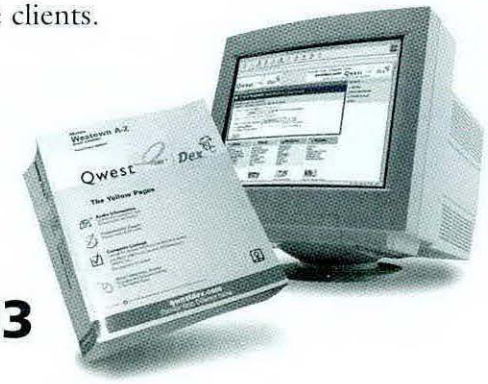

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date in that same race? She perceptively smelled a conflict.

Should a goal of judicial impartiality, at least the appearance of total neutrality, be dealt with by an ethics opinion (touched on but not directly in Opinion 46) or in a new Canon of the Code of Judicial Conduct, and if so, how at the same time can an endorsing judge's constitutional rights be balanced and protected?

CJC Canon 7 touches the issue with annoying ambiguity, e.g., CJC7(A)(1)(b) prohibits endorsement of a *nonjudicial* candidate (thus by implication, endorsement of judicial candidates); CJC7(A)(2) allows *speaking to gatherings* on behalf of other judicial candidates (emphasis in both by this writer). An unpublished advisory ethics opinion (88-6) commenting on "difficult distinctions" in this area, allowed a retiring judge to endorse a court commissioner for the judge's department.

I find this a troubling dilemma and think further study by some panel or committee of the Supreme Court or Bar Association would be merited. Perhaps a straw poll in the *Bar News* would be interesting.

The Bar Association's disciplinary staff and Managing Editor Amy Hines's assistance in furnishing relevant citations is gratefully acknowledged.

Don M. Gulliford
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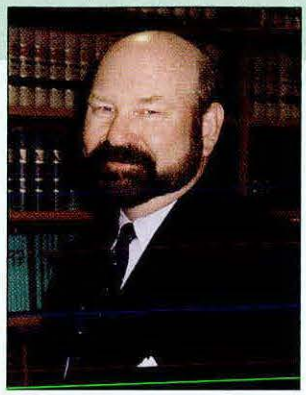


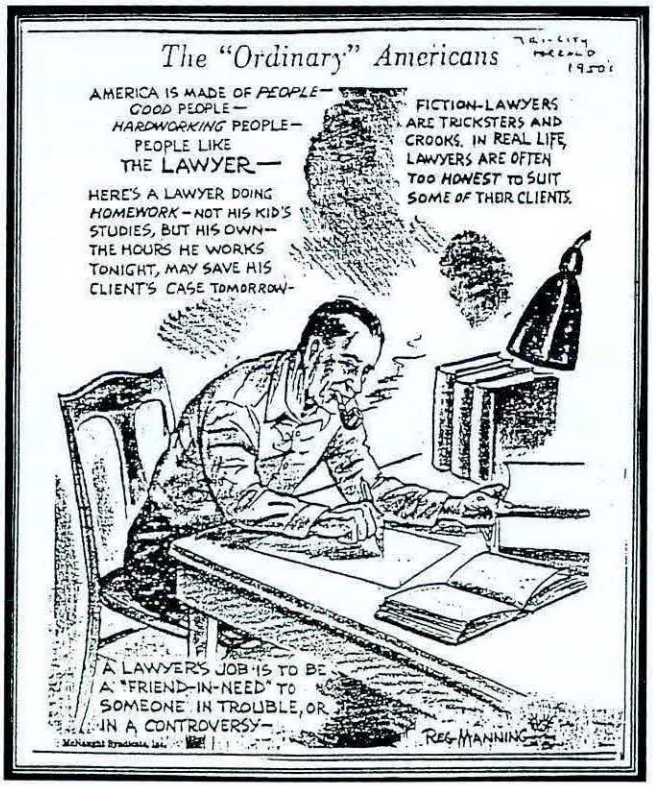
Proud to Be a Lawyer

by Jan Eric Peterson
WSBA President

"Kill all the lawyers." Are you sick and tired of that misquote? Lawyer-bashing takes its toll. It's demoralizing and depressing.

When I was a small child in Pasco, Washington, the adjacent cartoon ran in the local paper. I was proud my dad was a lawyer. It was a respected profession. Today, even though you know you do the right thing — you're honest, you practice law with integrity — it hurts to be accused daily on television programs, in newspapers and in jokes of being everything from greedy to downright crooked. It's time to speak up, and it starts with each of us. I am campaigning for a proud profession.

What Shakespeare really said was, "If it is anarchy we want, the first thing to do is to kill all the lawyers." (*Henry VI,* Act II, Scene 2.) In a civilized society, might does not make right. The rule of law is paramount to power and we lawyers are the difference. We see that people play by the rules. We insist on fairness and justice. Lawyers resolve conflict and differences, not by fists but by a system of justice blind to the differences between the powerful and the powerless, equal to all. Lawyers are the enforcers of rights and responsibilities.



As a lawyer, you have a great tradition to be proud of:

- He drafted the Declaration of Independence, the most revolutionary document of democracy for more than 200 years. His name was Thomas Jefferson, and he was a student of the law.
- He was at the miracle in Philadelphia, the Constitutional Convention, fighting for the inclusion of the Bill of Rights, a model for freedom the world over. His name was James Madison, and he was a lawyer.
- He stood in the rain at Gettysburg, tears in his eyes, gaunt, exhausted, and rededicated our country to equality, saving the Union. His name was Abraham Lincoln, and he was a lawyer.
- Speaking to us from a wheelchair, he lifted us up from despair and led the free world in the fight to save democracy with the words, "The only thing we have to fear is fear itself." His name was Franklin D. Roosevelt, and he was a lawyer.
- By self-sacrificing examples of passive resistance, he threw off the shackles of empire and brought forth an independent democracy in India. He was known as Mahatma Gandhi, and he was a lawyer.
- He drove a stake through the heart of Jim Crow by bringing *Brown v. Board of Education* to the U.S. Supreme Court, and laid the legal foundation for the civil rights movement. His name was Thurgood Marshall, and he was a lawyer.
- He wrote a book that forced our most powerful industry to make safety a priority and has fired up the consumer movement ever since. His name is Ralph Nader, and he is a lawyer.
- She reluctantly and bravely faced a hostile Congress under the hot light of media scrutiny to stand up for women in the workplace and raise a nation's consciousness. Her name is Anita Hill, and she is a lawyer.

Twenty-four of the 56 signators to the Declaration of Independence were lawyers, many of whom sacrificed their profession, their homes and farms, their families, and some even their lives for freedom. Twenty-nine lawyers of the 40 signers

brought forth our Constitution. Over half of our presidents have been lawyers. More than any other nation on earth, America was founded and molded by lawyers.

Some of us may not be as famous, but like thousands of lawyers every day we help someone survive a divorce, help a small business thrive, save a family's home and show them how to provide for the future of their children, ensure equality on the job, protect a person's privacy and freedom, or literally save an accused person's life. You and I have had the satisfaction of making a difference for someone by being a lawyer, and we have our own heros:

- He resurrected a family's name from the ravages of McCarthyism and also saved baseball for Seattle. His name is Bill Dwyer, and he is a lawyer.
- She has dedicated her life to representation of the poor and disenfranchised, prodding the conscience of the profession to champion access to justice. Her name is Ada Shen-Jaffe, and she is a lawyer.
- He has never wavered from his ceaseless dedication to relieving the plight of migrant farm workers in the Yakima Valley. His name is Guadalupe Gamboa, and he is a lawyer.
- He has courageously fought the profession's ultimate battle throughout the country for society's most reviled persons against execution of the death penalty. His name is Tim Ford, and he is a Seattle lawyer.
- Through compensation litigation, he insisted that an industry protect children from the ultimate agony caused by flammable fabrics, and then taught a new generation how to try cases. His name was Professor Jack Sullivan, and he was a lawyer.
- Beginning in the 1940s, when his home town was divided racially by the railroad tracks, he risked his new career by becoming the lawyer for the African-American side and went on to become an internationally recognized trial lawyer. He was my dad, and he was my first lawyer hero.

The law is a learned and serving profession. The pursuit of justice is a calling worthy of respect. Hold your head high, be proud of what you do, because you deserve to be! I am proud to be a lawyer and privileged to serve as your president.

The Gift of a Tail Wind

by Jan Michels
WSBA Executive Director

I'm a bicycle rider. In mid-August, I completed a 400-mile trek from Ilwaco to Walla Walla — "Oysters to Onions." On the third day, as we peddled from Maryhill State Park to Skamania Fairgrounds, we had a 20-mph tail wind. Tail winds are a gift to bicyclists. They make a huge difference in the effort it takes to cover ground. Thinking of that day when I was able to cover 65 miles in three and one-half hours, I composed this new year's story.

It's a new Bar Year (BY) 2000-2001. Jan Eric Peterson has assumed office and formed a strong team with Dale Carlisle, president-elect. He's also created a special advisory committee to the president to help guide his campaign initiative, "Proud to Be a Lawyer." This initiative is rooted in the WSBA's Strategic Goal #4, "Enhance professionalism and civility in the profession." Lawyers who are proud of their role in our republic and the profession's long tradition of public service will do their best to present their profession at its most esteemed. Myself, Bar staff, and especially Judith Berrett and the WSBA Communications Department, stand ready to support this important initiative.

The input of members, sense of common purpose, enthusiasm of staff, volunteerism on committees, and support of the board have given the WSBA Long-Range Strategic Plan and 2000-2001 Operational Plan the gift of a tail wind.

I also think members should know that the WSBA Board of Governors has formally adopted its BY 2000-2001 Operational Plan. This plan takes each of the 11 strategic goals adopted last year and "operationalizes" them — breaks them into specific work items developed to speed the achievement of each goal. There are over 243 "do it" entries in the plan. All the operational detail and progress reports in the plan are posted on the WSBA website (www.wsba.org). To me, this is stimulating and enervating. It tells you where we're going and how we'll get there. It requires constant feedback and accountability to members on how we steward their license fees. But I've read enough other Executive Directors' columns about starting a new year to know that as long as you trust the WSBA to be honest, efficient, and provide the services you really want, this detail is B-O-R-I-N-G. If you're interested in a specific goal, strategy or action plan, check it on the website.

Another BY 2000-2001 initiative is member benefits, the WSBA's Strategic Goal #1. We've created a Member Benefits Task Force, which will begin sorting through the vast array of service product endorsements, group insurance plans, group buying packages, product sales, and free or low-fee consulting/advisory services. The board has approved a new approach to these concepts with the guidelines of: 1) producing tangible services desired by members, and 2) assuring all programs will be revenue-neutral or enhancing. We hope for recommendations by mid-2001 and immediate implementation.

Progress on our other nine strategic goals is also strong, and that's what prompts my thoughts on tail winds. The input of members, sense of common purpose, enthusiasm of staff, volunteerism on committees, and support of the board have given the WSBA Long-Range Strategic Plan and 2000-2001 Operational Plan the gift of a tail wind. These features reduce the effort, push us up the climbs, and speed the journey. It makes the effort fun. So I welcome the new BY 2000-2001 with its gift of a tail wind. I look forward to covering a lot of ground.

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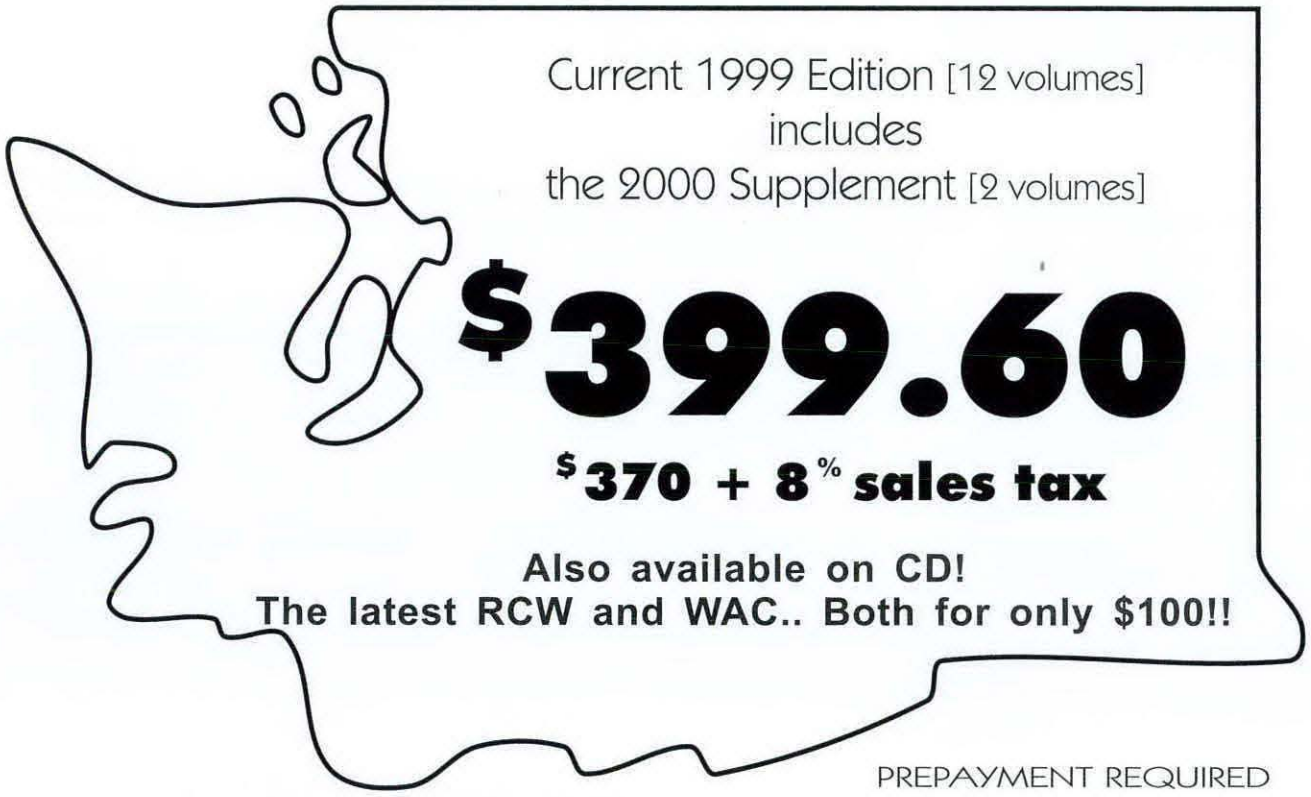

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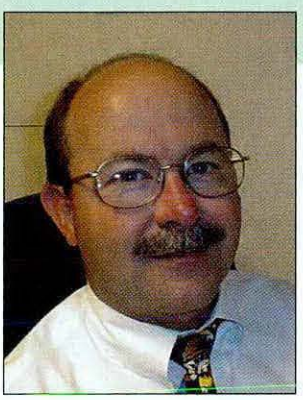

The Catalog of Arguments

by Jeff Tolman
Guest Editor

Two waves are hitting courts now. The first is judicial efficiency. How long does it take a court to process a case? The powers that be apparently feel that quick justice is good justice. The second wave is being required to have a form for everything. In my part-time judicial job, one of my monthly chores is the traffic mitigation and contested calendar. A contested hearing is "I didn't do it." Testimony of the officer is almost always taken by declaration. The alleged offender usually appears in person and testifies. The burden of proof for these civil infractions is a preponderance.

A mitigation hearing is "I did it, but I want to talk to you about it." In these hearings the court usually summarizes the officer's testimony, and then hears from the offender. The court can keep the amount of the ticket or lower it.

A mitigation hearing is "I did it, but I want to talk to you about it." In these hearings the court usually summarizes the officer's testimony, and then hears from the offender.

After doing thousands of these hearings some themes have arisen. There are really only about 40 excuses/arguments any court hears. Below is a catalog of these arguments. Using the argument numbers rather than actually making the argument may be the perfect way to run a calendar. The judicial reviewers should approve, because a form is involved, and it clearly will be more efficient than actually having drawn-out dialogue with the cited citizens. A judge will be able to do dozens of these hearings in an hour. The hearings would be succinct:

"Mr. Kirk, please come forward."

"Judge, I plead 1, 5, 27 and 39."

"Thank you, sir. Based on those arguments I will lower the fine to $50."

Next case is the Franz case. "Ms. Franz, please step forward..." and off we would go to the next efficient hearing. The excuses/arguments could be numbered as follows:

1. Don't the police have better things to do?
2. The officer was rude.
3. The officer was unconvinced when I told him my excuse.
4. The officer should have given me a warning.
5. I don't know how fast I was going, but I wasn't speeding.
6. I don't think radar is reliable.
7. I don't think the officer's speedometer was working when he paced me.
8. The officer couldn't have seen if I had my seatbelt on or not from where she was.
9. I had my seatbelt on. I took it off after I was stopped.
10. The officer couldn't see if I stopped or not:
    a. There were trees/shrubs blocking the view.
    b. The stop line is back from the stop sign. I stopped and then crept into the intersection.
11. I have a good record. I haven't had a ticket for
    ____ years
    ____ months
    ____ days
    ____ hours
    ____ minutes
    ____ seconds
12. I don't have a good record, but have decided to do better from now on.
13. The speed limit sign didn't exist.
14. The speed limit sign isn't very visible.
15. The speed limit sign isn't legal because_____.
16. I don't think the speed limit sign is legal, but can't give you a specific reason why.
17. My car won't go that fast.
18. I thought the light was yellow.
19. If the light had not been yellow I wouldn't have entered the intersection.
20. I thought I had insurance, but my spouse forgot to pay the bill.
21. The insurance card was in the glove compartment, but buried under enough tissue to dab up Lake Michigan.
22. It was a new car. I was used to one with different-sized tires.
23. The speed limit is too low.
24. All the other cars were going that fast.
25. I've gone past cops that fast before and not received a ticket.
26. Come on, Judge, haven't you ever romped on a new car a little bit?

(continued on next page)

27. Speed is a relative term. I was driving safely.
28. I almost always drive the speed limit.
29. My speedometer must be broken. It said I was going exactly the speed limit, maybe a little below.
30. They must have changed the speed limit recently.
31. The guy behind me was breathing up my tailpipe.
32. I get scared at night and wanted to get home as soon as I could.
33. The officer was mad because I said he looked like a dork in that uniform.
34. The officer was just mad because I mentioned that if he didn't have a gun I'd kick the !@$#%@ out of him. Can't he take a joke?
35. The mayor/sheriff/chief of police is a good friend of mine.
36. My sister is a judge. She said not to mention her name, but she thinks this ticket should be dropped.
37. I have a friend who had a next-door neighbor who judges sometimes, and she said that he said the ticket should be dropped.
38. Where I come from (as if it is a different planet) what I did was legal. I guess Washington has some peculiar laws I'm unfamiliar with.
39. My accelerator stuck. It's fixed now.
40. I think this is a big conspiracy against me. I won't tell anyone if you drop the ticket.

While the efficiency experts may like this approach, two waves should be hitting the courts now. First, that each cited citizen has a right to be heard, no matter how long it takes. Second, that no form, no matter how long, could ever fully capsulize the excuses/reasons judges hear on the mitigation calendar.

Jeff Tolman is a lawyer and the part-time municipal court judge in Poulsbo. He has served on the WSBA Board of Governors and is a frequent speaker and writer on law-related topics. After 22 years he is still a true believer about our profession.

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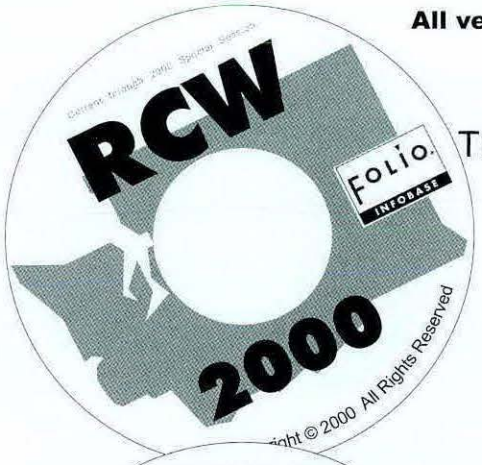

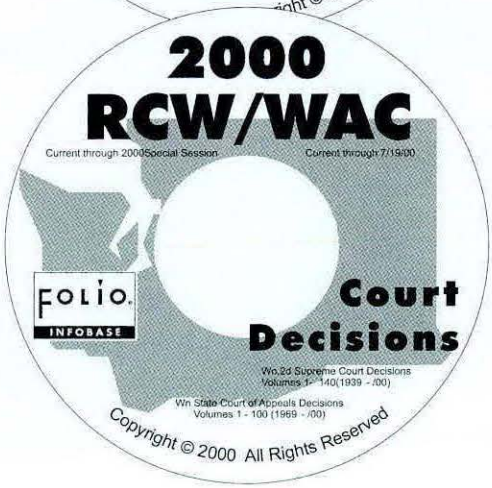

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Jan Eric Peterson

A Profile of the New WSBA President

by Allison L. Parker

He has been described as a passionate trial lawyer with small-town roots, a liberal who's not just in love with issues, and someone who stands up for the rights of the disenfranchised. But when asked to describe himself, he says simply, "I'm a trial lawyer."

Recently, WSBA Executive Director Jan Michels asked Peterson what he hoped people would remember about him after his term as president. He responded, "I want them to think, 'He made me proud to be a lawyer.' That's the theme for the coming year — proud to be a lawyer."

It might seem that Jan Eric Peterson is narrowly focused, and he is — on law as a profession. He believes the legal community must return to its roots, being more of a profession and less of a business in order to change public perception and restore pride among lawyers. "We must commit to core values — justice first, public service, commitment to individual clients, being officers of the court, the Constitution — all before profit," he explains.

Peterson also believes access to the justice system is critical. "Many people can't afford and can't get access to the system. It's difficult to have respect for a system you can't participate in. Access to justice is a bedrock to a democratic society....The profession must make a commitment to make the justice system relevant and accessible to people — not just those who can pay. If we do that, participation will breed respect for law and lawyers."

Peterson believes many people don't understand the role of the judicial branch of government. Therefore they don't recognize the fundamentally important role lawyers play in a democracy. "You can't have a democracy without lawyers. People need to understand that. Our role is key," he says. In his opinion, the number of television judge shows is evidence of the public's thirst for legal education.

Such passion for law and justice is practically innate. Peterson's parents were a legal team. His father was a lawyer in Pasco, Washington, and his mother was his father's secretary, bookkeeper and legal assistant. As a child, Peterson was proud to tell anyone that his father was a lawyer because he believed it was a respected calling. He traveled with his parents from small-town courts, to meetings of the International Academy of Trial Lawyers around the world. Their home was frequently filled with lawyers, judges and clients.

In his opinion the number of television judge shows is evidence of the public's thirst for legal education.

The qualities that initially attracted Peterson to law are the same ones that have kept him in the profession for 30 years. "What attracted me is real people with real problems. I wanted to make a difference....I like doing something about something, righting wrongs. That feels good," he explains.

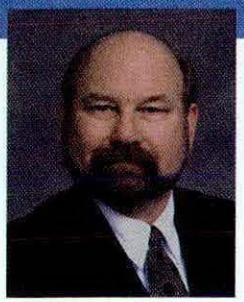
"There's also the problem-solving aspect to it. It's pragmatic. There are measurable results....It's constantly intellectually stimulating....Trial work is exciting and fun. I get satisfaction from helping people."

The advancement of the WSBA Long-Range Strategic Plan is one of Peterson's primary concerns as president. One of his goals is to get increased funding for legal services by enlisting the help of the Legislature, the governor and local legal service agencies. He looks forward to meaningful discussions about the future of the profession in relation to multidisciplinary practice issues and the unauthorized practice of law.

With the assistance of the Board of Governors, Peterson intends to spearhead a mentorship program for new lawyers. "If we want to be more professional, we have to make it happen. Law schools are not equipped or obliged to teach professionalism. It's our obligation to teach professionalism," he says. Mentors need training, proper materials, and accountability to effectively help new lawyers become professionals. Likewise, he believes young lawyers need something more than a one-time seminar. They need ongoing guidance and resources. He believes the program is "so doable, there's no reason not to."

Peterson's professional goals and activities leave him with little spare time. But he can often be found at Safeco Field. An avid Mariners fan, he has been a season ticket holder since the franchise began. He also enjoys going out to hear live jazz, and plays the piano at home.

What does Jan Eric Peterson really want WSBA members to know about him? With a thoughtful stroke of his beard he says, "I'm a native of a small Eastern Washington town. My dad was a lawyer. I've practiced mostly in a small firm — criminal defense, family law, trial work, personal injury, employment, civil rights. The result is that I have fairly representative experience. I think I know what it's really like out there. With some credibility, I can say I speak for all lawyers in Washington."



Jan Eric Peterson, President

Dale L. Carlisle, President-elect

Kenneth H. Davidson, First District

William D. Hyslop, Fifth District

Lucy Isaki, Seventh District-West

Bar Year 2000-2001

Welcome to the New Governors

Ken Davidson is a principal in the law firm of Davidson, Czeisler, Kilpatric & Zeno in Kirkland. He has served for five years on Washington's Access to Justice Board, was founder of the Eastside Legal Assistance Program, and is a past-president of the East King County Bar Association. Davidson's goals as a WSBA governor include promoting public legal education, assuring delivery of quality legal services, and providing better ways to make the justice system responsive, fair and accessible.

A Spokane native, **Bill Hyslop** has practiced law for 20 years, and is a principal in the Spokane, Coeur d'Alene and Moses Lake firm of Lukins & Annis, P.S. He is also a former U.S. Attorney for the Eastern District of Washington. Hyslop is the immediate past-president of the Spokane County Bar Association, a former co-chair of the Equal Justice Coalition, and a chair of the 2000 WSBA Bar Leaders Conference. He has been exceedingly active in civic and political activities including serving as co-chair of Citizens for Spokane Schools and as former president of the Washington State University Alumni Association.

Currently a senior assistant attorney general, **Lucy Isaki** is completing a term as president of the King County Bar Association. She is past-president of the Seattle Chapter of Washington Women Lawyers, past-chair of the board of visitors at Seattle University Law School, and was a trustee at Eastern Washington University. Isaki was also a partner at Bogle & Gates at the time of its dissolution.

Returning Governors

James E. Deno, Second District
Jenny A. Durkan, Seventh District-East
Stephen J. Henderson, Third District
Daryl L. Graves, Ninth District
Stephen T. Osborne, Fourth District
Lindsay T. Thompson, Seventh District
Victoria L. Vreeland, Eighth District

Note: As *Bar News* was going to press, a new governor from the Sixth District was elected. A profile of Port Angeles attorney **S. Brooke Taylor** will be published in the November issue of *Bar News*.

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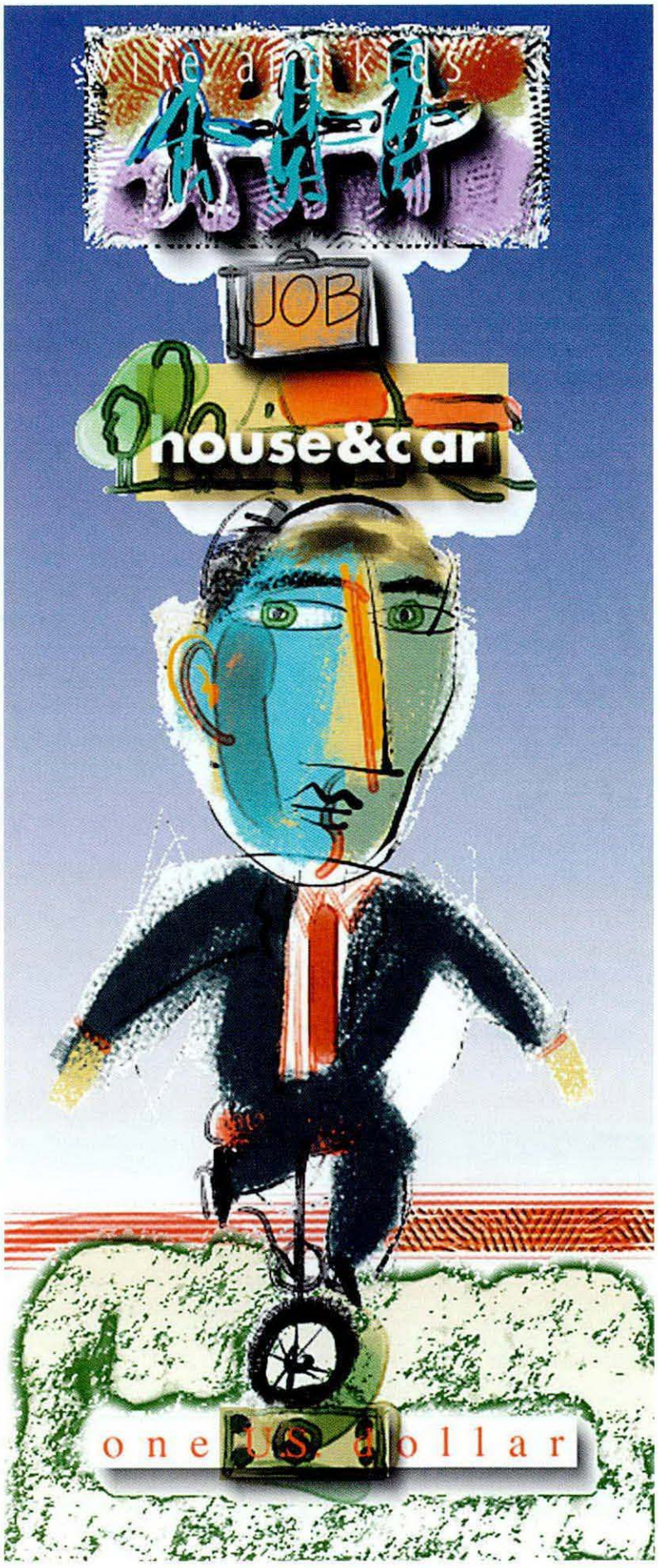
by David S. Kupetz

Beware When Your Client is a Debtor in Possession

Getting and Staying Employed in Bankruptcy Cases



Introduction

Courts uniformly recognize that "[t]he Bankruptcy Code imposes particularly rigorous conflict-of-interest restraints upon the employment of professional persons in a bankruptcy case."[1] Moreover, "the bankruptcy court has broad and inherent authority to deny any and all compensation when an attorney fails to meet the requirements" of the Code.[2] However, an attorney's representation of a debtor in possession is complicated by the reality that there may be confusion regarding who the client is and what related obligations counsel owes.[3]

In all circumstances, in order to minimize the risk of not being paid and/or having to disgorge payments previously received, counsel for a debtor must comply with the disclosure requirements imposed under the Code and the Federal Rules of Bankruptcy Procedure.[4] While it is necessary that counsel for the debtor obtain court approval of its employment, the disclosure obligation constitutes a continuing duty that does not terminate when the professional's employment is approved.[5] Disclosure for the sake of disclosure alone is a necessity. That is, "failure to comply with the disclosure rules is a sanctionable violation, even if proper disclosure would have shown that the attorney had not actually violated any Bankruptcy Code provision or any other Bankruptcy Rule."[6]

Employment Requirements

A. Court Approval

"The Bankruptcy Code and Federal Rules of Bankruptcy Procedure contain various provisions to ensure the impartiality of professionals in their representation

of clients in bankruptcy cases."[7] Section 327(a) of the Code, in pertinent part, provides:

> Except as otherwise provided in this section, the trustee,[8] *with the court's approval*, may employ one or more attorneys, ... or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.[9]

Further, Section 330 of the Code provides, in pertinent part, that "the court may award to a ... *professional person employed under section 327...* reasonable compensation for actual, necessary services...."[10] Many courts have held that the debtor's failure to obtain court approval of the employment of a professional precludes the payment of fees to the professional.[11] Moreover, it has been "held that the Code and Rules preclude fee awards for services performed on behalf of the bankruptcy estate based on state law theories not provided for by the Code, such as *quantum meruit*."[12]

Some courts, however, have allowed counsel to circumvent the employment requirements of sections 327 and 330 of the Code. For example, where legal services were rendered out of necessity while an application for appointment was pending, and before such application was disapproved, courts taking a flexible approach might approve compensation pursuant to section 503(b)(1)(A) of the Code as an actual, necessary cost of preserving the bankruptcy estate.[13] Other courts have taken a more rigid view and have concluded that a bankruptcy court may not approve compensation for an attorney for services rendered without a court order having been entered approving the attorney's employment.[14] Nonetheless, under "extraordinary circumstances" bankruptcy courts may entertain and approve *post facto* (frequently referred to as *nunc pro tunc* approval) applications for authority to employ professionals by a bankruptcy estate representative.[15]

B. Disinterestedness and Adverse Interest

Section 327(a) of the Code creates a two-part requirement for retention of counsel: 1) counsel must "not hold or represent an interest adverse to the estate," and 2) counsel must be a "disinterested person." In actuality, "the two requirements of disinterestedness and lack of adversity telescope into a single hallmark."[16] This overlap becomes evident by examining the definition of "disinterested person" set forth in the Code. The Code defines a "disinterested person" as one who is not a creditor, an equity security holder, or insider, and who "does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor...."[17] Thus, to be "disinterested" under the Code, counsel for the debtor cannot hold an equity security in the debtor.[18] A "disinterested" person must be a person who is not a creditor of the debtor.[19] An "insider" of the debtor is not a "disinterested person."[20] Further, the catch-all clause in the definition of disinterested person is broad enough to include any professional with an "interest or relationship that would even faintly color the independence and impartial attitude required by the Code."[21]

What it means to "hold or represent an interest adverse to the estate" is not defined in the Code.

What it means to "hold or represent an interest adverse to the estate" is not defined in the Code. Numerous courts, however, have adopted the definition that to hold an adverse interest means either 1) the possession or assertion of any economic interest that would tend to lessen the value of the bankruptcy estate or that would create either an actual or a potential dispute with the estate as a rival claimant, or 2) a predisposition of bias against the estate.[22] The majority view is that the determination of whether an adverse interest exists is an objective determination that is concerned with the appearance of impropriety.[23] While a minority of courts has held or implied that only "actual" and not "potential" conflicts of interest are disabling, the majority view is that even potential conflicts are fatal.[24] Moreover, the debate over the question of actual versus potential conflicts "may be more semantic than substantive" since, ultimately, the determination of counsel's disinterestedness is "largely driven by the facts of each case."[25] "Potential conflicts, no less than actual ones, can provide motives for attorneys to act in ways contrary to the best interests of their clients."[26]

"What is clear is that undivided loyalty is central to disinterestedness."[27] However, as discussed below, in the context of representing an entity that serves as a fiduciary, it may not always be clear to whom counsel owes undivided loyalty. In any event, "the attorney takes the risk that the court will finally determine that a conflict exists and deny the employment of the attorney by the debtor and, consequently, deny any compensation for services already provided."[28]

There are many reported decisions setting forth examples of conflicts of interest engaged in by counsel for the debtor which violated the disinterestedness and/or lack of adverse interest requirements of the Code. For example, in *In re Leslie Fay Companies, Inc.*,[29] it was found that the law firm represented interests that were materially adverse to its chapter 11 debtor client where it was retained to complete a fraud investigation for the debtor, and the firm also had significant ties to three potential targets of that investigation. In *In re Occidental Financial Group, Inc.*,[30] disgorgement of attorney's fees for prepetition and postpetition services was compelled as a result of the attorney's conflict of interest in representing the debtor and the debtor's principals. In *In re Angelika Films 57th, Inc.*,[31] the court found that the chapter 11 debtor's attorneys had engaged in egregious conduct by representing the interests of the debtor's principal over those of the debtor in a situation where a motion to assign the debtor's lease of a single-screen movie theater and concession stand to the debtor's principal for the sum of $100,000 was filed shortly after the lease had been valued at $500,000 or more. In *Interwest Business Equipment, Inc. v. U.S. Trustee (In re Interwest Business Equipment, Inc.)*,[32] the court found that it was necessary for three interrelated chapter 11 debtors in possession, where intercompany debts placed each estate in creditor/debtor relationships

with one another and where a prepetition management contract existed between one debtor and another, to have separate counsel who could fairly and fully advise each debtor as to its rights and responsibilities. Moreover, it has been held that regardless of a client's ability to waive a conflict of interest under the rules of professional conduct, the Code does not permit a debtor in possession to negate a conflict by signing a waiver.[33]

The disinterestedness requirement of section 327(a) of the Code is subject to two limited exceptions. The first exception applies only under the following circumstances: 1) the attorney is to be employed for a specific special purpose approved by the court; 2) the attorney previously represented the debtor; 3) the employment will be in the best interest of the estate; and 4) the attorney does not represent or hold any interest adverse to the debtor or the estate concerning the matter for which she is to be employed.[34] The second exception allows a person not to be disqualified for employment under section 327(a) "solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest.[35] Moreover, courts have allowed a creditor's law firm to simultaneously serve as special counsel to the trustee if it does not hold an adverse interest "with respect to the matter on which such attorney is to be employed."[36]

The duty to avoid conflicts of interest is an ongoing obligation of debtor's counsel.[37] The most obvious potential penalty for failure to satisfy this obligation is explicitly set forth in section 328(c) of the Code which provides, in pertinent part, as follows:

> [T]he court may deny allowance of compensation for services and reimbursement of expenses of a professional person employed under section 327... if, at any time during such professional person's employment ... such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed.[38]

Courts have found that the plain language of section 328(c) provides that the bankruptcy court has discretion in determining whether to deny compensation.[39] This discretion may be exercised harshly. That is, "if its fact-specific inquiry leads the bankruptcy court to conclude that an impermissible conflict of interest looms or exists, available sanctions include disqualification and the denial or disgorgement of all fees."[40]

Disclosure Obligations

The Code and the Rules contain procedural mechanisms designed to enforce the statutory requirements of disinterestedness and no interest adverse to the estate. Rule 2014 requires that a request for approval of the employment of a professional in a bankruptcy case include an application and an accompanying verified statement "setting forth the person's connection with the debtor, creditors, or any other party in interest...."[41] "Though this provision allows the fox to guard the proverbial hen house, counsel who fail to disclose timely and completely their connections proceed at their own risk because failure to disclose is sufficient grounds to

revoke an employment order and deny compensation."[42] Thus, the duty to disclose under Rule 2014(a) is a self-policing one.[43] Accordingly, courts strictly construe the Rule 2014 disclosure requirements.[44]

> "[A] misstatement in a Rule 2014 statement by an attorney about other affiliations constitutes a material misstatement."[45] "All facts that may have any bearing on the disinterestedness of a professional must be disclosed."[46] "So important is the duty of disclosure that the failure to disclose relevant connections is an independent basis for the disallowance of fees or even disqualification."[47] Moreover, there is little doubt that "nothing would inflame a court's anger more than the belief that a party has intentionally failed to disclose...."[48]

The failure to adequately disclose all connections with the debtor and the estate has haunted numerous lawyers who have subsequently found what must have seemed like their surreal nightmares published in reported decisions. In large part, the genesis of John Gellene's travails in his firm's representation of Bucyrus-Erie Company in its chapter 11 case was his failure to disclose his firm's representation of a group of investment entities which held senior secured notes and leasehold interests/secured claims against his firm's chapter 11 debtor client.[49]

In *Rome v. Braunstein*,[50] the debtor's counsel failed to make full and spontaneous disclosure of financial transactions between the debtor, the debtor's sole shareholder and president, and the shareholder's family members that occurred shortly before counsel filed the debtor's chapter 11 petition. Additionally, counsel's failure to obtain explicit court authorization to represent the shareholder's former secretary in her efforts to purchase the debtor's assets led to the court's denial of compensation to counsel.

In *In re Leslie Fay Companies, Inc.*,[51] the debtor's counsel failed to make the required disclosure of potential conflicts by not revealing that it represented companies whose principals were potential targets in a fraud investigation the firm would be called upon to complete.[52] Moreover, the court held that boilerplate language contained in papers filed with the court stating that the law firm might represent claimants of the chapter 11 debtor did not constitute adequate disclosure.[53] Finally, the court concluded that the failure of the debtor's counsel to disclose potential conflicts which might have impaired its investigation into fraud by the debtor's upper management warranted monetary sanctions in the amount of the cost of investigating counsel's performance (approximately $800,000 or more), even though counsel actually performed the investigation competently and in a manner consistent with its fiduciary obligations to the estate.[54]

An attorney representing a debtor in a bankruptcy case must also file a statement disclosing all compensation paid or agreed to be paid for services rendered in contemplation of or in connection with the case.[55] Under section 329 of the Code and Rule 2017, "the compensation of attorneys employed by debtors to provide services in contemplation of or in connection with bankruptcy is subject to review for reasonableness."[56] Section 329 provides statutory authorization for the bankruptcy court to order disgorgement, in certain circumstances, of fees paid for prepetition services.[57] The denial of fees to attorneys who willfully fail to disclose all their connections with the debtor, creditors, and any other party in interest is appropriate.[58] Moreover, an attorney's failure to obey the disclosure and reporting requirements of the Code and the Rules gives the bankruptcy court the discretion to order disgorgement of attorney's fees.[59]

In *In re Park-Helena Corp.*,[60] the 9th Circuit held that a fee applicant must disclose the precise nature of his fee arrangement with his debtor client. In that case, failure of counsel to accurately and precisely disclose the source of his prepetition retainer, which was paid not from the corporate accounts of the chapter 11 debtor, but from money which the debtor's president had borrowed from the debtor and deposited in his personal checking account, was found to have violated the attorney's obligation to disclose all connections with the debtor, the debtor's officers, creditors and any other parties in interest.[61] Further, the 9th Circuit held that, even if it had been determined that the retainer at issue was properly and appropriately paid to the debtor's counsel

by the debtor, counsel had failed to describe the circumstances of the payment in violation of Rule 2014's disclosure requirements and, accordingly, the court's denial of all fees was appropriate.[62]

In re Lewis[63] is another case where the 9th Circuit addressed egregious facts. The debtor's counsel falsely represented that an entire $40,000 retainer was paid prepetition, when $30,000 was actually paid postpetition. Because of his misrepresentations and his deliberately delayed and incomplete disclosure, counsel was ordered to disgorge $37,000 of the $40,000 payment he had previously received.[64]

It has been held that the Code and the Rules "do not provide authority for the court to prohibit a professional from working for any client it chooses."[65] The 10th Circuit has stated that it is not a question of the court either permitting or prohibiting unapproved representation, but rather "any professional not obtaining approval is simply considered a volunteer if it seeks payment from the estate."[66] At the same time, the 9th and 4th Circuits have held that the bankruptcy court may order the disgorgement of any payment made to an attorney representing the debtor in connection with the bankruptcy case, irrespective of the payment's source.[67] Further, section 329(b) of the Code, contemplating that retainers may be paid to counsel for the debtor from sources other than the debtor, provides that if the court determines that the compensation paid exceeds the reasonable value, the court may order the return of such payment to the entity that made such payment.[68]

Fiduciary Duty of Counsel for the Debtor in Possession

"Generally, courts discuss conflicts of interest and disinterestedness in the same breath."[69] In order to avoid conflicts of interest and remain disinterested, it has been held that counsel for the debtor in possession must "tender undivided loyalty and provide untainted advice and assistance in furtherance of their fiduciary responsibilities."[70] Unquestionably, "an attorney owes fiduciary duties of loyalty and care to his/her client."[71] However, for attorneys who are retained to assist in the administration of a fiduciary entity, the initial question of "who is the client?" may be more than an academic inquiry.[72]

Obviously, pre-bankruptcy, counsel's client is the corporation (in the case of a corporate debtor). But who is the client after commencement of the bankruptcy — the debtor-in-possession or the estate? Is the debtor-in-possession the client entity or is it just the decision-making constituent of the client estate?[73]

It has been held that "[a]n attorney authorized to represent a debtor in a bankruptcy proceeding has a duty to represent the best interests of the debtor *and* its creditors."[74] In *Hansen, Jones & Leta, P.C. v. Segal*,[75] the court discusses at length its view that the client of counsel for a debtor in possession is the debtor in possession and not an "estate" consisting of a collection of various property interests. Further, the court explains that, as a general principle, attorneys owe no duty to non-clients and, thus, counsel for the debtor in possession would not have any fiduciary duty to the beneficiaries of the bankruptcy estate because they are not his/her clients.[76] Ultimately, the court in *Hansen, Jones & Leta, P.C. v. Segal* determines that the provisions of the Code adequately govern the conduct of counsel for the debtor in possession without the need to impose an unclear fiduciary duty to the

estate and its beneficiaries on counsel, stating:

> Imposing an undefined fiduciary duty to the estate and its beneficiaries on counsel for debtor-in-possession is confusing, unhelpful and unnecessary to insure that counsel is independent and aware of his/her duty under the Bankruptcy Code and Model Rules [of Professional Conduct] to represent and assist the debtor-in-possession in the performance of its duties. In virtually all the cases which rely on counsel's fiduciary duty to the estate in sanctioning counsel, the same result would be reached by finding a breach of counsel's fiduciary duty to the client debtor-in-possession, violations of Sections 327, 328, or 329, and/or a failure to provide services which benefit the estate under Section 330.[77]

Standard for Approval of Compensation

Section 330(a) sets forth a non-exclusive, five-factor test for determining reasonable compensation to be awarded counsel for the debtor, as follows:

> In determining the amount of reasonable compensation to be awarded, the court shall consider the nature, the extent, and the value of said services, taking into account all relevant factors, including
> a) the time spent on such services;
> b) the rates charged for such services;
> c) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
> d) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance and nature of the problem, issue or task addressed; and
> e) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.[78]

There is a "strong presumption" that payment of one's standard hourly rates for actual and necessary services constitutes "reasonable compensation."[79] "The 9th

Circuit standard for adding a bonus to counsel's full hourly rate requires powerful evidence and detailed findings."[80] In order to overcome the presumption against an enhancement above the standard hourly rates, specific evidence must be provided in two categories. First, the fee applicant must show why the results obtained were not reflected in either the standard hourly rate or the number of hours allowed. Second, the applicant must show that the bonus is necessary to make the award commensurate with compensation for comparable non-bankruptcy services.[81] Section 330(a) of the Code was revised in 1994. However, "[t]he controlling factor in *Manoa Finance* — compensation for comparable nonbankruptcy services — is unchanged in new § 330(a)."[82] In *Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc.*,[83] the 3rd Circuit recognized that "[t]he baseline rule is for firms to receive their customary rates."[84] However, it found that the bankruptcy court had erred in taking the market rate for services in Western Pennsylvania (the location where the debtor's bankruptcy case was pending) as a starting point for fees for a firm based in New York. The 3rd Circuit held, however, that this error was not material because the bankruptcy court had based its reductions on other appropriate factors, stating:

> The idea that a firm should be restricted to the hourly rate typical in the locale of the case is unduly parochial particularly in this age of national and regional law firms working on larger more complex bankruptcy cases of more than local import. ... The bankruptcy court here should have looked first to *Zolfo*, Cooper's customary market (New York) and then made reductions based on the other factors [duplicated effort, use of too many high-level personnel, sharp rate increases during the course of the case, etc.]. But this error does not require reversal because the bankruptcy court achieved substantially the same result. While the bankruptcy court erroneously started with Western Pennsylvania as its baseline, it properly raised the hourly rates as close to the New York rates as it determined was warranted given its findings regarding *Zolfo*, Cooper's improper billing.[85]

Conclusion

It is imperative that counsel for a debtor disclose all connections with the debtor, the estate, creditors, and other parties in interest at the inception and throughout the course of his/her employment. If there is any doubt as to whether an initial or supplemental disclosure should be submitted, the doubt should be resolved in favor of submission. Otherwise, counsel for the debtor risks waking up to the nightmare of the denial of compensation for work done, disqualification from continuing representation, and/or disgorgement of fees previously received.

David S. Kupetz, a partner in the Los Angeles firm of Sulmeyer, Kupetz, Baumann & Rothman, focuses his practice on business reorganization, bankruptcy and insolvency matters, and related litigation. He may be reached at dkupetz@skbr.com.

NOTES

1 Rome v. Braunstein, 19 F.3d 54, 57 (1st Cir. 1994). *See also* Franke v. Tiffany (In re Lewis), 113 F.3d 1040, 1044-46 (9th Cir. 1997); Neben and Starrett, Inc. v. Chartwell Financial Corp. (In re Park-Helena Corp.), 63 F.3d 877, 880-82 (9th Cir. 1995); Kravit, Gass & Weber v. Michel (In re Crivello), 134 F.3d 831, 835-41 (7th Cir. 1998); Beal Bank, S.S.B. v. Waters Edge Ltd. Partnership, 248 B.R. 668, 694 (D. Mass. 2000). All references in this article to the "Code" are to the Bankruptcy Code, 11 U.S.C. § 101, *et seq.* This article focuses on representation of debtors in posses-

sion. The term "debtor" is used interchangeably in this article with the term debtor in possession.

2 In re Lewis, 113 F.3d at 1045, *citing* In re Downs, 103 F.3d 472, 479 (6th Cir. 1996), Matter of Prudomme, 43 F.3d 1000, 1003 (5th Cir. 1995), and In re Chapel Gate Apartments, Ltd., 64 B.R. 569, 575 (Bankr. N.D. Tex. 1986).

3 *See* Hansen, Jones & Leta, P.C. v. Segal, 220 B.R. 434, 447-67 (D. Utah 1998).

4 *See* 11 U.S.C. § 329; Fed. R. Bankr. P. 2014 & 2016; In re Park-Helena Corp., 63 F.3d at 880. All references in this article to the "Rules" are to the Federal Rules of Bankruptcy Procedure.

5 In re Keller Financial Services of Florida, Inc., 243 B.R. 806, 813 (Bankr. N.D. Fla. 1999).

6 In re Park-Helena Corp., 63 F.3d at 880.

7 In re Keller Financial Services of Florida, Inc., 243 B.R. at 811.

8 Section 327 applies to debtors in possession as well as trustees. *See* 11 U.S.C. §§ 1101(1) and 1107(a).

9 11 U.S.C. § 327(a) (emphasis added).

10 11 U.S.C. §330(a) (emphasis added).

11 *See, e.g.*, Shapiro Buchman, LLP v. Gore Brothers (In re Monument Auto Detail, Inc.), 226 B.R. 219, 224-25 (Bankr. 9th Cir. 1998) ("[T]he Firm's failure to obtain court authorization for its employment was fatal to its ability to obtain payment for its chapter 11 services."); In re W. T. Mayfield Sons Trucking Co., Inc., 225 B.R. 818, 824 (Bankr. N.D. Ga. 1998) ("Because Mr. Reuss was not approved as counsel for the Debtor, even if due to inadvertence rather than design, he is not entitled to any compensation from the Debtor for serving as its counsel."); Land West, Inc. v. Coldwell Banker Commercial Group, Inc. (In re Haley), 950 F.2d 588, 590 (9th Cir. 1991) ("Control by the bankruptcy court is necessary to enable the court to contain the estate's expenses and avoid intervention by unnecessary participants." Otherwise, the person rendering services may be an officious intermeddler or a gratuitous volunteer.).

12 In re Monument Auto Detail, Inc., 226 B.R. at 224. In In re Monument Detail, Inc., the 9th Circuit's Bankruptcy Appellate Panel held that possession of an attorney's lien under state law did not obviate counsel's obligation to satisfy the employment and compensation requirements of the Code and Rules. *Id.* at 227.

13 *See, e.g.*, In re Milwaukee Boiler Manufacturing Co., 232 B.R. 122, 125-27, where the court stated: This is not a case of attorneys seeking to do an "end run" around a specific exclusive Code provision. It is also not a case of performing services as officious intermeddlers. Based upon the overriding equities of this case, ... [counsel] is entitled to compensation under § 503(b)(1)(A) as an administrative claim.

14 *See* Atkins v. Wain, Samuel & Co. (In re Atkins), 69 F.3d 970, 973 (9th Cir. 1995) ("In bankruptcy proceedings, professionals who perform services for a debtor in possession cannot recover fees for services rendered to the estate unless those services have been previously authorized by a court order."). *See also* In re Milwaukee Engraving Co., Inc., 2000 U.S. App. Lexis 16044 (7th Cir. 2000); In re Keren Ltd. Partnership, 189 F.3d 86, 88 (2nd Cir. 1999); In re F/S Airlease II, Inc., 844 F.2d 99, 108-09 (3rd Cir. 1988).

15 *See* In re Atkins, 69 F.3d at 973 ("The bankruptcy courts in this circuit possess the equitable power to approve retroactively a professional's valuable but unauthorized services."); *see also* In re Jarvis, 53 F.3d 416, 419-22, where the 1st Circuit Court of Appeals stated: [W]e hold that under 11 U.S.C. §327(a) and Fed. R. Bankr. P. 2014(a), a bankruptcy court may, in its discretion, consider an application to approve the employment of a professional even though the professional person's services have already been rendered. But the court should grant the authorization only if it can be shown that the professional person meets all the requirements of Section 327(a) *and* that the untimeliness of the application results from extraordinary circumstances. Because the lack of punctuality in this case was attributable entirely to inadvertence, the district court did not err in affirming the bankruptcy court's denial of the trustee's *post facto* application. Mere oversight does not fall within the realm of extraordinary circumstances for these purposes.

Id. at 422. The 9th Circuit has held that "[t]o establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must 1) satisfactorily explain their failure to receive prior judicial approval; and 2) demonstrate that their services benefitted the bankruptcy estate in a significant manner." In re Atkins, 69 F.3d at 974. A non-exclusive checklist of factors that may be considered when evaluating whether the circumstances are extraordinary include

the following: 1) whether the applicant or some other person bore responsibility for applying for approval; 2) whether the applicant was under time pressure to begin service without approval; 3) the amount of delay after the applicant learned that initial approval had not been granted; and 4) the extent to which compensation to the applicant would prejudice innocent third parties. *See* F/S Airlease II, 844 F.2d at 105-06; In re Jarvis, 53 F.3d at 420-21.

16 In re Martin, 817 F.2d 175, 181 (1st Cir. 1987); In re Leslie Fay Companies, Inc., 175 B.R. 525, 532 (Bankr. S.D.N.Y. 1994).

17 11 U.S.C. §§ 101(14)(A) & (E). *See also* 11 U.S.C. § 101(31) for the Code's definition of "insider."

18 11 U.S.C. § 101(14)(A). *See* United Mechants & Manufacturers, Inc. v. Skadden, Arps, Slate, Meagher & Flom, 1999 U.S. App. Lexis 24381 (2nd Cir. 1999) (law firm's fee award reduced by $225,000 where partner in firm owned stock in debtor client during part of representation); Merrimac Assocs., Inc. v. Daig Corp. (In re Daig Corp.), 799 F.2d 1251 (8th Cir. 1986).

19 11 U.S.C. § 101(14)(A). *See* U.S. Trustee v. Price Waterhouse, 19 F.3d 138, 141 (3rd Cir. 1994). Proposed counsel must be careful to ensure that it is not a creditor of its debtor client at the time a chapter 11 petition is filed for the client. However, some courts have recognized that application of this requirement to ordinary retainer arrangements may go too far. In reversing a bankruptcy court decision, a Colorado district court held that the security interest possessed by the chapter 11 debtor's attorneys in their prepetition retainer was a conflict which the Code recognized and generally tolerated as an exception in assessing attorneys' disinterestedness, and did not disqualify attorneys from being retained as counsel to the debtor, as long as a security interest was fully disclosed and subject to the court's scrutiny. Weinman, Cohen & Niebrugge v. Peters (In re Print Crafters, Inc.), 233 B.R. 113 (D. Colo. 1999).

20 11 U.S.C. §§ 101(14)(A) & 101(31). *See also* W.F. Development Corp. v. U.S. Trustee (In re W.F. Development Corp.), 905 F.2d 883 (5th Cir. 1990) ("In a bankruptcy proceeding, limited and general partners do hold materially adverse positions ... we ... adopt here a clear rule. When one attorney represents both limited and general partners in bankruptcy, there will always be a potential for conflict, and disqualification is proper."). In a recent decision, the 9th Circuit affirmed the decisions of the lower courts in a case where one of the partners of Gibson, Dunn & Crutcher LLP (Gibson, Dunn) had resigned as the debtor's assistant secretary two weeks before the debtor filed its chapter 11 petition. In that case, Gibson, Dunn, nevertheless, asserted that it was a "disinterested person" under 11 U.S.C. § 101(14). The U.S. trustee objected to the debtor's application to employ Gibson, Dunn. The bankruptcy court and the Bankruptcy Appellate Panel concluded that the interest of its partner was not attributable to Gibson, Dunn and that, under the circumstances, Gibson, Dunn could serve as the debtor's counsel. Interestingly, the Bankruptcy Appellate Panel reached this ruling although it did find that the Gibson, Dunn partner was not a disinterested person and, thus, was himself disqualified to act as the debtor's counsel. Ultimately, Gibson, Dunn was paid fees and expenses pursuant to court approval and, after objecting to all of these fees, the U.S. trustee brought an appeal contending that Gibson, Dunn was not a disinterested person, should never have been employed as the debtor's counsel, and that all court-approved payments received by Gibson, Dunn had to be disgorged. The 9th Circuit found numerous factors weighing in favor of holding that it would be inequitable to require Gibson, Dunn to disgorge the bankruptcy court's award of fees and expenses, including that there had been full and timely disclosure, the partner's lack of any involvement in Gibson, Dunn's representation of the debtor, that Gibson, Dunn acted properly, and the failure of the UST to seek a stay order. S.S. Retail Stores Corp. v. Ekstrom (In re S.S. Retail Stores Corp.), 2000 Daily Journal D.A.R. 7151, 7151-52 (9th Cir. 2000).

21 In re Crivello, 134 F.3d at 835. *See also* In re Angelika Films, 57th, Inc., 227 B.R. 29, 38 (Bankr. S.D.N.Y. 1998); Winship v. Cook (In re Cook), 223 B.R. 782, 789 (Bankr. 10th Cir. 1998).

22 In re Angelika Films 57th, Inc., 227 B.R. at 38; In re Cook, 223 B.R. at 789; In re Granite Partners, L.P., 219 B.R. 22, 33 (Bankr. S.D.N.Y. 1998); In re Roberts, 46 B.R. 815 (Bankr. D. Utah 1985), *aff'd in part and rev'd in part on other grounds*, 75 B.R. 402 (D. Utah 1997 (en banc).

23 In re Angelika Films 57th, Inc., 227 B.R. at 38, *citing* Rome, 19 F.3d at 58.

24 *See* In re Leslie Fay Companies, Inc., 175 B.R. at 532. "Congress [in drafting and enacting the Code] sought to disqualify professionals with the appearance of a conflict of interest as well as those who have an actual conflict of interest." Michel v. Federated Department Stores, Inc. (In re Federated Department Stores, Inc.), 44 F.3d 1310, 1319 (6th Cir. 1995).

25 In re Leslie Fay Companies, Inc., 175 B.R. at 532; In re Angelika Films 57th, Inc., 227 B.R. at 39.

26 In re Leslie Fay Companies, Inc., 175 B.R. at 533. In In re Leslie Fay Companies, Inc., the court continued by stating: Rather than worry about the potential/actual dichotomy it is more productive to ask whether a professional has either a meaningful incentive to act contrary to the best interests of the estate and its sundry creditors — an incentive sufficient to place those parties at more than acceptable risk — or the reasonable perception of one. ... In other words, if it is plausible that the representation of another interest may cause the debtor's attorneys to act any dif-

ferently than they would without that other representation, then they have a conflict and an interest adverse to the estate. 175 B.R. at 533.
27 In re Angelika Films 57th, Inc., 227 B.R. at 39.
28 In re BBQ Resources, Inc., 237 B.R. 639, 642 (Bankr. E.D. Ky. 1999).
29 175 B.R. 525 (Bankr. S.D.N.Y. 1994).
30 40 F.3d 1059 (9th Cir. 1994).
31 227 B.R. 29 (Bankr. S.D.N.Y. 1998), 246 B.R. 176 (S.D.N.Y. 2000).
32 23 F.3d 311 (10th Cir. 1994).
33 In re Perry, 194 B.R. 875, 880 (E.D. Cal. 1996) ("This is because the ultimate party at interest is the creditors of the bankruptcy estate.... [S]ection 327(a) has a strict requirement of disinterestedness and absence of representation of an adverse interest which trumps the rules of professional conduct."). *See also* In re Amdura, 121 B.R. 862, 866 (Bankr. D. Colo. 1990) ("The activities and multiple representation that may be acceptable in commercial settings, particularly with the informed consent of clients, may not be acceptable in bankruptcy ... when those entities are insolvent and there are concerns about intercompany transfers and the preference of one entity and its creditors at, perhaps, the expense of another.").
3411 U.S.C. § 327(e). *See* In re Abrass, 200 Bankr. Lexis 737 (Bankr. M.D. Fla. 2000), where an attorney could not be employed as general counsel under § 327(a) because the firm was not disinterested and could not be employed as special counsel § 327(e) because the trustee sought to employ the firm for general representation purposes and the firm had not previously represented the debtor. *See also* Meespierson, Inc. v. Strategic Telecom, Inc., 202 B.R. 845, 846 (D. Del. 1996) ("The conflict of interest arising from the law firm's prior representation of a shareholder and creditor of the debtor was not avoided, pursuant to the provisions of § 327(e), where the firm had engaged in no prior representation of the debtor.").
35 11 U.S.C. § 327(c).
36 Nisselson v. Wong (In re Best Craft General Contractor), 239 B.R. 462, 467 (Bankr. E.D.N.Y. 1999).
37 *See* In re Angelika Films 57th Inc, 227 B.R. at 39; Rome v. Braunstein, 19 F.3d at 59.
38 11 U.S.C. § 328(c).
39 *See* In re Crivello, 134 F.3d at 837; Gray v. English, 30 F.3d 1319, 1324 (10th Cir. 1994) ("The permissive 'may deny' language does not require the court to deny legal fees or disgorge previously paid fees in all cases."); In re Federated Dept. Stores, Inc., 44 F.3d 1310, 1319-20 (6th Cir. 1995).
40 Rome v. Braunstein, 19 F.3d at 58; Gray v. English, 30 F.3d 1319, 1324 (10th Cir. 1994) ("In exercising the discretion granted by [§ 328(c)] we think the court should lean strongly toward denial of fees, and if the past benefit to the wrongdoer fiduciary can be quantified, to require disgorgement of compensation previously paid that fiduciary even before the conflict arose."); Electro-Wire Products, Inc. v. Sirote & Permutt, P.C. (In re Prince), 40 F.3d 356 (11th Cir. 1994) ("The court held that denial of request for attorney's fees and disgorgement of fees previously received was required in connection with law firm's representation of chapter 11 debtor where conflicts of interest resulted from law firm's prior representation of debtor and nondebtor's spouse in estate planning matters, prior representation of debtor's corporation, and postpetition representation of debtor's spouse in suit brought against.").
41 Fed. R. Bankr. P. 2014(a).
42 In re Crivello, 134 F.3d at 836. *See also* Rome v. Braunstein, 19 F.3d 54, 59 (1st Cir. 1994) ("Absent the spontaneous, timely and complete disclosure required by section 327(a) and Fed. R. Bankr. P. 2014(a), court-appointed counsel proceed *at their own risk*.").
43 In re Crivello, 134 F.3d at 839, *citing* Rome, 19 F.3d at 59.
44 In re Leslie Fay Companies, Inc., 175 B.R. at 533.
45 U.S. v. Gellene, 182 F.3d 578, 588 (7th Cir. 1999). This case involved the penultimate non-disclosure nightmare for an attorney. In this case, attorney John Gellene, failed to disclose various conflicts of interest in connection with his firm's representation of a chapter 11 debtor in possession, ultimately faced federal criminal charges (two counts of bankruptcy fraud and one count of perjury), and was convicted by a jury on all three counts. At his trial, Mr. Gellene testified, as the only defense witness, that his failure to disclose conflicts had been the result of "bad judgment" and was "stupid, but not criminal." The jury disagreed. U.S. v. Gellene, 182 F.3d at 584-85.
46 In re Leslie Fay Companies, Inc., 175 B.R. at 533 ("Consistent with the duty placed on the professional, it is the responsibility of the professional, not of the court, to make sure that all relevant connections have been brought to the light."). *See also* U.S. v. Gellene, 182 F.3d 578 (the disclosure requirements are not discretionary and professionals cannot pick and choose which connections are irrelevant or trivial).
47 In re Leslie Fay Companies, Inc., 175 B.R. at 533. *See also* In re Roger J. Au & Son, Inc., 71 B.R. 238, 242 (Bankr. N.D. Ohio 1986) (failure to disclose facts material to potential conflict may provide totally independent ground for denial of fees, quite apart from the actual representation of competing interests).
48 In re Crivello, 134 F.3d at 841.
49 *See* U.S. v. Gellene, 182 F.3d at 581-85.
50 19 F.3d 54 (1st Cir. 1994).
51 175 B.R. 525 (Bankr. S.D.N.Y. 1994).
52 *Id.* at 536 ("[W]here counsel is being retained to conduct an investigation into the actions of, among others, senior management and members of the board of directors, most assuredly connections with entities affiliated with board members that could cause pressure on investigating counsel must be disclosed.").
53 Specifically, the court stated: The boilerplate language to the effect that Weil Gotshal may have in the past represented, currently represents, and may in the future represent entities which are claimants of the debtors was insufficient to alert the court to Weil Gotshal's representation of a creditor which was high on the list of the debtors' twenty largest creditors (from which a creditor's committee is normally selected). The boilerplate is reasonable to cover inadvertent failures to disclose insignificant connections; it is not an adequate substitute for disclosure of representation of known and significant creditors. To rule any other way would be to eviscerate the disclosure requirements of Rule 2014(a). In re Leslie Fay Companies, Inc., 175 B.R. at 537.
54 In re Leslie Fay Companies, Inc., 175 B.R. at 539.
55 11 U.S.C. § 329(a); Fed. R. Bankr. P. 2016(b).
56 In re Keller Financial Services of Florida, Inc., 248 B.R. 859, 877 (Bankr. N.D. Fla. 2000). *See also* 11 U.S.C. § 329 and Fed. R. Bankr. P. 2017.
57 Law Offices of Ivan Halperin v. Occidental Financial Group, Inc. (In re Occidental Financial Group, Inc.), 40 F.3d 1059, 1063 (9th Cir. 1994) ("Halperin's [counsel's] undisclosed conflict of interest and failure to disclose his representation of the Deckers [the principals of the debtor] deprived him of any equitable claim to a retention of the fees for prepetition services.").
58 In re Park-Helena Corp., 63 F.3d at 881 (A fee applicant must accurately disclose the source of its prepetition retainer. In this case, counsel failed to reveal that the funds came from the president of the debtor in possession, rather than the debtor in possession itself.).
59 In re Lewis, 113 F.3d at 1045 (In this case, counsel

acted with "complete disregard" for the procedures and requirements of the Rules and the Code and made misrepresentations to the court.).
60 63 F.3d 877 (9th Cir. 1995).
61 In this regard, the 9th Circuit stated: Neben & Starrett's failure to describe the transaction and indicate that Meyer paid the retainer out of his personal account constituted a violation of 11 U.S.C. § 329 and Fed. R. Bankr. P. 2016. Our holding does not impose any new or additional investigatory burdens on firms that represent a debtor. A law firm must at least disclose the facts of the transaction, as those facts were known to the firm. This Neben & Starrett failed to do. Because Neben & Starrett did not disclose known facts, we need not decide in this case whether the obligation should be even broader than that. In re Park-Helena Corp., 63 F.3d at 881.
62 *Id.* at 882.
63 113 F.3d 1040 (9th Cir. 1997).
64 *Id.* at 1045 ("Not only did Franke fail to supplement its Rule 2016(b) statements, but Franke included a false statement in its application for employment.").
65 In re Interwest Business Equipment, Inc., 23 F.3d at 318.
66 *Id.*
67 In re Lewis, 113 F.3d at 1046; In re Walters, 868 F.2d 665, 668 (4th Cir. 1989).
68 11 U.S.C. § 329(b).
69 In re Angelika Films 57th, Inc., 227 B.R. at 39.
70 Rome v. Braunstein, 19 F.3d at 58; In re Leslie Fay Companies, Inc., 175 B.R. at 532.
71 Hansen, Jones & Leta, P.C. v. Segal, 220 B.R. 434, 449 (D. Utah 1998).
72 *Id.* (The question "is the beginning and end of a tautology which ultimately determines the nature and scope of the duty owed, and whether the duty has been breached.").
73 *Id.* at 449-50.
74 Beal Bank v. Waters Edge Ltd. Partnership, 248 B.R. 668, 694 (D. Mass. 2000), *citing* Rome, 19 F.3d at 57.
75 220 B.R. 434 (D. Utah 1998).
76 220 B.R. at 457.
77 Hansen, Jones & Leta, P.C. v. Segal, 220 B.R. at 461.
78 11 U.S.C. § 330(a)(3).
79 Burgess v. Klenske (In re Manoa Finance Co.), 853 F.2d 687, 692 (9th Cir. 1988); Meronk v. Arter & Hadden, LLP (In re Meronk), 2000 Daily Journal D.A.R. 5969 (Bankr. 9th Cir. 2000).
80 In re Meronk, 2000 Daily Journal D.A.R. at 5971, *citing* Manoa Finance, 853 F.2d at 692. In Manoa Finance, the 9th Circuit stated: A compensation award based on a reasonable hourly rate multiplied by the number of hours actually and reasonably expended is presumptively a reasonable fee ... [T]he following ... factors are now considered subsumed within the lodestar and cannot serve as independent bases for an upward adjustment: (1) the novelty and complexity of the issues, (2) the special skill and experience of counsel, (3) the quality of representation, and (4) the results obtained ... Because these factors ordinarily are accounted for in either the hourly rate or the number of hours expended, they can support an upward adjustment only when it is shown by specific evidence that they are not fully reflected in the lodestar. In re Manoa Finance Co., Inc., 853 F.2d at 691. *See also* Cedic Development Co. v. Warnicke (In re Cedic Development Co.), 2000 U.S. App. Lexis 17978 (9th Cir. 2000) ("We have recognized that the general principles applicable to fee-shifting statutes 'may require some accommodation to the peculiarities of bankruptcy.'... [*citing* Manoa Finance] Moreover, the district court's premise that the hourly rate set by the firm would indicate the lodestar amount was incorrect. The rates were bargain rates not incorporating the Kerr factors. Not to allow the $10,000 enhancement would be to pay below the lodestar.").
81 In re Manoa Finance Co., 853 F.2d at 692. In In re County of Orange, a municipal debt adjustment case pending under chapter 9 of the Code, counsel for the debtor requested a fee enhancement of approximately $49,000,000 above its "benchmark" hourly billing rates. However, this case was not governed by § 330 of the Code since that provision does not apply in a chapter 9 case. *See* 11 U.S.C. §§ 103 and 901. Moreover, the enhancement request was based upon the contract between counsel and its client which provided that the final fee would be determined by "benchmark" hourly rates, with possible adjustment down or up at the end of the representation based on results accomplished and other listed criteria. In that case, the court concluded that construing the contract against the attorneys as it was obliged to do, "the appropriate interpretation of the parties' contract is an upward adjustment of the "benchmark" hourly rate fees ... [by] an additional $3 million. ..." 241 B.R. at 224 (Bankr. C.D. Ca. 1999).
82 In re Meronk, 2000 Daily Journal D.A.R. at 5971. In In re Meronk, the 9th Circuit's Bankruptcy Appellate Panel denied counsel's request for a bonus, stating: This ... is a tale of a law firm that refused to be employed on a contingent fee and crowed about the economic efficiency of results it achieved on an hourly basis, only to turn around and request a bonus that eclipsed the difference between the hourly fees and the contingent fee it had rejected.

We conclude that the law firm did not prove that it shortchanged itself by charging its standard hourly fees. We further conclude that it was judicially estopped from seeking a bonus. 2000 Daily Journal D.A.R. at 5969.
83 50 F.3d 253 (3rd Cir. 1995).
84 *Id.* at 259.
85 Zolfo, Cooper & Co. v. Sunbeam-Oster Co., Inc., 50 F.3d at 260 (quotation marks, citation, and footnote omitted).

by Hugh Spitzer

Take the Initiative on Constitutionality

Many Washingtonians have expressed frustration with hard-won ballot measures that are declared unconstitutional by the courts. These include Referendum 47's slowdown on property reappraisal for tax purposes that was declared invalid in 1998. Initiative 695, which recently was held by two superior courts to violate the state's constitution, is now before the state Supreme Court.

Some groups, including the League of Women Voters, have asked for a method of letting voters know *ahead* of an election, whether a particular initiative is constitutional. It may be possible to do this in some form, but we must keep four things in mind.

First, our courts have avoided ruling on the constitutionality of laws before they are passed. It is difficult enough for judges to throw out a law passed by the voters or their representatives. Courts prefer to rule when they are dealing with a *real* law applied to *real* facts. The U.S. Supreme Court and almost all state courts decline to make advisory, abstract rulings on legislation that doesn't yet exist. The problem is that without a concrete dispute in which lawyers on both sides develop creative arguments on constitutionality, the courts will not be able to consider all possible legal views. Furthermore, Washington courts rarely bar an initiative from the ballot, and then only if the *topic* of the measure is clearly beyond the proper sphere of the initiative power.

Courts prefer to rule when they are dealing with a *real* law applied to *real* facts.

Second, only the courts are empowered to finally determine if a statute is constitutional, whether that statute is enacted by the Legislature or by the people. If some other body issues an opinion as to whether or not a proposed initiative is constitutional, it is just that — an opinion. The state Supreme Court ultimately might take an opposite view, and that court has the last word on Washington's constitution.

Third, it would be unfair to ask the attorney general to provide an advisory opinion on any proposed law. If the Legislature or the people pass a measure, the attorney general is duty bound to defend it, regardless of whether she had advised that it was constitutional or not. Under the ethics rules governing lawyers, the attorney general might have to appoint an independent outside counsel to defend a statute if she had labeled it invalid just months before. This would create a situation where the attorney general could not carry out one of her basic duties: defending properly enacted laws. This would also be costly.

Fourth, any advisory ruling mechanism would cost tax money, and the more elaborate the pre-vote process, the more expensive. Between 1914 and 1999, 940 separate initiative measures were filed, but only 134 received enough valid signatures to appear on the November ballot. Should an indication of constitutionality be provided for all initiatives filed, regardless of how likely they are to succeed, or just for the ones that receive sufficient signatures? If it were limited to the measures that

qualified for the ballot, the sponsors would be quite disappointed to hear of possible defects in their proposal only after they had spent so much time, money and effort at collecting signatures.

The following approach might work if the Legislature were willing to establish it by statute and then provide the necessary financial support. A three- or five-member non-partisan commission could be appointed by the governor and confirmed by the Senate. A majority of the commission would be retired judges. The commission members would not be compensated, but the body would have a small paid staff including at least one lawyer. The staff might be housed in one of the state's three law schools.

When citizens propose draft initiatives, the commission's staff could assist in drafting and would comment on potential constitutional problems. Currently, the Office of the State Code Reviser gives simple assistance to initiative proponents, who need not follow that office's advice. The commission's staff would provide a somewhat higher level of assistance and comment, without interfering with the sponsors' goals or final decisions on wording. But some warning would be provided to proponents about potential constitutional issues. The commission's advice would be accompanied with a notice that neither that body nor its staff would be deemed attorneys for the initiative's sponsors, and that in any event the courts might view the text of a measure differently than the commission.

The attorney general's office would continue to be responsible for drafting the actual ballot title, although this task might instead be handled by the commission. Later, when initiatives gain enough signatures to qualify, the commission would study those measures and provide, in the official voters' pamphlet, a paragraph listing the possible constitutional challenges that might later be raised. The analysis would be accompanied by a warning that the commission's views are preliminary, are not binding in any way, and that the courts might view the measure differently. This warning would also accompany the commission's statement in cases where it had found no potential constitutional defects.

Why shouldn't the voters have the assistance of professional staff, since the Legislature itself has paid specialists who help draft bills and advise legislators about potential constitutional problems posed by proposals? Because the commission would provide notice of possible constitutional problems, the voters would have some forewarning of issues that might later be raised. They could take that into account in deciding whether or not to support a proposal. Finally, if an initiative were later found to be constitutionally defective, the citizens would have much less cause to complain that they had not been warned.

A commission like this cannot substitute for either an initiative sponsors' final decision on what they wish to put before the voters, or the Supreme Court's last word on what is or isn't constitutional. But such a commission might give both proponents and voters an earlier perspective of constitutional issues that could later cause an initiative's demise.

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Hugh Spitzer is an attorney with Foster Pepper & Shefelman PLLC in Seattle and an affiliate professor at the University of Washington School of Law, where he teaches state constitutional law.

How to Understand Your Anger

by Jean L. Johnson
Clinical Social Worker, WSBA Lawyers' Assistance Program

There is a prevailing theme in the cultural wind these days — the advantage of being emotionally adept. This theme recognizes that our emotions contain wisdom, provide direction, and will deepen and enrich life's meaning, if we attend to them with intelligence and responsible expression. The far-reaching benefits that you derive from being skilled in this area — how it enhances and deepens life's experiences in both your professional and personal life — have been expounded on from practical, philosophical, psychological and medical points of view. In legal journals of late there has been an emphasis on collegiality, civility, professionalism, and general concerns over an absence of "order in the court." As a therapist with the Lawyers' Assistance Program, I often hear lawyers lament over the level of rancor and truculence experienced in their encounters with professional peers. The dispiriting and corrosive nature of such behavior has been a determining factor in the departure of some lawyers from the profession altogether.

A constant factor amidst all this, wheth-er addressed head on or gently alluded to, is anger, that often misunderstood emotion that resides within us all. Numerous books have been written on the subject. Manuals and books dealing with mental health, self-improvement, and office management offer at least a chapter on anger (or a thinly veiled synonym/euphemism). There are classes and programs solely devoted to the "management" of anger.

Unless human nature is to be fundamentally altered, this age-old emotion is a reality we will always have to contend with. It is important to examine the type of relationship you have with anger. Do you nurture and relish it, enjoy the rush of fanning the flames of your own rage, avoid or deny the anger you feel, manipulate others with your anger? What are we supposed to do with this unwieldly, terrifying, mystifying, energizing, paralyzing, empowering, shaming state of mind? Have you ever wondered why you get angry in the particular way that you do? It is often chalked up to temperament, or more broadly, basic physiological instinct and hardwiring. Thankfully, it is not that simplistic and ironclad. This is good news, because chronic anger and frequent raging outbursts are potentially life-threatening, and may contribute directly to heart disease and immune suppression. The presence of anger can alienate others, jeopardize your professional reputation, and leave you feeling out of control.

Important Facts About Anger

First, let's acknowledge that anger is a very complex, varied and normal human mind/body state. The raw material is your physiology, which at the most primitive level, is conditioned to fight or flee in response to perceived danger. Anger is nature's very necessary gift designed to set off an alarm and motivate the body to take an action against a threat or challenge and ultimately ensure your survival. Your own particular innate temperament that involves your sensory threshold and resulting tolerance level is also biologically based. However, lest we assume we're all destined (or doomed) to either rant our way through life, or alternatively, kick back and let come what may, the acquisition of our anger style takes place in a very interactive social context. As human cognitive intricacies are factored into the equation, we can begin to appreciate why this emotion is understood and dealt with in such a variety of ways. At its very core, anger is about perceived unfairness and injustice, whether involving the mundane annoyance of the phone system not working, or as fundamental as the perception of not being regarded as worthwhile.

Factors Contributing to the Socialization Process of Anger

We reside in an individualistic society, where collectively valued norms and beliefs indirectly condone aggression in pursuit of individual rights. Our capitalistic, free enterprise system promotes competition rather than cooperation. Emphasis on productivity and "making it to the top" with material wealth as an indicator of success and significance has seeped into the legal profession. Many are concerned that this honorable, service-oriented legal profession has lost some of its luster, and appears to have incorporated the pervasive business "bottom line" of monetary return.

Media influence is a powerful mechanism in the transmission of messages that condition us and our children to attitudes and acts of violence. Through the conduits of TV, movies, music and video games, American culture is modeling numerous forms of violence. This continuous onslaught tends to desensitize us, increasing our tolerance of the abuse we experience, observe, hear, or carry out against others. It is embedded in the foundation of our society, transforming violent behavior into something acceptable and normative.

Childhood experience may play a crucial role in developing a pattern of anger. The person prone to be most volatile and reactive (vulnerable to emotional flooding), with very meager anger management skills, is the individual whose family was verbally or physically abusive during their childhood and adolescence. A very different situation is that of growing up in a family where anger is considered an unacceptable emotion, and consequently is never allowed to be expressed, providing no opportunity for children to learn constructive ways to modulate and effectively express human emotions. Both environments send young adults into the world ill-equipped to manage and demonstrate anger in constructive ways.

The Anger Arousal Sequence

Jerry Deffenbacher, a psychologist with expertise in anger management, described the phenomenon of the anger arousal sequence at a recent seminar for health professionals. Most angry episodes take place in a social context. A trigger event gets filtered through you — that elegant mix of innate physiology and socialization — overriding cultural norms of accepted public behavior. Think of yourself as a human filtering system. If you're generally laid back, then you may be only mildly annoyed with an interaction. If you have a "short fuse," that same interaction could move you quickly into a "flashpoint" stage. Your present emotional state also influences the consequent level of anger that occurs. Your threshold of tolerance is lowered if you're already angry and will facilitate an increase of anger at the next provocation. Other negative states such as being cold, tired, embarrassed, anxious, depressed, frightened or ashamed will increase the likelihood of anger.

Let's examine some of the more enduring (not endearing) characteristics that contribute to our filtering system. If you operate in the world with values, expectations and standards that tend to be rigid, perfectionist, narrow in scope of acceptance, and that fuel the need to be right, you are vulnerable to anger, and very likely to live in a chronic state of agitation.

Events that evoke a dramatic reaction, often out of proportion to the present situation, may be due to triggered memories, associations and emotions of past significant, often traumatic, experiences that surge to the forefront. Characteristics that are reminiscent of a prominent person in your past (e.g., an abusive or critical parent) can bring about an angry response.

The appraisal process describes how you think about the trigger. If the triggering event is interpreted as a violation, transgression, or as something that is blocking your goals, and then you add the attribution of intent to the volatile mix, you're primed for anger. Blame is that disastrous combination of two bad ideas — "someone is at fault" and "they're going to pay." Another popular way of justifying your anger is the notion that "nothing bad should ever happen to me." Continuous ruminating about an unpleasant event or person sustains anger, and can keep it alive for years! In fact, anger is often a defense for more primary feelings that exist beneath the surface, such as fear, sadness, profound disappointment and jealousy.

Anger runs along an emotional continuum, from annoyed to enraged. Initially there is a flood of internal activity. Our physiology engages the fight-flight response, and we experience significant activation — rapid breathing, red face, neck ache, blood flowing to the muscles and away from the outer limbs. The cognitive portion of the anger response presents powerful images, memories, and fantasy ideas that involve learned perceptions and interpretations to the triggering event.

None of this, however, predicts what you may do with anger. This is where the shaping influence of your life experience and the fascinating complexity of human behavior is so dramatically illustrated. One style is "holding it in" while seething inside with an array of critical, hostile fantasies. This is not only unproductive, but also leaves you vulnerable to immune suppression.

Another style is acting out anger with physical aggression toward a person, or targeting the environment (slamming doors, throwing and smashing things). Shouting matches and the use of a deni-

grating tone and contemptuous words can function as a verbal assault. Venting your anger was at one time promoted in some therapeutic circles as an effective cathartic release. In fact, venting further escalates anger and prolongs the agitated mood and accompanying chemical bath, causing many to experience a feeling of being overwhelmed, out of control and having lowered self-esteem.

Passive-aggressive anger is considered by many as the worst guise of anger, particularly when they are on the receiving end! You recognize the frustration you feel when you suspect someone is intentionally inefficient or is obstructing your efforts by not doing their share of the work. Negativism, sullen or irritable demeanor, and the tendency to blame others typically accompany this particular mode of anger. A hallmark of this style is that it is often subtle, so the recipient can't always come up with definitive proof. The classic passive-aggressive retort or intimation is, "I don't have a problem. You must be the one with the problem!"

The non-verbal aggressive stance, with its use of body language, stares and glares is equally ineffective, because it doesn't confront the situation directly and honestly.

The following list underscores the scope of destructive outcomes that un-managed anger can cause.

- Fosters the engagement in impulsive, risky behaviors — drinking and other substance misuse, driving fast, etc.
- Interpersonal violence and consequent relationship repercussions, both professionally and personally.
- High blood pressure.
- Heart disease.
- Immune-suppression response; increased vulnerability to illness.
- Physical injury.
- Property damage.
- Legal problems.
- Internal experiencing of shame, stupidity, being out of control; perception by others that you are unprofessional.

It is worth noting that a lawyer's professional formalized training promotes a mind set that contributes to black and white thinking — winning or losing, allowing little room for the complexities, absurdities and gray areas of real life. The battle mentality heightens the intensity of feelings and perpetuates the belief that one

can potentially control the outcome. Anger and aggression can be viewed in the legal arena as an asset — a part of one's arsenal, but this is all accomplished at considerable physical and psychological cost to an individual.

Strategies for Living with Anger and Moving Beyond It

Heighten your self-awareness and develop techniques for managing anger by increasing your sensitivity and attention to anger triggers (those predictable situations and people that have been conditioned to raise your ire automatically), your typical (conditioned) response, and the consequences of particular expressions of anger. Appreciate the powerful influence of your thoughts and become attuned to how certain thoughts and ways of thinking "fan the flames." Explore possible errors and biases you may have, and develop new cognitive responses that are believable to you. Acknowledge that you are sad, fearful or hurt. In the process, the anger will diminish.

Make an effort to slow down. Become a better observer and create a disconnect of the automatic anger response. Defuse your anger by jumping on and challenging the thoughts that trigger your first infusion of anger. Timing is crucial. The anger response can be short-circuited early on with ameliorating appraisal of the situation. ("They must be having a bad day.") Do this before acting on your anger and you'll successfully avoid potentially destructive or humiliating consequences.

Utilize time-outs. Allow yourself both physical and temporal distance from a provocation by leaving the situation or tabling the discussion, allowing you the necessary time to calm down. Be in a controlled state of mind as you approach the person or situation. Appreciate the fact that physiologically you are under the influence of powerful chemicals, where cognitive agility is lowered and judgment is clouded.

Lawyers are often in a unique position, as professional responsibilities place them in a context which, by its very nature, is litigious and combative and where anger can be utilized as a manipulative device to influence a legal outcome. Hostility and a contemptuous demeanor can be "tools of the trade," used in a Machiavellian manner to obtain a desired result in situations where your leaving is not an option. How do you remain even remotely under control while being berated or provoked by a contentious foe? Again, attempt to monitor your reaction, become the observer, and step out of the battle. Tell yourself that contemptuous tactics do not emanate from a position of strength, since people who resort to aggressive behavior often feel threatened and in danger. Have a repertoire of palliative activities available such as taking a walk or talking to a friend in the face of frustration or agitation. It may not entirely eliminate all the angst, but can help you tolerate what's going on.

Consider the "biology of your beliefs" — that what you believe has a direct relationship to your chemistry and consequent impact on your immune and cardiovascular systems. Examine the thoughts, beliefs and expectations that promote your hostility and impatience. Cynical mistrust is the mental state worthiest of change. It is deemed to be the most corrosive, destructive mindset in perpetuating a chronic state of anger. Not withstanding the potentially lethal health risks, life with anger as a familiar companion is a grim and lonely existence. Give renewed emphasis to the virtues of tolerance, acceptance and endurance.

Conduct self-dialogue that includes age-old adages: This too shall pass; life is messy, unfair and sometimes painful; terrible things happen to good people. Holding onto anger can be an effort (often on an unconscious level) to punish those who have hurt you. Others may barely take notice, but it will always be detrimental to *you*. Many have wasted their lives by allowing themselves to be consumed with the need for retribution. Loosen the grip and let it go.

Remain cognizant of the ever-increasing knowledge base we have on human anger and the specific skills to manage it. If you incorporate the healthy tenets for living your life described above, there will be little room for anger to run amok. Stay engaged in life. Invest time in relationships and select healthy people as your friends. Promote and practice self-acceptance (including those pesky negative qualities). In the process it allows compassion and empathy to flow a little more easily as it relates to acceptance of others. Finally, eradicate chronic self-blame, negative expectations, cynicism and distrust. They are terrible for your body, mind and soul. Life is precious and far too short to allow it to be mired in anger, an emotion that was designed for purposes of survival. It is our ally only if understood and used wisely.

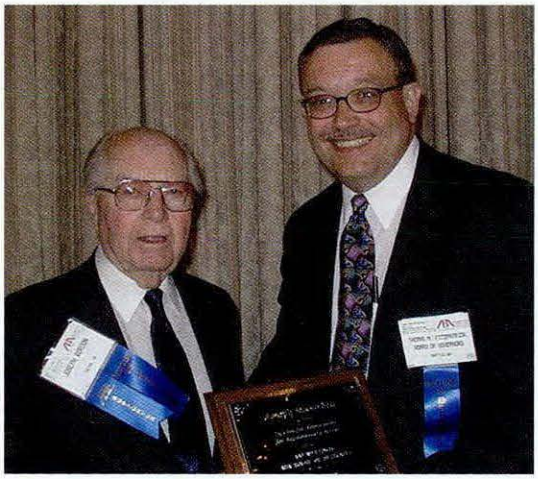
For more information about the programs offered through the Lawyer Services Department, please call Zella Ozretich at 206-727-8268.

Changing Venues

Honors and Awards

Paul L. Stritmatter, of Stritmatter Kessler Whelan Withey Coluccio in Hoquiam, was named vice-president of the Trial Lawyers for Public Justice Foundation board of directors. The Foundation is the nonprofit parent of Trial Lawyers for Public Justice, the national public interest law firm specializing in precedent-setting tort and damage litigation.

Bellingham lawyer **Greg Boos** has received the 1999-2000 Outstanding Achievement in Advocacy Award from the Washington chapter of the American Immigration Lawyers Association. He was honored for his work to repeal Section 110 of the 1996 immigration law.



Joseph H. Gordon (above left) has received an award for attending 100 consecutive meetings of the ABA House of Delegates. As a result of being treasurer of the ABA for seven years, Mr. Gordon was granted a lifetime membership in the House of Delegates.

The Washington Defense Trial Lawyers have elected **Roy A. Umlauf** president. Other newly elected officers are **Bradley A. Maxa**, vice-president; **Karen Bertram**, secretary; **Jim S. Berg**, treasurer; **Joanne T. Blackburn**, trustee; **Brian Rekofke**, trustee; **Elizabeth A. Moceri**, trustee; **Bronson Potter**, trustee; **Andrew G. Cooley**, trustee; **Greg Arpin**, trustee; **Brad Davis**, trustee; and **Jeff Frank**, trustee.

Long-time Olympia lawyer **Evelyn Foster** was named Lawyer of the Year by the Thurston County Bar Association (TCBA). She also received the Daniel Bigelow Award. The award is given annually to a member of the TCBA who has provided outstanding professional and community service.

Judd H. Lees

John Rizzardi

Christopher W. Tompkins has been elected to the executive committee of the International Association of Defense Counsel. He is chair of the complex litigation practice group at Betts, Patterson & Mines PS in Seattle.

Judd H. Lees has been elected president of the Bellevue Rotary Club. He is chair of Williams, Kastner & Gibbs' labor and employment law practice group.

John Rizzardi, a partner with Cairncross & Hempelmann PS, has been elected vice-president of international development for the Turnaround Management Association (TMA). The TMA is an international organization serving the needs of professionals and institutions dedicated to corporate renewal and the turnaround process.

Movers and Shakers

Noelle E. Harman has joined the Seattle firm of Hillis Clark Martin & Peterson as an associate, focusing on business and tax law. She was formerly a tax associate with the accounting firm of Deloitte & Touche.

Sharon L. Nelson has been named the first director of the University of Washington Law School's Center for Law, Commerce and Technology. The Center was founded last year to provide leadership in teaching, research and policy analysis in the legal aspects of emerging technologies.

Western Washington University has named **Julie Helling** (a member of the Minnesota bar) director of the Fairhaven College Law and Diversity Program. The program began in 1991 and is designed to prepare students from under-represented groups for admission to and success in law school.

Seattle lawyer **Lish Whitson** has opened his own firm. As Lish Whitson PLLC, he will focus primarily on health care, medical malpractice, complex civil litigation and mediation/arbitration.

Lupe Jones has joined Northwest Justice Project (NJP) as a lawyer with the CLEAR program in Seattle. **Kate Hoskins** and **Laura Diaz Moore** have joined the Spokane office of NJP.

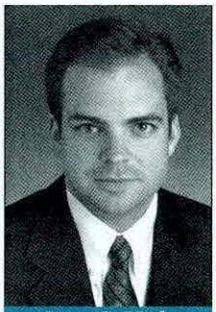
Albert Gidari has joined the Seattle office of Perkins Coie as an entrepreneur-in-residence. The new program will add acceleration services to the bundle of legal services traditionally provided to emerging companies.

Christine Allen-Crowell has joined the Seattle University Law School faculty as the first full-time director of the Access to Justice Institute. Prior to joining SU, she served as public service counsel at Foster Pepper & Shefelman.

Ted Armbruster has been appointed administrative law judge for the Office of Administrative Hearings. He will be based in the agency's Everett office, and will conduct hearings and decide cases primarily involving public assistance and child support issues.

Ross D. Jacobson

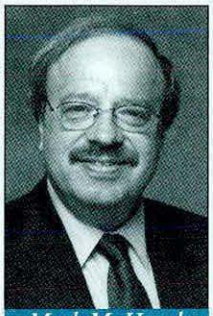
Christopher S. Marks

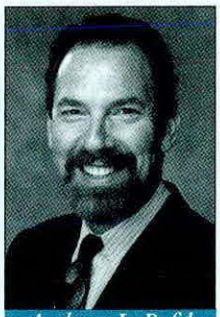


Peter S. Hicks

Charles R. Gossage has joined Short Cressman & Burgess PLLC as of counsel. His practice focuses on construction law, suretyship, government contracts and bankruptcy law.

Ross D. Jacobson, **Christopher S. Marks** and **Peter S. Hicks** have joined the Seattle office of Williams, Kastner &


Mark M. Hough

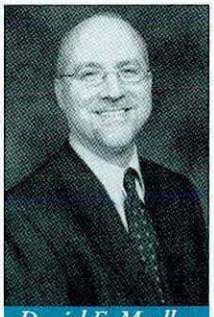

Anthony L. Rafel

Gibbs PLLC. As of counsel, Mr. Jacobson concentrates his practice in business matters including corporate transactions, business design and structure, mergers and acquisitions, technology licensing and transfer, and real estate. Mr. Hicks is an associate who focuses on employment-related matters. Mr. Marks focuses on tort and commercial litigation as an associate.

Mark M. Hough and **Anthony L. Rafel** have joined Riddell Williams PS as principals. Mr. Hough practices commercial litigation emphasizing trademark, copyright, trade secret, non-compete, business torts and antitrust law. Mr. Rafel's practice emphasizes the litigation and trial of disputes involving real estate transactions and condominium construction, labor and employment issues, and contract and tort matters.

Ed Schaller, Jr. and **Stephen A. Foster**, formerly of Foster, Foster and Schaller, have formed Foster, Foster & Schaller LLC with **Christine Schaller** as a member. The Olympia firm will continue to practice in the areas of family law, criminal defense, personal injury, wills and probate.


Christine Schaller


Daniel E. Mueller

Kristopher I. Tefft has become an associate with the Spokane firm of Paine, Hamblen, Coffin, Brooke & Miller LLP. His practice emphasizes commercial law, complex civil litigation and appeals.

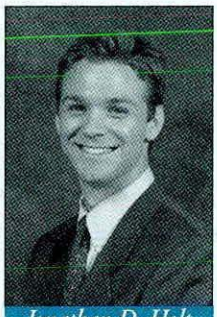
Foster Pepper & Shefelman PLLC has added **Andrew S. Lane** to its land use and environmental practice group as of counsel. His practice focuses on environmental law with emphasis on growth management and land use planning.

Brian J. Ramming has become a partner in Roach Law Offices PS, focusing on litigation, business law, landlord-tenant law and collections. The firm name will change to Roach & Ramming Law Offices PS.

Recreational Equipment, Inc. (REI) has appointed **Pam Myers** vice-president and general counsel. She will provide counsel to the management team and oversee all of REI's legal needs.

Stacy D. Heard has joined Lee Smart Cook Martin & Patterson as an associate. Her practice emphasizes professional liability.

Bullivant Houser Bailey PC has added **Richard G. Birinyi** to its Seattle office as of counsel. He practices in the areas of creditor/debtor issues, corporate reorganizations, business transactions and complex commercial litigation.


Jonathan D. Holt


Jennifer A. Harrison


Regina Vogel Culbert

Amanda Vedrich has joined Betts, Patterson & Mines PS as an associate in the commercial litigation practice area.

Jonathan Dirk Holt and **Jennifer A. Harrison** have joined the Seattle office of Lane Powell Spears Lubersky LLP as associates. Mr. Holt's practice concentrates on general litigation, insurance coverage, product liability and construction defect litigation. Ms. Harrison focuses on taxation. **Regina Vogel Culbert** has joined the Seattle office as of counsel to the firm. Her practice emphasizes intellectual property disputes and commercial litigation.

Daniel E. Mueller has joined Groff & Murphy PLLC as an associate. His practice focuses on complex civil litigation.

Kathleen J. Hopkins has become an owner of Tousley Brain PLLC. **John P. (Jack) Zahner** and **Laura M. Pilkington** have become associates. Ms. Hopkins concentrates her practice in the areas of real property, commercial leasing and bankruptcy. Mr. Zahner practices commercial litigation, and Ms. Pilkington focuses on commercial real estate, real property, commercial leasing and corporate law.

In Memoriam

Long-time Kitsap County lawyer **Frank Shiers** died July 23 of injuries sustained in a fall. He was 79. A resident of Bremerton, Mr. Shiers practiced law for 51 years. For the last 50 years he practiced with Shiers, Chrey, Cox, Caulkins, DiGiovanni and Zak, the Port Orchard firm he founded. He served as president of the Kitsap County Bar Association, exalted ruler of the Bremerton Elks, president of the Navy League, and board member of the Olympic College Foundation. Mr. Shiers was a seaman meteorologist in the U.S. Navy during World War II, and was a 1948 graduate of the University of Washington Law School.

Van Patrick Wilson, a Seattle lawyer who helped represent a contractor in the case of the fallen Kingdome tiles, died August 3 of a brain tumor. He was 32. After graduating from Gonzaga University School of Law, he joined Kingman, Peabody, Pierson and Fitzharris in 1994, where one of his main jobs was researching the reams of paperwork on the original ceiling work done on the Kingdome. Mr. Wilson had a passion for the outdoors, including mountain biking, camping, hiking and baseball.

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Honest Abe's Guide to Practicing Law

by Barrie Althoff • *WSBA Chief Disciplinary Counsel*

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

Abraham Lincoln was a lawyer, and a good one, who knew that practicing law was hard work. In the following imaginary conversation with the author, Lincoln's responses are taken verbatim from his various writings. The source of each Lincoln response is given in abbreviated form in square brackets after each response, while the end note gives full citations.[1]

Barrie: Abe, many students seem to think that becoming a lawyer is beyond them. I tell them that if they have a passion for justice, they can and should become a lawyer. What would you say to them?

Abe: If you are resolutely determined to make a lawyer of yourself, the thing is more than half done already....Always bear in mind that your own resolution to succeed, is more important than any other one thing. [Reavis]

Barrie: Today, a person wanting to become a lawyer in Washington state must go to law school or read law with an experienced lawyer. When you became a lawyer, you simply read law books on your own. As I understand it, a lawyer encouraged you to study law, loaned you some of his law books, which you then took home and "went at it in good earnest." After you "studied with nobody," you obtained your law license, and then entered into private law partnership with that lawyer. [Autobiography] What would you tell a person who wanted to read law with you?

Abe: I am from home too much of my time, for a young man to read law with me advantageously. [Reavis] My partner ... controls our office in this respect, and I have known of his declining at least a dozen applications like yours within the last three months. [Grigsby] I am absent altogether too much to be a suitable instructor for a law student. [Thornton]

Barrie: How important do you think it is to study with someone else?

Abe: It is but a small matter whether you read *with* any body or not. I did not read with any one. [Reavis]

Barrie: Abe, I know you didn't read with anyone, but today that is not a choice. Should training be different for someone who, like you, comes to law after having experienced the "real" world, for example, by running a business?

Abe: When a man has ... already been doing for himself, my judgment is, that he reads the books for himself without an instructor. That is precisely the way I came to the law. [Thornton]

Barrie: What is the best way to get a thorough knowledge of the law?

Abe: The mode is very simple, though laborious, and tedious. It is only to get the books, and read, and study them carefully. [Brockman]

Barrie: What books?

Abe: Begin with Blackstone's Commentaries, and after reading it carefully through, say twice, take up Chitty's Pleadings, Greenleaf's Evidence, & Story's Equity &. in succession. Work, work, work, is the main thing. [Brockman; also see Thornton]

Barrie: It's as simple as that? Get the books and work?

Abe: Get the books, and read and study them till, you understand them in their principal features; and that is the main thing. [Reavis]

Barrie: Practicing law is tough. There is so much to learn and to remember. We tend to look to successful lawyers for help in understanding how to do it. What can you tell us from your practice?

Abe: I am not an accomplished lawyer. I find quite as much material for a lecture in those points wherein I have failed, as in those wherein I have been moderately successful. [Notes]

Barrie: Abe, we appreciate your modesty and honesty, but we think of you as a very accomplished lawyer. Today some law students seem to think that to get good experience in law they need to go to big cities or work with a famous lawyer. But if you are studying under the direction of another lawyer, does it matter who the lawyer is or where that lawyer practices?

Abe: It is of no consequence to be in a large town while you are reading. I read at New-Salem, which never had three hundred people living in it. The *books*, and your *capacity* for understanding them, are just the same in all places. [Reavis] If you wish to be a lawyer, attach no consequence to the *place* you are in, or the *person* you are with; but get books, sit down anywhere, and go to reading for yourself. That will make a lawyer of you quicker than any other way. [Grigsby]

Barrie: Abe, as I understand it, what you mean is that whether or not you become a good lawyer really depends on you, and not on your teachers or others. But other

than read law books, what else should a person do to practice law?

Abe: Get a license, and go to the practice, and still keep reading. That is my judgment of the cheapest, quickest, and best way for ... [a person] to make a lawyer of himself. [Thornton]

Barrie: Abe, it sounds to me like you're saying that becoming a lawyer is just a lot of plain, old-fashioned hard work. If you could tell lawyers only one thing to do in their practices to be successful, what would it be?

Abe: The leading rule for the lawyer, as for the man of every other calling, is *diligence*. Leave nothing for to-morrow which can be done to-day. [Notes]

Barrie: At the Bar's Office of Disciplinary Counsel we get a lot of complaints from clients saying their lawyers do not answer their letters or communicate with them, and that the lawyer seems to take much too long to do what the lawyer has promised to do. What is your advice?

Abe: Never let your correspondence fall behind. Whatever piece of business you have in hand, before stopping, do all the labor pertaining to it which can *then* be done. When you bring a common-law suit, if you have the facts for doing so, write the declaration at once. If a law point be involved, examine the books, and note the authority you rely on upon the declaration itself, where you are sure to find it when wanted. The same of defenses and pleas. [Notes]

Barrie: That's fine for cases going to trial. What advice do you have for other cases?

Abe: In business not likely to be litigated, — ordinary collection cases, foreclosures, partitions, and the like, — make all examinations of titles, and note them, and even draft orders and decrees in advance. This course has a triple advantage; it avoids omissions and neglect, *saves* your labor when once done, performs the labor out of court when you *have* leisure, rather than in court when you have not. [Notes]

Barrie: Today with so many lawyers in private practice there is fierce competition for clients. If a lawyer wants to become a rainmaker and bring in the clients, what should the lawyer learn to do, and what should the lawyer look out for?

Abe: Extemporaneous speaking should be practiced and cultivated. It is the lawyer's avenue to the public. However able and faithful he may be in other respects, people are slow to bring him business if he cannot make a speech. And yet there is not a more fatal error to young lawyers than relying too much on speech-making. If any one, upon his rare powers of speaking, shall claim an exemption from the drudgery of the law, his case is a failure in advance. [Notes]

Abe: In law it is good policy to never *plead* what you need not, lest you oblige yourself to prove what you *can* not. Reflect on this well before you proceed. [Linder]

Barrie: If a client comes to a lawyer and wants to sue someone, what should the lawyer do?

Abe: Discourage litigation. Persuade your neighbors to compromise whenever you can. Point out to them how the *nominal* winner is often a *real* loser — in fees, expenses, and waste of time. As a peacemaker the lawyer has a superior opportunity of being a good man. There will still be business enough. [Notes]

Barrie: Abe, its easy to say you should discourage litigation. You don't understand what it's like to have just graduated from law school with $120,000 in student loans to repay, and no clients at the door. For example, why can't a lawyer check out public filings and solicit business?

Abe: Never stir up litigation. A worse man can scarcely be found than one who does this. Who can be more nearly a fiend than he who habitually overhauls the register of deeds in search of defects in titles, whereon to stir up strife, and put money in his pocket? A moral tone ought to be infused into the profession which should drive such men out of it. [Notes]

Barrie: Suppose your client won't compromise and you conclude the only way your client can get resolution of the dispute is to sue. Do you have any advice on pleadings?

Abe: In law it is good policy to never *plead* what you *need* not, lest you oblige yourself to *prove* what you *can* not. Reflect on this well before you proceed. [Linder]

Barrie: Abe, you act as though fees are not important for a lawyer. Lawyers have big student loan debts to pay off, they have office rent and staff to pay. It costs a lot to run a business. What do you really think about legal fees?

Abe: The matter of fees is important, far beyond the mere question of bread and butter involved. Properly attended to, fuller justice is done to both lawyer and client. An exorbitant fee should never be claimed. [Notes]

Barrie: Sometimes, unfortunately, clients do not pay. What do you think about getting your fees paid in advance?

Abe: As a general rule never take your whole fee in advance, nor any more than a small retainer. When fully paid beforehand, you are more than a common mortal if you can feel the same interest in the case, as if something was still in prospect for you, as well as for your client. And when you lack interest in the case the job will very likely lack skill and diligence in the performance. Settle the *amount* of fee and take a note in advance. Then you will feel that you are working for something, and you are sure to do your work faithfully and well. [Notes]

Barrie: Sometimes clients give a note to a lawyer promising to pay. What do you think of financing those notes to get the cash you need to run your practice?

Abe: Never sell a fee note — at least not before the consideration service is performed. It leads to negligence and dishonesty — negligence by losing interest in the case, and dishonesty in refusing to refund when you have allowed the consideration to fail. [Notes]

Barrie: It sounds to me like you would not approve of nonrefundable retainers. I recently came across an old letter of yours in which it looks like you are returning money to a client. That's unusual. Since your handwriting is as bad as mine and I can't read it, would you read the letter to me?

Abe: I have just received yours of 16th, with check ... for twenty-five dollars. You

must think I am a high-priced man. You are too liberal with your money. Fifteen dollars is enough for the job. I send you a receipt for fifteen dollars, and return to you a ten-dollar bill. [Floyd]

Barrie: That's what I thought – you are actually returning money to a client because you think the client paid you too much for your legal services. That's not a situation we see very often. Is there any general principle you use in establishing and collecting legal fees?

Abe: As to fees, it is impossible to establish a rule that will apply in all, or even a great many cases. We believe we are never accused of being very unreasonable in this particular; and we would always be easily satisfied, provided we could see the money — but whatever fees we earn at a distance, if not paid before, we have noticed we never hear of after the work is done. We therefore, are growing a little sensitive on that point. [Irwin]

Barrie: Did you ever sue a client for a fee?

Abe: The Railroad Company employed me as one of their lawyers in the case.... I was not upon a salary, and no agreement was made as to the amount of the fee. The Railroad Company finally gained the case. The decision, I thought, and still think, was worth half a million dollars to them. I wanted them to pay me $5,000, and they wanted to pay me about $500. I sued them and got the $5,000. [Carthage]

Barrie: Abe, I hate to say it, but you should have had a written fee agreement with the Railroad Company. You were lucky to get paid in that case. Honesty in legal fees raises interesting questions about our core values as lawyers. I believe, for example, that absolute honesty must be one of those values. Since your day we've included some of those values in our ethical codes, clearly proclaiming that it is misconduct for a lawyer to engage in any deceit or dishonesty, or to make misrepresentations to the court or to others. Yet somehow the public still often views us as being dishonest. Why is that?

Abe: There is a vague popular belief that lawyers are necessarily dishonest. I say *vague*, because when we consider to what extent *confidence* and *honors* are reposed in and conferred upon lawyers by the people, it appears improbable that their *impression* of dishonesty is very distinct and vivid. Yet the impression is common, almost universal. [Notes]

Barrie: The public seems at times to think that most lawyers inflate their hourly bills and cheat their clients. I know from experience that the overwhelming majority of lawyers are very hard working and honest. What would you say to a person who is thinking of becoming a lawyer, who knows that lawyers handle a lot of their clients' monies, but who may be tempted to pad a few bills here and there at the expense of the clients?

Abe: Let no young man choosing the law for a calling for a moment yield to the popular belief — resolve to be honest at all events; and if in your own judgment you cannot be an honest lawyer, resolve to be honest without being a lawyer. [Notes]

Barrie: Abe, you are saying some people should simply not be lawyers. If a person has larceny in his or her heart, if a person is unwilling to be an ethical lawyer, what is your advice to them?

Abe: Choose some other occupation, rather than one in the choosing of which you do, in advance, consent to be a knave. [Notes]

Barrie: Abe, I don't think we lawyers start out intending to be knaves. But some of us, when we forget that we are here to serve our clients, become knaves by putting ourselves ahead of our clients.

NOTES

1 All of the Lincoln responses are from texts in the two volumes of *Abraham Lincoln: Speeches and Writings 1832-1858* and *1859-1865* (The Library of America, 1989 and 1994, respectively). Those volumes, in turn, are based on *The Collected Works of Abraham Lincoln*, edited by Roy P. Basler (Rutgers University Press, 1953 and 1974).

The specific writings used in this article are: Autobiography: Autobiography Written for Campaign, July 1860; Brockman: Letter to John M. Brockman, September 25, 1860; Carthage: Speech at Carthage, Illinois, October 1858; Floyd: Letter to George P. Floyd, February 21, 1856; Grigsby: Letter to William H. Grigsby, August 3, 1858; Irwin: Letter to James S. Irwin, November 2, 1842; Linder: Letter to Usher F. Linder, February 20, 1848; Notes: Notes for a Law Lecture, written in the early 1850s, unclear if ever delivered as a lecture; Reavis: Letter to Isham Reavis, November 5, 1855; Thornton: Letter to James T. Thornton, December 2, 1858.

Disciplinary Notices

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 206-733-5926, leaving the case name and your address.

Disbarred

Marvin Olsen (WSBA No. 5462, admitted 1969), of Lakewood, has been disbarred by order of the Supreme Court effective May 4, 2000, approving a stipulation. The discipline is based upon his failure to preserve client property, failure to obey court orders and failure to avoid conflicts of interest.

Matter 1: Mr. Olsen drafted a client's will in the fall of 1988 and the client died in December 1988. The will made two specific bequests and left the residue of the estate to a disabled nephew. The executor named in the will expressed reservations about becoming executor, but agreed with Mr. Olsen's promise that Mr. Olsen would do most of the work. Mr. Olsen represented the estate and performed most of the executor's duties. Mr. Olsen did not prepare a written fee agreement or discuss the amount of his fee with the executor.

Mr. Olsen filed the initial pleadings in late 1988 or early 1989 and remained attorney of record in the probate until November 30, 1992. The initial inventory listed the estate at $181,155.92. Mr. Olsen later found an additional $70,000 in a safe deposit box, but did not amend the inventory. On January 4, 1989, Mr. Olsen obtained a court order directing the executor to sell a car for no less than $10,500. After January 6, 1989, Mr. Olsen filed no further documents or pleadings in the probate case.

In March 1989, Mr. Olsen sold the car to an acquaintance for $8,000, which was less than market value. Mr. Olsen placed the proceeds from the car sale in an estate account with the proceeds of two of his client's bank accounts that he liquidated and closed. At the end of 1989, Mr. Olsen closed the estate account and moved the entire $66,561 balance to his

IOLTA account. In April 1990, Mr. Olsen received a $82,557 check from liquidating all but one of the estate's stock investments. Mr. Olsen held this check in his client file until June 27, 1990, when he deposited it into the IOLTA account. Mr. Olsen liquidated two additional bank accounts in November 1990 and May 1991. He held the cashier's checks in his client file until November 30, 1992. Mr. Olsen did not liquidate the remaining bank accounts or stock investments, nor did he place the estate funds in an interest-bearing account after closing the initial estate account in 1989.

Mr. Olsen distributed $6,000 to the executor in 1989 and paid an additional $5,000 in executor's fees in 1992. He also paid a total of $145,000 to the disabled nephew's guardian in 1989 and 1990. He paid himself $14,000 in fees. He kept no billing or time records on this case and estimated his time to calculate his fee. Mr. Olsen gave away personal property of the estate to Goodwill and to his family and friends. Mr. Olsen kept for himself a collection of jazz record albums, a short-wave radio and a family Bible. Mr. Olsen did not keep complete records of receipts and disbursements of estate property.

On April 30, 1990, Mr. Olsen wrote a check on his IOLTA account and entered it as a debit to the estate, but has never explained or accounted for this expense. Mr. Olsen did not file the required estate tax returns for 1990, 1991, 1992 or 1993. Mr. Olsen also did not file an individual tax return for the testator for 1989. The nephew's guardian wrote letters and called Mr. Olsen regarding the status of the estate from April 1990 through mid-1992. In response, Mr. Olsen sent one of the amounts listed above, but did not otherwise respond.

On November 30, 1992, at the guardian's request, the court removed Mr. Olsen as attorney for the estate. The estate lost more than $30,000 on interest penalties and fees related to Mr. Olsen's mishandling of property, and in hiring a new lawyer and executor.

Matter 2: In March 1993, the Bar Association auditor determined that Mr. Olsen's trust account contained $14,000 to $20,000 less than it needed to meet the known client balances. Mr. Olsen and his law partner at the time replaced approximately $8,000 with their own funds.

In early 1994, following a full audit, the auditor recommended that Mr. Olsen and his partner deposit $6,989.96 of their own funds into the trust account to cure existing shortages. Mr. Olsen did not deposit this amount. The auditor conducted a subsequent audit in 1997, finding that the amounts had not been replaced and that four areas in non-compliance with trust account rules noted in the original audit had not been corrected. Mr. Olsen did not have the funds available to correct the deficiency. On May 31, 1997, Mr. Olsen's trust account was short by $32,234.64.

During the time periods covered in the audits, Mr. Olsen had minors' funds in his trust account, in violation of court orders requiring the funds to be in blocked accounts. He also failed to disburse the funds to the minors' creditors, as required by court order. Mr. Olsen did not maintain sufficient records to document payments he made to himself from his trust account.

Matter 3: In 1990, Mr. Olsen represented a client in a driving while under the influence of alcohol (DUI) charge in King County District Court. The client, who spoke English as a second language, paid Mr. Olsen a flat fee of $750. Mr. Olsen had the client sign a waiver of speedy trial at the first appearance. Neither Mr. Olsen nor the client appeared for the October 2, 1990 pretrial conference, and the court issued a bench warrant for the client's arrest. In late October, the client called Mr. Olsen, asking about the status of his case. Mr. Olsen told the client that he did not need to do anything and to wait to hear from Mr. Olsen.

On November 29, 1990, Mr. Olsen wrote a letter to the court indicating that he failed to appear due to a "comedy of errors" in his office. He enclosed his notice of appearance. He asked to have the pretrial conference reinstated. The court clerk responded that the client would have to either surrender to the jail or go to the front counter and then directly to the courtroom. Mr. Olsen received the instructions from the court clerk and took no further action on the case. Mr. Olsen did not tell the client about his conversation with the clerk or the client's need to go to the court or surrender to the jail. In late December, the client called again. Mr. Olsen repeated his statement that the client did not need to do anything regarding his case. In January 1993, the client was involved in an automobile accident. The investigating officers arrested the client on the 1990 DUI charge and he spent the night in jail. Mr. Olsen refunded $400 of the client's fee for "partial compensation for the time that you spent in jail." Mr. Olsen also assisted the client in entering into a deferred prosecution of his case.

Matter 4: In January 1996, a husband retained Mr. Olsen for an uncontested dissolution. The wife had moved to England with their children. The husband's home of record was in Washington, but at the time, he was assigned to the U.S.S. Independence, whose home port was in Japan. The client asked that Mr. Olsen complete the work as soon as possible. Mr. Olsen asked if the client had plans to remarry. Prior to answering the question, the client asked Mr. Olsen if he was in fact his lawyer. When Mr. Olsen answered that he was the client's lawyer, the client stated that he planned to remarry on July 14, 1997. The client signed the initial pleadings and returned them to Mr. Olsen on February 7, 1997.

Between February 7, 1997 and April 5, 1997, the client called to inquire about the status of his case. Mr. Olsen and his staff told the client that his petition had been filed on February 20, 1997. In late March 1997, the client learned that his wife had not been served and informed Mr. Olsen. Mr. Olsen then filed the dissolution pleadings on April 5, 1997. Mr. Olsen mailed the pleadings to the client's wife in England and never filed proof that she had been properly served. Between April and July 1997, the client asked for copies of the proposed final pleadings to determine the status of his case. Mr. Olsen would not answer the client's questions or provide him copies of the documents.

On or about July 3, 1997, another lawyer called Mr. Olsen and told him that he would appear to represent the wife. During this conversation, Mr. Olsen told op-

posing counsel that the husband planned to remarry shortly. On this same day, after the phone call from opposing counsel, Mr. Olsen obtained an ex parte order of default and decree of dissolution. The date the court signed the decree was less that the required 90 days from the date of filing. On July 9, 1997, opposing counsel filed his notice of appearance, not aware of the ex parte orders. On July 12, the client obtained certified copies of his dissolution decree to be certain that he could remarry. On July 14, 1997, the client remarried. On August 30, 1997, opposing counsel moved to set aside the decree on the grounds that the wife had not been properly served, the 90 days had not elapsed, and an order of default should not have been entered without prior notice to opposing counsel.

Mr. Olsen did not notify his client about the motion to set aside his decree. On October 27, 1997, the court granted the motion, but delayed entry of an order to allow the parties time to resolve the disputes. Mr. Olsen never told his client about the order or his need to negotiate an agreement with his first wife. The client learned of the order from the Bar Association in March 1997. The client retained new counsel. In July 1997, the court set aside the dissolution decree.

Matter 5: On May 17, 1995, Mr. Olsen prepared a will for a client, naming himself as the personal representative and trustee for the trust established in the will. The client died on June 24, 1995. The estate consisted of about $225,000 in assets. The will provided that the estate be held in trust with monthly income paid to the client's wife during her life. The remainder of the estate was to be distributed equally to a nephew and a cousin.

On July 23, 1995, Mr. Olsen obtained an order admitting the will to probate and appointing himself as personal representative, to serve without bond. He also filed a notice to creditors and other pleadings. Mr. Olsen did not file any other pleadings in the case until June 3, 1997. Mr. Olsen did not file the required inventory and appraisement. In 1995 and 1996, the beneficiaries each filed separate requests for special notice of actions taken in the probate. Mr. Olsen filed the inventory in June 1997 after a motion to compel was filed. The wife, through her lawyer, requested that Mr. Olsen provide an accounting of the trust. Mr. Olsen did not respond to this request.

In spring of 1997, the beneficiaries negotiated an agreement to terminate the trust and disburse one-third of the assets to each beneficiary. The agreement was not to be effective until Mr. Olsen filed an inventory and provided an accounting of expenditures. Mr. Olsen filed an inventory on June 3, 1997, one day prior to a hearing requesting that the court order the inventory and accounting. He did not provide an accounting.

On June 12, 1997, the wife died. On September 29, 1997, the court ordered Mr. Olsen to provide an accounting by October 15, 1997. Mr. Olsen did not comply with this court order. On December 8, 1997, Mr. Olsen made a $57,123.38 disbursement to the two beneficiaries. On December 8, 1998, the court ordered Mr. Olsen to provide an accounting and partial distributions to the two beneficiaries by January 5, 1999. Mr. Olsen did not comply with this court order.

At the January 20, 1999 hearing, the court ordered that the final distribution be made by February 19, 1999 and assessed $4,971 in attorney's fees against Mr. Olsen. On January 29, 1999, Mr. Olsen made a partial distribution of $30,000. He did not provide an accounting or make the final distribution as required by the court order. The court ordered Mr. Olsen to be removed as personal representative if he had not made the final distribution by April 26, 1999 and provided a full accounting by that time. On April 26, 1999, Mr. Olsen made another partial distribution of $20,000. He did not provide an accounting or make the final distribution.

On May 3, 1999, the court removed Mr. Olsen as personal representative and trustee and directed that he turn over all funds and estate property to one of the beneficiaries' lawyers by May 5, 1999. Mr. Olsen did not comply with this court order. On July 28, 1999, the court held Mr. Olsen in contempt for failing to turn over estate funds and records, but suspended the finding on the condition that Mr. Olsen cooperate in an audit of his trust account and turn over all the funds by the next day. The Bar Association informed Mr. Olsen that it would seek his immediate interim suspension if he failed to turn over the funds. As of the date of the stipulation, February 10, 2000, Mr. Olsen had not turned over the funds or provided a complete accounting.

Matter 6: On December 31, 1997, Mr. Olsen agreed to represent a husband in a dissolution action. During the initial conference, Mr. Olsen told the client it would take approximately 90 days after signing the petition to get his divorce. The client signed the petition and other required pleadings on January 8, 1998. Mr. Olsen never filed the petition or served it on the wife. In April 1998, the client called several times regarding the status of his divorce. Both Mr. Olsen and his secretary told the client that the petition had been filed and they were waiting for the 90 days to expire. When the client called in July to find out why the divorce was taking so long, either Mr. Olsen or his secretary told the client that the petition had not been filed. The client terminated Mr. Olsen's services on July 19, 1998. At that time, the original signed petition and pleadings were loose in the front of the file. Mr. Olsen did not respond to the Bar Association's requests for information on this matter.

Matter 7: In September 1998, an 81-year-old client retained Mr. Olsen to help him to correct his real property records to reflect his sole ownership of his home. His wife had died recently, and under the terms of their community property agreement, the client had become the sole owner of the home. During the first conference, the client gave Mr. Olsen the original community property agreement. Mr. Olsen told the client that an affidavit would be necessary to clear the title and that he would take care of that. Also, Mr. Olsen told the client that he would record the client's community property agreement. The client signed the affidavit on September 23, 1998. Mr. Olsen took no further action on this case. He did not record the affidavit or the community property agreement.

In the fall of 1998, the client gave power of attorney to his case manager. In October 1998, the case manager attempted to contact Mr. Olsen to obtain the client's

community property agreement. Although Mr. Olsen promised to mail the community property agreement to the case manager, she never received it.

In December 1998, the client's house was being sold. Again, the case manager attempted to reach Mr. Olsen. After many phone calls, a courier picked up the community property agreement from Mr. Olsen's office the day prior to closing. Mr. Olsen's failure to respond generated additional closing expenses for his client. Mr. Olsen also failed to respond to the Bar Association's requests for information on this matter.

Mr. Olsen's conduct violated RPC 1.1, requiring lawyers to provide competent representation; RPC 1.3 and 3.2, requiring lawyers to diligently represent their clients and to expedite litigation; RPC 1.14, requiring lawyers to account for client property in their possession and to deliver property to the client upon request; RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; RPC 1.5, requiring lawyers' fees to be reasonable and that the basis of the fee or rate be communicated to the client; RPC 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; RPC 3.4(c), prohibiting lawyers from knowingly disobeying a court order; RPC 1.8(a), prohibiting a lawyer from knowingly taking an ownership or possessory interest adverse to a client; RPC 1.8(j), prohibiting a lawyer from taking a proprietary interest in the cause of action of the subject matter of litigation; RPC 8.4(b), prohibiting committing a criminal act (theft of estate property) that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects; RPC 5.1 and 5.3, requiring lawyers supervising lawyers and nonlawyer assistants to make reasonable efforts to be certain the RPCs are followed; RPC 3.3(f), requiring lawyers in ex parte proceedings to inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse; and RLD 2.8, requiring lawyers to respond to Bar Association requests for information.

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

Disbarred

George R. Cole (WSBA No. 5575, admitted 1974), of Bellingham, has been disbarred by order of the Supreme Court effective May 4, 2000, approving a stipulation. The discipline is based upon his conviction of one count of rape in the third degree.

On March 5, 1997, the Whatcom County Prosecuting Attorney's Office charged Mr. Cole with three counts of rape in the third degree. On May 27, 1997, following a jury trial, Mr. Cole was found guilty of one count and not guilty of the other two. On October 16, 1997, Mr. Cole was sentenced to 11 months' confinement, placed on 12 months of community supervision with conditions, and ordered to pay restitution and legal financial obligations. Mr. Cole did not admit the conduct at the criminal trial or in these proceedings. He accepted that pursuant to RLD 4.9, his conviction is conclusive evidence of guilt in the disciplinary proceeding.

Mr. Cole's conduct violated RCW 9A.44.060, rape in the third degree; RLD 1.1(a), subjecting a lawyer to discipline for committing an act involving moral turpitude; and RLD 1.1(c), subjecting a lawyer to discipline for violating his oath or duties as a lawyer.

Sachia Stonefeld represented the Bar Association. Kurt Bulmer represented Mr. Cole.

Admonished

Jacob Cohen (WSBA No. 5070, admitted 1973), of Oak Harbor, has been ordered admonished based on a stipulation approved by the disciplinary board. The disciplinary action is based upon his failure to make reasonable efforts to convince his client to consent to disclosure of a false representation she made to the court.

In 1997, Mr. Cohen represented the wife in a dissolution action. The wife left the state with $140,000 in community funds, without the husband's knowledge, and filed a declaration stating that the funds were "spent, gambled or given away — they are lost forever." The court ordered the client to deposit any remaining funds into the court registry. On or about August 4, 1997, Mr. Cohen received a $77,368.73 check from the client and a fax that Mr. Cohen believed denied him authority to deposit the funds in the court registry. He asked the client to clarify her intentions.

On August 15, 1997, Mr. Cohen spoke with his client and still believed that he did not have authority to deposit the funds into the court registry. He also believed that his client may not have had the funds to cover the check. Mr. Cohen did point out that depositing the check would contradict the client's earlier statement that she did not have the money. He did not counsel the client to correct her earlier statement, or explain that he would have to withdraw from the case and could not help her violate a court order. In August 1997, the parties orally settled for $72,000, but disagreed about wording of the final documents. Mr. Cohen returned the original check to his client.

In September 1997, Mr. Cohen sent proposed final pleadings to opposing counsel and indicated that he had a $72,000 cashier's check from his client. Opposing counsel obtained an ex parte order requiring that the funds be deposited immediately and setting a show cause hearing to determine why the funds had not been deposited sooner, as required by the earlier court order. Mr. Cohen's office immediately forwarded the check to the court. Mr. Cohen filed a declaration explaining the existence of the first check.

Mr. Cohen's conduct violated RPC 3.3(d), requiring lawyers, when they learn that material evidence offered to a tribunal is false and disclosure of the evidence is prohibited by RPD 1.6, to make reasonable efforts fo convince the client to consent to disclosure. If the client refuses to consent, the lawyer may seek to withdraw from the representation.

Douglas Ende represented the Bar Association. Leland Ripley represented Mr. Cohen.

NON-DISCIPLINARY NOTICE

Interim Suspension

William Freeman (WSBA No. 17586, admitted 1974), of Bellingham, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered July 18, 2000.

Opportunities to Serve

Washington Defender Association Board of Directors

Application deadline: November 15, 2000

The Board of Governors of the WSBA is accepting letters of interest from members interested in serving a three-year term on the Board of Directors of the Washington Defender Association. The three-year term will commence on January 1, 2001. The incumbent is eligible for reappointment and must also submit a letter of interest.

The board generally meets 10 or 11 times per year (approximately one and one-half hours per meeting). In addition, individual members, particularly the president, assist in meetings with government officials and in advising management of the Washington Defender Association on a wide range of issues. The board has hiring and firing authority over the director, and approves annual budgets, contracts with the County, and bargaining agreements with the union. It also has a mediation and review role in disputes with union members.

Please submit a letter of interest and résumé to the Office of 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 – Two Positions Available

Application deadline: November 15, 2000

The Board of Governors of the WSBA is accepting letters of interest from members interested in serving a two-year term on the Legal Foundation of Washington Board of Trustees (two positions). The two-year term will commence on January 1, 2001. One of the two incumbents is eligible for reappointment and must also submit a letter of interest.

The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for those who are very poor and 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.

Please submit a letter of interest and résumé to the Office of the Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Limited Practice Board – Two Positions

Application deadline: November 15, 2000

The Board of Governors of the WSBA will be nominating two members who are appointed by the Supreme Court to serve a four-year term on the Limited Practice Board, which will commence on January 1, 2001. Incumbents are eligible for reappointment and must also submit a letter of interest. The board oversees administration of and compliance with the Limited Practice Office Rule (APR 12) and meets every other month.

Please submit a letter of interest and résumé to the Office of 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 Available

Application deadline: November 15, 2000

The Board of Governors of the WSBA is accepting letters of interest from members in serving a three-year term on the Northwest Justice Project Board of Directors (two positions). The three-year term will commence on January 1, 2001. One of the two incumbents is eligible for reappointment and must also submit 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.

Please submit a letter of interest and résumé to the Office of the Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Office of Public Defense Advisory Committee

Application deadline: November 15, 2000

The Board of Governors of the WSBA is accepting letters of interest from members in serving a three-year term on the Office of Public Defense Advisory Committee. The three-year term will commence on January 1, 2001. The incumbent is eligible for reappointment and must also submit a letter of interest.

The Office of Public Defense Advisory Committee meets on a quarterly basis to set policies for appellate indigent defense funding, approve legislative and rule requests, review budgetary matters, oversee new OPD programs, and consider appeals of billing decisions. During the term of his or her appointment, no appointee may: (a) provide indigent defense services except on a pro bono basis; (b) serve as an appellate judge or an appellate court employee; or (c) serve as a prosecutor or prosecutor employee. Members of the advisory committee shall receive no compensation for their services as members of the committee, but may be reimbursed for travel and other expenses in accordance with rules adopted by Office of Financial Management.

Please submit a letter of interest and résumé to the Office of the Executive Director, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330 or e-mail oed@wsba.org.

Committee Reports

Excerpted from the committees' recently submitted annual reports.

Amicus Brief

A policy on input from other members and groups within the Bar was adopted. This year, the committee reviewed four requests for amicus briefs; they approved one and turned down the other three. These decisions were approved by the Board of Governors. All WSBA amicus efforts should be reviewed by the committee and submitted to the Board of Governors for approval. The committee welcomes the submission of three-page memoranda on any amicus request before them, but do not normally receive presentations at meetings.

Character and Fitness

The committee holds hearings concerning bar examination applicants whose character and fitness to practice law have been questioned as a result of past misconduct. The committee also holds hearings concerning petitions for reinstatement by disbarred attorneys, and to otherwise fulfill its tasks as outlined in RLD 9.3. Membership in this 14-person committee includes three nonlawyers. The committee meets five to six Saturdays a year and issues written decisions. The committee was able to conduct all its meetings during the year as scheduled with a quorum present, and issued all written findings of fact, conclusions of law and recommendations within approximately 20 days of the hearing.

Consumer Protection
Efforts to have the Washington State Insurance Commissioner review and assess certain activities which the committee believed were anti-consumer and amounted to the unauthorized practice of law were continued. The committee supported proposed legislation regarding superior court mandatory arbitrations. The chair testified before the Legislative Committee (which supported the mandatory arbitration proposal with some revisions) as well as the House Judiciary Committee. The committee also considered matters referred to it regarding claims of the unauthorized practice of law.

Continuing Legal Education
The committee reviewed and recommended plans for efficient and effective delivery of CLE that meets the needs of members throughout the state. The committee reviewed all proposed seminar topics, and suggested new topics, enhancements and combinations for the coming year. They will continue to address the ways in which new technology can be harnessed to foster greater access and choice for all WSBA members regardless of their location.

Court Improvement
With the completion of a survey about the physical accessibility of local courts for persons with disabilities, the committee will continue implementation of education and related strategies to improve physical access to and use of courthouses statewide. The committee reviewed, commented and provided input to WSBA legislative liaisons on proposed legislation affecting the courts and judicial system. They worked toward completion of a matrix about alternative dispute resolution in which local rules and procedures on ADR requirements were summarized. The committee also participated in the Board for Judicial Administration (BJA)-initiated Project 2001 and the BJA-created Public Trust and Confidence Committee.

Court Rules and Procedures
During the fiscal year, the committee concentrated primarily on the civil rules and the mandatory arbitration rules. They also responded to requests for comments from the Supreme Court on other matters, and completed work on issues carried over from previous years. The committee presented its annual report to the Board of Governors at its June meeting, and the board took action as reported in "The Board's Work" in the August issue of *Bar News* (page 30).

Committee for Diversity
Outreach included hosting a breakfast and career day program at Gonzaga Law School, and participating in the Law Week 2000 event planned by the Loren Miller Bar Association. The committee reviewed their original mission statement and "new" role with respect to the request to serve as liaison in the Board of Governor's efforts to increase communication with minority and specialty bar associations as part of ongoing Strategic Initiative #10 of the WSBA's Long-Range Strategic Plan (the WSBA will continue to promote diversity and equality in the courts, the legal profession and the Bar). They considered President Eymann's proposal to add a minority seat to the Board of Governors, and hosted a meeting involving President Eymann, leaders of minority and specialty bar associations, and others to further discuss this proposal.

Editorial Advisory Board
The Board approved additions to the Editor's Handbook Appendix. The Board adopted a policy of annual performance reviews for the *Bar News* editor and developed the format and content of these reviews. The publication frequency of *Bar News* was studied and discussed. The Board also began the search for a new *Bar News* editor.

Electronic Communications (EC2)
EC2 subcommittees and study groups are indicative of the scope of the issues and projects the committee is involved in. These groups are: access to justice; administrative task tracking; technology articles; CLE topics; digital signatures; e-filing and privacy; emerging issues; encrypted e-mail; list serves, chat rooms and forums; lawyers practicing online; legal research using the Internet; legislative; public data access; safe e-shopping; speakers; strategic initiative; technology in Washington courtroom; UETA and UCITA; web back-ups; web marketing; and web time and billing. During the year, EC2 established a cooperative relationship with like groups at other bar associations; compiled a list of "best practices" for handling documents on the Internet; and compiled, archived, and made searchable the materials and information gathered by the committee.

Interprofessional
This has been a year of transition for the committee. Previously, the committee mediated disputes between attorneys and other professionals, primarily health care providers and expert witnesses. In October 1999, they discontinued mediating disputes. The committee's new overall goal is to improve communication between lawyers and other professionals. To this end, the committee is planning to develop a seminar addressing issues involved in working with other professionals.

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." They submitted recommendations to the Board of Governors regarding the process, as well as an amendment to the committee's guidelines. The committee also adopted changes to the candidate questionnaires.

Law Examiners
The committee's main task is to prepare and grade the best bar examination possible, and to continue to streamline and update the bar exam training, preparation and grading process. The committee is near its goal of having a full exam in its "question bank." The bank serves as an excellent training tool, and also provides a reserve of approved questions when the need arises. This year the committee edited, revised and produced an updated version of its Handbook of Procedures, which dictates preparing and grading bar exam questions. At the request of the chief justice, Committee Chair Frank Slak, Governor Stephen Henderson, and Committee Liaison Bob Welden participated in two meetings with representatives of the Idaho and Oregon Bar Associations for the purpose of exploring a tri-state reciprocal practice or admissions agreement. Because Washington has a reciprocity rule, the other states developed a draft rule with special reciprocity for Washington lawyers.

Lawyers' Assistance Program (LAP)
With information gleaned from examining the rules and procedures of 40 other states to determine how other jurisdictions handle issues of confidentiality, determine the type of structure, and set policies and procedures for similar programs, the committee is now drafting a proposed LAP rule, which will be presented to the Board of Governors. A successful, well-attended statewide conference was held in the spring in Blaine, Washington. Efforts were initiated to solicit law schools to provide LAP information to students.

Lawyers' Fund for Client Protection
The committee reviews and approves (or disapproves) applications for gifts from the Lawyers' Fund for Client Protection. The committee's work is publicized on a regular basis in *Bar News* — quarterly reports are published in the January, April and July issues, and the annual report is published every October or November. A new pamphlet outlining the parameters of the work of the committee and the procedure for obtaining a gift from the fund was developed.

Legal Assistants
In pursuing its goal of expanded roles for paralegals, particularly as it relates to issues of access to justice, the committee adopted the following Statement of Recommendation: "The 1999-2000 WSBA Legal Assistants Committee recommends that the WSBA actively promote the utilization of legal assistants as one method of enhancing the delivery of affordable legal assistance." The committee examined other states' actions regarding the licensing of legal assistants. They have established and maintained a strong relationship with the Access to Justice Board, and have been working toward providing legal services to low-income individuals with the use of nonlawyer assistants who work under the supervision of licensed attorneys. The committee spent time commenting on GR22, the proposed Definition of the Practice of Law, and GR21, the proposed Court Facilitator Rule.

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. This year, the committee made recommendations on nine legislative proposals and conducted a Legislative Roundtable with groups interested in legislation bearing on the Bar. Additional information about the work of the committee can be found on the WSBA website at www.wsba.org/c/leg.

Mandatory CLE Board
The main goal of the board is to make the process of taking approved courses and submitting the results to the WSBA as easy to accomplish and as user-friendly as possible. The board finished comments and changes to the new MCLE rules, and they are now working on the details of the implementation of the changes. Through enhanced communication with members, the number who fail to report their CLE credits on time has been significantly reduced.

Pro Bono and Legal Aid (PBLAC)
PBLAC continues to work to implement the Volunteer Attorney Legal Services Action (VALS) Plan, adopted by the Board of Governors in 1994; in September 1999, PBLAC issued a five-year progress report of the implementation of the VALS Plan. In an effort to determine what motivates attorneys to volunteer, PBLAC developed a survey which was published in *Bar News* (August 2000, p. 37) and posted on the WSBA website. PBLAC participated in a national effort to develop a resolution for the Conference of Chief Justices, "Providing and Institutionalizing Leadership on Equal Justice." The rule developed by PBLAC two years ago to award CLE credit to attorneys for doing pro bono work was adopted this year by the Washington Supreme Court. Committee members assisted the Equal Justice Coalition in organizing "Summer of Justice" events.

Professionalism
The committee designed a shorter version of its successful CLE seminar "Ethics, Professionalism and Civility: The Hard Questions," which was presented at Celebration 2000. A Civility Code was drafted, which will be presented to the Board of Governors and then taken to local and specialty bar associations for input and discussion. The committee also collaborated with the *Bar News* editor to increase the number of articles about professionalism, made contact with the Fetzer Institute on the Healing and Law Project, developed enhanced understanding of underlying issues that are at the root of incivility, and began conversations with the judiciary on issues of incivility and professionalism violations within the courtroom.

Rules of Professional Conduct
The committee anticipates that by the end of the fiscal year, it will have issued approximately 45 opinions. Each opinion is researched, briefed, debated, drafted, frequently amended, and then issued. Some issues are so involved that they require extraordinary outside work by an assigned task force selected from the committee membership. The committee worked with the WSBA webmaster, resulting in the availability of ethical opinions and committee information on the WSBA website (www.wsba.org/ethics).

We regret that reports from the following committees were not received in time for publication: Alternative Dispute Resolution, Civil Rights, Corrections, Disciplinary Board, Law Clerk, Law Office Management Assistance Program, Legal Services to the Armed Forces, and Resolutions.

Section Reports

Alternative Dispute Resolution (ADR)
Scott Peppet of Harvard Law School conducted a seminar on problem-solving in negotiations and mediation at the section's annual meeting in October. The Ninth Annual Northwest ADR Conference was held in April and was co-sponsored by the section, the University of Washington Law Foundation and the Washington Mediation Association. It was attended by over 300 people and included more than 30 programs held over two days. A new Internet directory of ADR providers was completed and will soon be available at http://www.adr-wa.com. The Legislation and Court Rules Committee was very active in providing input to the drafters of the proposed Uniform Mediation Act.

Antitrust, Consumer Protection and Unfair Business Practices
The 1999 annual conference gave particular attention to the product distribution and insurance industries, to consumer class actions, and post-employment restrictions. Two issues of the section newsletter were published under the leadership of David Lundsgaard, Joseph McMillan and Melissa Scanlan. The third edition of the *Antitrust and Consumber Protection Handbook* was

recently published. It contains new updates and amendments to Washington and federal antitrust, consumer protection, trade regulation and e-commerce law.

Business Law
This section sponsors two major CLEs each year — the Northwest Securities Institute and the midyear meeting. The Northwest Securities Institute, held in Portland in February, was cohosted by the Oregon State Bar. The June midyear meeting was held in Seattle and was a combined meeting with the Taxation Section. In addition to these annual programs, the Securities Committee continued its informal, half-day "Meet the Securities Regulators" program, at which federal and state securities regulators discussed current issues with practitioners. The Committee on Conflicts of Interest published an updated version of its *Conflicts of Interest in Business Transactions* deskbook in June.

Environmental and Land Use Law
The section web page was created this year and is accessible via the WSBA website (www.wsba.org). In January, the section sponsored a brown-bag program on the Endangered Species Act. They expected about 60 attendees, but over 200 people showed up. The section now has over 1,100 members, a five percent increase from last year.

Family Law
In April, the section sponsored a skills-training seminar which focused on domestic violence orders and hearings. At the same time, delegates from the executive committee participated in the annual meeting of the Family Law Council of Community Property States. The section also sponsored an annual midyear meeting in Spokane that included seminars on the newly enacted relocation statute and new case decisions from the Supreme Court and courts of appeal.

Intellectual Property
Almost 600 lawyers are members of the Intellectual Property Section, making it one of the largest. The Intellectual Property Institute featured the Honorable M. Margaret McKeown as a keynote speaker. A series of brown-bag lunch seminars was cosponsored by the section and Washington Lawyers for the Arts. Section committees are continually engaged in analyzing proposed legislation with intellectual property implications. The section has been instrumental in sponsoring legislation such as the personality rights legislation enacted in 1998.

International Practice
Last fall saw another successful foreign lawyer program in which visiting lawyers pursuing post-doctoral studies at the University of Washington were paired with Seattle law firms that gave them an informal introduction to the practice of law in the U.S. Later in the year, the Supreme Court approved the section's proposal to modify the rules for the admission of foreign law consultants. In the spring, section members toured the Temple of Justice and were greeted by five Supreme Court justices.

Labor and Employment Law
In May 2000, lawyers were invited to join this newly created section. Nearly 400 people responded and an executive committee was elected in August. Section activities will provide a forum for members to exchange ideas and get acquainted with each other.

Law Practice Management and Technology
This year the section sponsored a series of brown-bag seminars. An average of 24 people attended each program. RealAudio recordings of the brown-bag programs can be accessed via the section web page on the WSBA website (www.wsba.org). The section co-sponsored the Law Office Management Institute Expo with the Puget Sound Chapter of the Association of Legal Administrators. A deskbook is currently in development.

Litigation
The midyear seminar featured Michael Tigar, a renowned litigation specialist and speaker. The executive committee broke tradition this year and held the seminar in Seattle, rather than Lake Chelan. A semi-annual newsletter was published to keep section members abreast of important developments in litigation. The executive committee continued to monitor legislative proposals and proposed court rules. The section enjoyed a significant increase in membership this year. Plans for the coming year include an additional annual publication and updating the *Washington Civil Trial and Evidence Manual.*

Public Procurement and Private Construction
A midyear seminar co-sponsored by Associated General Contractors of Washington was held in June, focusing on alternative methods of public procurement. The section is finalizing a set of pattern jury instructions dealing with construction law, and will likely sponsor a seminar related to the instructions.

Senior Lawyers
The primary mission of this section is to promote good fellowship and camaraderie among lawyers aged 55 and older. Each year the section sponsors a CLE seminar covering topics of particular interest to senior lawyers. It includes a luncheon and a reception. A quarterly newsletter is published which contains book reviews, travel diaries written by section members, and articles on current topics.

World Peace Through Law
Section activities include monthly brown-bag programs, a newsletter, an annual all-day CLE, an annual award luncheon, a summer picnic and a winter holiday party. Brown-bag speakers this year included University of Washington Law Professor Joan Fitzpatrick, Bruce Gryniewski of Washington Ceasefire, and Tim Harstad of the Rural Development Institute.

We regret that reports from the following sections were not received in time for publication: Administrative Law; Corporate Law Department; Creditor/Debtor; Criminal Law; Elder Law; General Practice; Health Law; Indian Law; Real Property, Probate & Trust and Taxation Law.

Implementation of Changes to GR 14 Extended

By order dated June 12, 2000, the Supreme Court of Washington adopted changes to GR 14 which became effective September 1, 2000. The changes to GR 14 and the companion amendments to RAP 10.4, CR 10, CrR 1.5, CRLJ 10 and CrRLJ 1.5 require the top margin of the first page of a pleading to be a minimum of three inches, and the bottom and side margins to be a minimum of one inch. All subsequent pages must have a minimum of one-inch margins all around. Since the changes to GR 14 were adopted, the Court Management Council has received many questions from the bench and bar regarding the implementation of the new margin requirements. Therefore, implementation of the margin requirements is delayed until April 1, 2001 to ensure uniform application throughout the state.

Upcoming BOG Meetings

The Board of Governors' meeting schedule is as follows:

Oct. 27-28 – Hampton Inn, Richland, WA
Dec. 1-2 – Port Ludlow Resort & Conference Center, Port Ludlow, WA
Feb. 9-10 – Inn at Gig Harbor, Gig Harbor, WA

With the exception of a one-hour executive session the morning of the first day, BOG meetings are open, and all WSBA members are welcome to attend. RSVPs are appreciated, but not required. Please contact Lisa KauzLoric at 206-733-5944 or e-mail oed@wsba.org.

New Edition of the Family Law Deskbook

The WSBA-CLE has released the new edition of *Family Law Deskbook 2000*. The deskbook is now in three volumes of approximately 2,200 pages, with selected forms on disk and 10 new chapters to help Washington practitioners enhance civility and maintain privacy for their clients, use retained and court-appointed professionals effectively in litigation, access (or protect) records, and draft effective pretrial motions. It contains analysis of the most recent case law and legislative developments affecting third-party custody and visitation, a full chapter on King County's Unified Family Court, and a list of Internet resources. The cost of the Washington *Family Law Deskbook 2000* is $385 ($346.50 for registered Automatic Update Service subscribers) plus tax, shipping and handling. Please call 206-733-5918 for further information, to place an order, or to register for a discount through the Automatic Update Service.

New Mandatory CLE (MCLE) Reporting Requirements

Beginning January 1, 2001 an amendment to APR Rule 11 will require sponsors of CLE activities to report attorney attendance directly to the WSBA. Your credits will be tracked by the WSBA, and credit status will be reported regularly to you. This rule change will streamline the MCLE program and make it more user-friendly. The November issue of *Bar News* will contain a thorough explanation of the new rule.

2000 WSBA Award Recipients

The Board of Governors takes great pleasure in honoring the following individuals who are this year's recipients of the Washington State Bar Association Awards.

Award of Merit – Louis Rukavina III
President's Award – Russell Speidel, Caitlin Newman Velazquez
Angelo Petruss Award for Lawyers in Public Service – Barbara Vining
Oustanding Judge Award – Honorable Richard P. Guy
Pro Bono Award – Rosemarie LeMoine
Lifetime Service Award – Leonard Schroeter
Courageous Award – Garth Dano
Professionalism Award – Peter Greenfield
Affirmative Action Award – Equality and Fairness Committee of the Superior Court Judges' Association for their *Quick Reference to Disabilities in the Courtroom* manual
Excellence in Legal Journalism Award – Karen Dorn Steele, *Spokane Spokesman-Review*

The awards were presented at the Awards Luncheon, held as part of Celebration 2000 on Friday, September 15 in Spokane.

Rulemaking Procedures

Effective September 1, 2000, there are some noteworthy changes to General Rule 9, the Supreme Court's rule on rulemaking. GR 9(g)(1) states that all proposed rules shall be published, including on the WSBA website, and that publication of proposed rules shall be announced in *Bar News*. Similarly, adopted rules shall be published, including on the WSBA website, and shall be announced in *Bar News*. Finally, please be advised that the WSBA's Court Rules and Procedures Committee is scheduled to review the Rules of Appellate Procedure (RAPs) and the Rules for Appeal of Decisions of Courts of Limited Jurisdiction (RALJ) when it reconvenes this fall. Suggestions for changes to the court rules should be submitted to: Washington Supreme Court, Temple of Justice, PO Box 40929, Olympia, WA 98504-0929. (Note: Court rules can also be found on the court's website at http://www.courts.wa.gov/rules.)

Discipline 2000 Task Force

The Discipline 2000 Task Force will meet at the WSBA offices on Thursday, October 12 from 10:00 a.m. to noon. Open to the public, the meetings are held to examine and suggest improvements for our discipline system. Contact Randy Beitel at 206-727-8257 for more information.

Usury Rate: The average coupon equivalent yield from the first auction of 26-week treasury bills in September 2000 is 6.305 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 June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears at http://www.wsba.org/barnews/.

Employee Legal Advocates, PS

welcomes as an associate to the firm

Michelle D. Gaines

Ms. Gaines graduated from the
University of Washington School of Law, 1999

We are also pleased to announce our
expansion to new offices at

The Court in the Square
401 Second Avenue South, Suite 650
Seattle, Washington 98104
206-467-5090
206-467-5095
ela@employ-law.com
www.employ-law.com

Groff & Murphy, PLLC

is pleased to announce that

Daniel E. Mueller

has joined the firm as an associate.

Mr. Mueller is a graduate of
The University of South Carolina
School of Law.

Mr. Mueller's practice will focus
on complex civil litigation.

1191 Second Avenue, Suite 1900
Seattle, Washington 98101
206-628-9500
Fax: 206-628-9506
E-mail: dmueller@groffmurphy.com

Foster Pepper & Shefelman PLLC

Attorneys at Law

We are pleased to announce the expansion of
our Seattle office with the addition of:

Diana L. Dietrich
Member
Litigation/Antitrust

Ivy D. Arai*
Associate
Business/Healthcare

Joseph A. Brogan*
Associate
Land Use

Andrew M. Carter*
Associate
Litigation

Angelie C. Chong*
Associate
Municipal

Susan E. Drummond*
Associate
Land Use/Real Estate

www.foster.com
*Washington admission pending

Anchorage Portland Seattle Spokane

SEBRIS BUSTO, P.S.

is pleased to announce that

Julie L. Kebler

has joined the firm as "Of Counsel"

and

Geoffrey M. Boodell

has joined the firm as an associate.

SEBRIS BUSTO, P.S.
1500 Plaza Center • 10900 NE 8th Street
Bellevue, Washington 98004
425-454-4233
Fax: 425-453-9005

THOMPSON & HOWLE

is pleased to announce
the opening of its University District office
and
the relocation of its downtown office

Downtown Office	University District Office
Suzanne C. Howle	Karen Marie Thompson
Donna Calf Robe	Michelle L. Graunke
Maureen Over	Maureen Over
1301 Fifth Avenue	4115 Roosevelt Way NE
Suite 2600	Suite B
Seattle, WA 98101	Seattle, WA 98105
206-682-8400	206-545-7777
206-682-9491	206-545-0777

Thompson & Howle will continue to emphasize guardianship, probate, and elder law, and trust and estate planning.

Karen Marie Thompson and Suzanne C. Howle are available for appointment as arbitrators and TEDRA mediators.

Thomas M. Keller remains Of Counsel.

TREECE RICHDALE MALONE, PS

is pleased to announce that

Christopher R. Casey

and

Eugene W. Wong

have become associated with the firm.

1718 NW 56th Street
Seattle, Washington 98107-5218
206-789-2111

WECHSLER, BECKER, ERICKSON, ROSS, ROUBIK & HUNTER, LLP

is please to announce that

Carl T. Edwards

has joined the firm as a partner.

The firm's name has been changed to

WECHSLER, BECKER, ERICKSON,
ROSS, ROUBIK & EDWARDS, LLP

The firm will continue its emphasis on complex family law matters, including mediation and arbitration services.

4550 Bank of America Tower
701 Fifth Avenue
Seattle, Washington 98104
206-624-4900

Calendar

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.

ADR

Professional Mediation Skills-Training Program
October 13-15 & 21-22 – Seattle. 36 CLE credits, including 2 ethics pending. By UW-CLE; 206-543-0059.

ANTITRUST

Annual Antitrust, Consumer Protection & Unfair Business Practices Conference
November 17 – Seattle. 5-6.25 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

BUSINESS

Mergers and Acquisitions (morning)
Purchase and Sale of Business (afternoon)
November 9 – Seattle. 3 CLE credits estimated per session. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Employment Law Conference
November 9-10 – Chicago; November 16-17 – San Francisco. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

ESTATE PLANNING

45th Annual Estate Planning Seminar
October 16-17 – Seattle. 15.5 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

How to Draft Wills and Other Estate Planning Documents
October 26 – Seattle and Olympia. 7 CLE credits, 1 ethics. By WSBA-CLE and WYLD; 800-945-WSBA or 206-443-WSBA.

How to Probate an Estate and Handle Post-Mortem Matters
October 27 – Seattle. 6.25 CLE credits, including .75 ethics. By WSBA-CLE and WYLD; 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethical Dilemmas for the Practicing Lawyer
October 11 – Vancouver; October 19 – Mt. Vernon; October 27 – Seattle; November 1 – Yakima; November 8 – Spokane; November 15 – Tacoma. 4 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics Tele-CLE Series
November 9 – Family Law; November 16 – Ballad of Nightmare Client. 1.5 CLE ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Art of Law: A Workshop on Professionalism
November 30 – Seattle. 7 CLE credits, including 5 ethics estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

One Man Play: *Impeach Justice Douglas!*
November 30 – Seattle. 1 CLE ethics credit estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Family Law Tax Issues
November 2 – Seattle; November 3 – Portland. 6.75 CLE credits, including .5 ethics pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Psychology of Divorce
November 3 – Seattle. 6 CLE credits, including 1 ethics pending. By KCBA; 206-340-2578.

GENERAL

Defense Lawyers – Why We Do What We Do
October 6 – Spokane. .5 CLE credits pending. By Spokane County Bar Association; 509-477-2665.

Misdemeanors: Not So Simple Anymore
October 6 – Seattle; October 13 – Spokane. 5.5 CLE credits, including 1 ethics pending. By WACDL; 206-623-1302.

Computer Camp for Counselors™
October 11 – Seattle (Basic Workshop/morning); (Legal Research/afternoon); October 12 – Seattle (Advanced Internet/morning). 4 CLE credits per workshop. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Probate Litigation and Ethics
October 13 – Seattle. 5 CLE credits, including 1.25 ethics pending. By KCBA; 206-340-2578.

Insurance Law Basics Seminar
October 13 – Seattle. 5.25 CLE credits, including .5 ethics. By WSTLA, 206-464-1011.

Representing Hi-Technology Firms
October 18 – Seattle. 5 CLE credits, including 1 ethics pending. By KCBA; 206-340-2578.

Brownfields Redevelopment Conference
October 19-20 – Seattle. 12.5 CLE credits. By The Seminar Group; 206-463-4400.

Trying Big Tort Cases
October 24 – Seattle. 7 CLE credits pending. By UW-CLE; 206-543-0059.

Inter-County Training for Settlement Guardian Ad Litem Registry
October 24 – Seattle. 5 CLE credits, including 1.25 ethics pending. By KCBA; 206-340-2578.

Signing on the Digital Line: What Your Clients Need You to Know About Electronic Signatures
October 25 – Seattle. 6 CLE credits pending. By KCBA; 206-340-2578.

Securities Law for Non-Securities Lawyers
October 26 – Seattle. 3.5 CLE credits pending. By UW-CLE; 206-543-0059.

LITIGATION

Preparing Cases to Win
November 3 – Seattle. 6.75 CLE credits pending. By WSTLA; 206-464-1011.

Digital Discovery (morning)
Use & Abuse of Depositions (afternoon)
November 16 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL ESTATE

7th Annual Fall Real Estate Conference
November 17 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL PROPERTY

Analysis and Drafting of Indemnity and Insurance Provisions for Real Estate Practitioners
October 5 – Seattle; October 6 – Spokane. 5.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

TAX LAW

Financial Statements (morning)
Tax Traps (afternoon)
November 8 – Seattle; November 16 – Spokane. 3 CLE credits estimated per session. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Professionals

APPEALS

Charles K. Wiggins
and
Kenneth W. Masters

We handle or assist on all types of civil appeals in the state and federal courts, from consulting with trial counsel to post-mandate proceedings.

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APPEALS

James E. Lobsenz
handles both civil and criminal appeals in state and federal courts. He has argued over 25 cases in the Washington Supreme Court, including *Washington State Physicians v. Fisons*, 122 Wn.2d 299, 858 P.2d 1054 (1993).

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701 Fifth Avenue, Suite 2200
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FOR SALE

Washington law practice available in Redmond. Practitioner will phase out. Website will soon be available for current listings of practices for sales and potential buyers or parties interested in merger. For information, e-mail louismillman@coldwellbankercom.com. Confidential information and consultation. Call 425-467-4180 or 800-459-5860; fax 425-646-5979.

SPACE AVAILABLE

Sweeping, unobstructed view of Olympics and Elliott Bay (Wells Fargo 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 Barbara at 206-624-9400.

Seattle's Pioneer Square: Spacious, well-lit office with partial view of Pioneer Square, on third floor of beautiful historic building. Near courts, King County Jail. Perfect for a sole practitioner who wants to share space in a professional but casual and friendly law office environment. Call Sarah at 206-467-9116 for details.

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.

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University – Laurelhurst: Executive office plus clerical space available. Share receptionist, conference rooms, library and services with senior-level attorneys, CPA and consultants. Optional networking and marketing opportunities. Great location, pleasant environment. Please call Carol at 206-523-6470.

Puget Sound Plaza Building in downtown Seattle across from Rainier Square. Friendly three-attorney office. Bright offices with water or city view for two attorneys available, including optional secretarial stations. Share fax, photocopier. Conference room available. Please call 206-343-4504.

Downtown Olympia: Professional office space. Private offices plus clerical in pleasant atmosphere with fellow attorneys. Large conference rooms, reception, kitchen, and use of office equipment. Call Debbie or Katharine at 360-754-1976.

Bellevue view: Exterior view office available 10/1. Suite with five attorneys. Furnished interior office also available. Receptionist, conference rooms. Some amenities included (mail processing, coffee service, messenger service). Other services at cost: photocopy, fax, WestLaw Internet access, postage, voicemail. Beautiful building, pleasant atmosphere. Possible shared secretarial. Convenient parking. 206-637-3040.

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Tousley Brain PLLC, an AV-rated, 15-attorney law firm in Seattle, is expanding its commercial and class-action litigation practice. The firm is seeking an entry-level litigation associate and one associate with at least two years' litigation experience. Qualified applicants will have excellent academic credentials, superior writing and analytical skills, and the demonstrated ability to excel in a fast-paced, client-focused environment. Tousley Brain offers a competitive salary and bonus program. Please send cover letter, résumé and writing sample to: Julie Livengood, HR/Operations Manager, Tousley Brain PLLC, 700 5th Ave., Ste. 5600, Seattle, WA 98104; e-mail jlivengood@tousley.com.

Associate position: Associate attorney sought by well-established, medium-sized, general practice law firm in Kitsap county. Please send brief description of professional goals, résumé, references and writing sample to: Associate Attorney Recruitment, 600 Kitsap St., Ste. 202, Port Orchard, WA 98366.

Nationally known and respected plaintiffs' class-action law firm involved in some of the highest profile cases in the country (e.g., Nazi slave labor, Texaco race discrimination, vitamin price-fixing, Microsoft antitrust, Boeing discrimination cases, Fen Phen class litigation, Swiss bank holocaust litigation, Weyerhaeuser

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Rates: *WSBA members:* $40/first 25 words; $0.50 each additional word. *Non-members:* $50/first 25 words; $1 each additional word. Blind-box number service: $12 (responses will be forwarded). Advance payment required; we regret that we are unable to bill for classified ads. Payment may be made by check (payable to WSBA), MasterCard or Visa.

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

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

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

and L-P hardboard siding cases, Immunex and other stock fraud cases) seeks experienced litigators with at least five years' experience, partner and/or associate level, to join its Seattle office. Firm website is http://www.cmht.com. Submit letter and résumé to: Steven J. Toll, Esq., Managing Partner; Cohen, Milstein, Hausfeld and Toll PLLC; 999 3rd Ave., Ste. 3600, Seattle, WA 98104.

Employment relations attorney: Karr Tuttle Campbell seeks an associate with at least three years' experience in employment relations. Candidates must have superior academic credentials and excellent writing and communication skills. Current WSBA membership required. Qualified individuals should submit a cover letter, a 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 are confidential.

Deputy I - Whatcom County Public Defender's. Starting salary range: $3,278-$3,683/mo. Excellent benefits. Requires good standing in the WSBA or current membership in another state bar; must pass next Washington bar exam. Trial experience in criminal law desired. Spanish fluency desired. Open until filled. Application required and available at: Human Resources, 311 Grand Ave., Ste. 107, Bellingham, WA 98225. Call Jobline at 360-738-4550; or visit our website at: http://www.co.whatcom.wa.us for details. EOE.

Attorney: annual salary range (DOQ) $36,464-$51,989. There are two openings for the position of attorney at the Yakima County Department of Assigned Counsel (Public Defender). These positions will be given assignments and cases at the entry level to moderate level of complexity and seriousness. Persons awaiting the results of the most recent bar examination are eligible and encouraged to apply and may be selected on condition of admission to practice in Washington. Apply immediately! Recruitment will close when positions are filled or on November 30, 2000, whichever occurs first. For further information and application forms, contact Yakima County Human Resources, 128 N. 2nd St., Yakima, WA 98901; 509-574-2220. Internet: http://www.co.yakima.wa.us; e-mail human.resources@co.yakima.wa.us. EOE.

Columbia Legal Services is soliciting applications for staff attorney positions in Seattle, Olympia, Kennewick, Yakima, and the statewide Institutions Project. Regional director positions are open in our offices in Wenatchee and Kennewick. Columbia Legal Services, a statewide full-range civil legal services program, is the non-federally funded partner in Washington's equal justice community. If you are interested in one of these positions, please send résumé and a writing sample to: Gail Jackson, Human Resource Manager, Columbia Legal Services, 101 Yesler Way, Ste. 600, Seattle, Washington 98104.

We seek an attorney with experience in real estate and litigation; estate planning, business law, or immigration a plus. Great for an established attorney or an attorney from out of state. Mail résumé to: Attn: James, 5108 196th St. SW, Ste. 300, Lynnwood, WA 98036; e-mail jamesrobert@jamesrobertdeal.com.

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Jones Law Group PLLC is a small business law firm located in Bellevue, Washington. We are seeking an attorney experienced in securities, including drafting and advising clients regarding Form 10, SB-1, SB-2, 20-F, and private placement memoranda. Full benefits; salary commensurate with knowledge of securities law. Please respond to: Marianne K. Jones, 2300 130th Ave. NE, Ste. 103, Bellevue, WA 98005; phone 425-882-6030; fax 425-882-6040; e-mail mkj@joneslawgroup.com.

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

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Litigation attorney: Karr Tuttle Campbell seeks an associate with at least three years' experience in litigation. Candidates must have superior academic credentials and excellent writing and communication skills. 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.

We are looking for an experienced family law attorney desiring to enjoy the sunshine. We are a five-attorney firm in Central Washington with offices in Moses Lake and Othello. Send, fax or e-mail cover letter and résumé to: Hiring Partner, PO Box 1159, Moses Lake, WA 98837.

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Progressive is seeking an attorney to join our recently formed staff counsel office in Bellevue, defending insureds in the greater Puget Sound region. The vast majority of the lawsuits concern motor vehicle torts. Counsel will be expected to handle every aspect of the litigation including jury trial. Qualified candidates should possess a minimum three years' insurance defense experience and WSBA membership. Progressive is the fourth largest auto insurance company. We offer a competitive salary commensurate with your experience, a gainsharing program, and comprehensive benefits including a 401(k) plan. Please submit résumé, indicating job code DMOWATT to: Progressive, 200 112th Ave. NE, Ste. 310, Bellevue, WA 98004; fax 425-462-8272; e-mail jobs@progressive.com; http://www.jobs. progressive.com. Equal opportunity employer, M/F/D/V.

The Boeing Company: Current opening for an experienced commercial transactions attorney at Boeing Commercial Airplanes in Renton, WA. Specific duties include: negotiating, drafting and administering major product and service supply contracts; providing management and business teams with contract interpretation and guidance; and advising management in the course of negotiating and settling claims between the company and its suppliers. The position will expand to support new commercial business ventures. Should have at least three years' experience handling commercial transactions. Please reference job code 004579 in your résumé and forward to marilyn.r.glenn@boeing.com. Mail résumés to: The Boeing Company, Attn: Marilyn Glenn, PO Box 3707 MC 6H-PR, Seattle, WA 98124-2207. It is the policy of The Boeing Company to attract and retain the best-qualified people available without regard to race, color, religion, national origin, gender, sexual orientation, age, disability, or status as a disabled or Vietnam era veteran.

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Marsh Mundorf Pratt Sullivan & McKenzie PSC: Growing Mill Creek law firm seeks associate attorney to support a busy business and litigation practice. Excellent opportunity for a motivated individual who desires to build a practice and seeks long-term commitment. Experience in litigation and/or general commercial practice is preferred but not required. Candidate must be current WSBA member and possess basic computer literacy. Competitive salary and benefits offered. Work environment is friendly and supportive. Please send résumé, cover letter and writing sample to: Jeffrey E. Pratt, Marsh Mundorf Pratt Sullivan & McKenzie, PSC; 16000 Bothell Everett Hwy, Ste. 160, Mill Creek, WA 98012.

Associate attorney – Portland: Small, AV-rated firm in Portland, concentrating on white collar and individual defense, is seeking associate attorney with at least three years' experience. Applicant must have outstanding research, writing and client skills, and some courtroom experience. Please fax résumé and cover letter to: Law Offices, 503-222-7589.

The Tribal Court for the Confederated Tribes of Grand Ronde hears cases in the following areas: juvenile dependency, torts, contracts involving the tribe and tribal enterprises, housing, constitutional law, ethics, elections and enrollment challenges. The court is headed by the chief judge and is located in a modern facility in Grand Ronde, Oregon. The tribe invites applications for the position of Court of Appeals Judge. Duties include hearing and deciding all matters presented to the Tribal Court of Appeals. Duties will be performed on an as-needed basis, commensurate with the responsibilities of the Court of Appeals. The successful candidate will be hired as an independent contractor. Minimum qualifications: degree from an ABA accredited school of law, member of the Oregon State Bar, and at least 10 years' experience practicing law. In addition to the above minimum qualifications, experience as a judge or in appellate work is highly preferred. The tribe may give preference to Indian applicants. Please send a résumé, cover letter with three references, and writing sample to the following address: The Confederated Tribes of Grand Ronde, Attention: Tribal Attorney, 9615 Grand Ronde Rd., Grand Ronde, OR 97347.

Successful, small firm seeks business/real estate attorney: Brown Davis and Roberts, PLLC is a five-attorney firm located in Gig Harbor. Our practice is limited to business, real estate and estate planning matters throughout Western Washington. This is an opportunity for an enthusiastic attorney to assist in our growing areas of business and real estate. Aptitude and experience in these fields are required. More important is a positive attitude and willingness to function with a team. We have developed a great atmosphere in which to work and look forward to a team member to complement it. Please respond to steve@bdrlaw.com or Brown Davis and Roberts PLLC, 7525 Pioneer Way, Ste. 202, Gig Harbor, WA 98335.

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Attorney: AV-rated Seattle insurance defense firm seeks associate with minimum two years' experience as judicial clerk or in practice. All responses confidential. Submit résumé and references to: Hiring Partner, Johnson Christie Andrews and Skinner, 701 5th Ave., Ste. 7400, Seattle, WA 98104.

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Employment law litigation associate: An AV-rated Seattle law firm is currently accepting résumés for an associate attorney with at least five years' employment law experience. Trial experience, superior writing and oral communication skills, and a sense of humor required. Please send résumé, a writing sample and two references to: Hiring Coordinator, 3131 Elliott Ave., Ste. 700, Seattle, WA 98121.

Family law paralegal: Downtown Seattle solo practice is looking for experienced paralegal. Must know WP, timeslips, court rules. Salary DOE; benefits. Fax résumé to 206-587-0780.

Litigation paralegal: Seattle insurance defense law firm seeks paralegal with at least three years' litigation experience in all phases of case management. A qualified candidate will be able to work independently and have extensive experience in document management, drafting of pleadings and discovery, records review and expert retention. Please send résumé to: Johnson Christie Andrews, 701 5th Ave., Ste. 7400, Seattle, WA 98104; fax 206-623-9050.

WILL SEARCH

Seeking information regarding will of Russell Bruce Moye of Seatac, Washington. Approximate date of will: June-August, 1999. Please contact Kelly Horst at 206-824-4353 or kelly.horst@pss.boeing.com.

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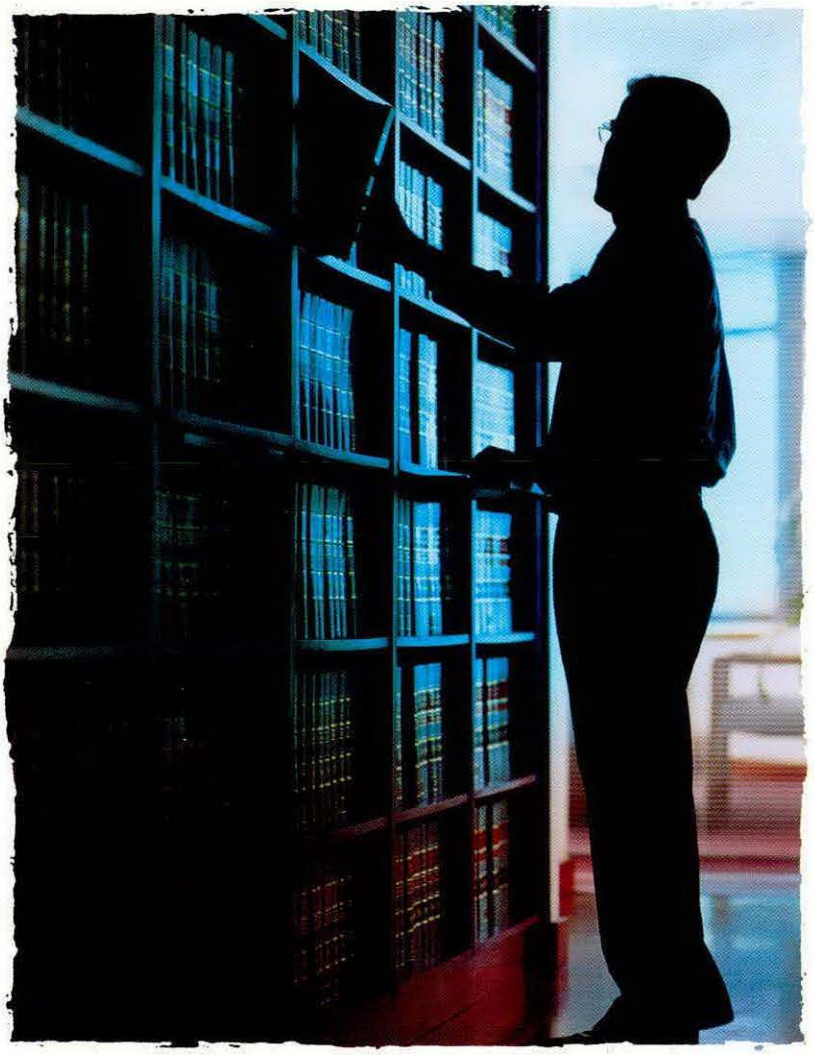

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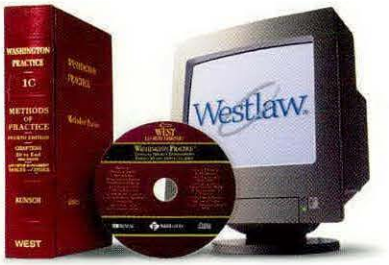

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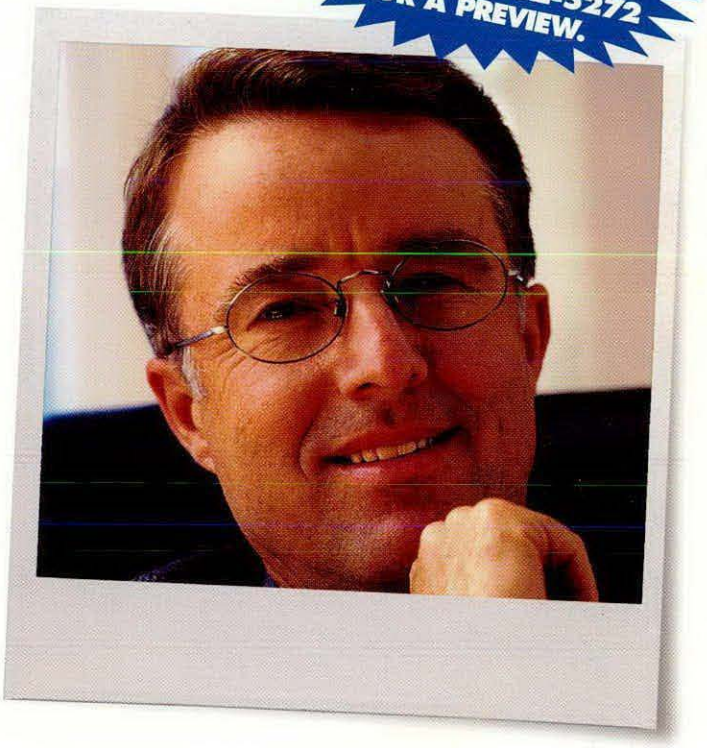

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