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Five Dollars

Washington State

BAR NEWS

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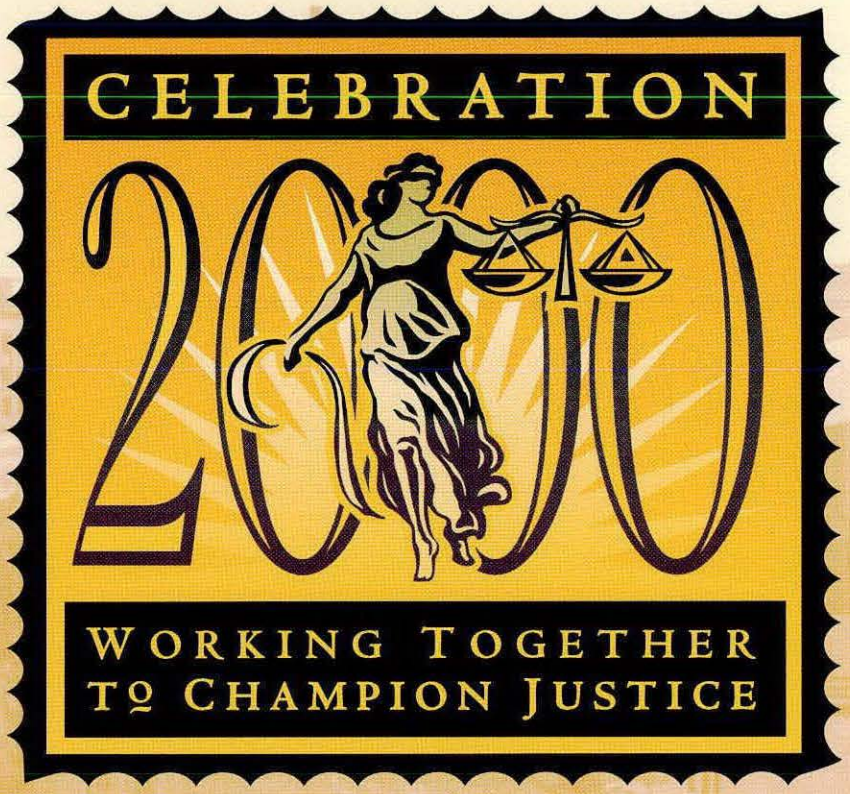

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Washington State

BAR NEWS

MARCH 2000

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Mitigated Hearing Best Ticket to Keeping Vehicle

Editor:

I am writing to correct some misconceptions and inaccuracies in your January article on the new DWLS towing law, "Criminal Lawyers: You Have to Love Them!" [President's Corner, January 2000, p. 15].

Your friend stated a fairly accurate figure that approximately 40 percent of misdemeanor cases are for DWLS (driving while license suspended). What he failed to mention is that these same drivers cause about 60 percent of the car accidents and have no insurance to pay for them.

Washington is new to the DWLS towing law but other states are not. San Diego experienced a 75 percent decrease in hit-and-run fatality accidents during their first year of towing for DWLS. Anchorage only tows DUI vehicles but has found that one-third of the drivers stopped for DUI also have a suspended license. In Kennewick, we began towing on February 8, 1999, and have experienced a 16 percent decrease in DWLS cases and a 14 percent decrease in all misdemeanor crime.

In Kennewick, if you fail to pay your traffic infractions and are suspended in the third degree, a first-time offender may recover the vehicle immediately upon paying the outstanding fines that caused the suspension. Repeat offenders must wait 30 days to recover their vehicle. A vehicle can only be impounded for 90 days if the driver is suspended in the first or second degree and is a repeat offender. Persons suspended in the first or second degree are usually suspended because of a DUI or in the interest of safety because they have too many driving offenses within the preceding year. Kennewick's ordinance also allows for early release of a vehicle based on personal or economic hardship. Under this section, a spouse or owner (who was not the driver) can request a hearing for early release of his vehicle. The hearing is held within a couple of days to reduce the hardship and generally our judiciary has been very lenient in releasing vehicles due to hardship.

My suggestion to your friend is that the next time he gets a speeding ticket, check the little box on the back requesting a mitigated hearing. The judge will probably reduce the ticket to a fraction of the face amount and allow your friend to make time payments of about $25 a month. This way he can keep his license, his insurance coverage, and his vehicle.

Alicia Berry
Assistant City Attorney
Kennewick

Availability Has Its Drawbacks

Editor:

Yikes! In her article about the future of the legal profession, Jan Michels wrote that, "Lawyers must move towards a 24x7 (24 hours a day, 7 days a week) presence and availability."

I hope not. Instead, I hope that we and our clients will be encouraging a reasonableness in what we ask of each other. My home phone number is still listed. Fortunately, after 27 years, I can report that clients use it infrequently and rarely abuse it.

While I like being a lawyer, it does not constitute the meaning of life for me. It is not the most important thing in my life.

While the pressures of today's practice make it difficult for any of us to get and maintain a life, I refuse to give up on the effort. The proposal that we seek to create a 24-hour-a-day, 7-day-a-week presence seems to me to encourage the wrong directions for our lives. This particular proposed accommodation to the "swiftly changing norms of this new information age" is one that I respectfully decline. The e-mail will still be there in the morning.

Timothy Bradbury
Seattle

Editor:
I opened my January 2000 *Bar News*, and as always, read it cover to cover. (Truly, I always do.) I was struck by your mastery of the use of irony in laying out the content.

I read on page 18 that change is not a choice and that, "Lawyers must move toward 24x7 presence and availability. They must develop a sense of urgency," with which I fully agree. I then turn the page, and at the top of page 21 I read, "But being admitted to the bar does not absolve a lawyer of his responsibilities outside of work.... [H]e must meet those responsibilities, which means he must lead a balanced life."

Which do you want us to follow? The 24 hour, 7-day availability, or the take-some-time-to-smell-the-roses paradigm? I'm sorry folks, I can't do both. Maybe the solution is to be available to clients 24 hours a day, 7 days a week, but only bill them from 9:00 a.m. to 5:00 p.m.?

I do appreciate the irony.

Craig Hansen
Bellevue

Response to Eymann Article

Editor:
It is a sad day for the Washington State Bar Association when the president proposes creating a new position on the governing board from which I am excluded solely by my race, and it is a sad day for this nation when we use the concept of "diversity" to select individuals based upon their race alone. The people who engage in this practice of institutionalizing racism are the same ones who bellow the loudest when it results in deteriorating race relations.

I realize that the concept is a backward one and I will never receive any awards for it, but please excuse me while I go back to treating people of all races equally.

Dennis M. Wallace
Spokane

Editor:
It is not just time, it's past time! I strongly endorse President Eymann's proposal to add a young lawyer and a minority lawyer to the Board of Governors.

Carleton B. Waldrop
Pullman

Readers are invited to submit letters of reasonable length to the editor. They may be sent via e-mail to comm@wsba.org or provided on disk in any conventional format with accompanying hard copy. Due date is the 10th of the month for the second issue following, e.g., March 10 for the May issue. The editor reserves the right to select excerpts for publication or edit them as appropriate. Signatures in excess of three names will be printed at the discretion of the editor.

How to Befuddle Opposing Counsel and Improve Yourself at the Same Time

by Sherrie Bennett
Editor

We've all been there: opposing counsel inexplicably comes unglued in a deposition and becomes an emotional bully with your client. As you attempt to stop the proceedings to give the other attorney a chance to chill out and collect himself, you can't help but think, "He's acting like a two-year-old. How immature!" Or you're well into a mediation when it occurs to you that opposing counsel simply isn't listening to your client's largely emotion-based requests, which could easily settle the case with little or no cash outlay on his client's part. Or opposing counsel brings a baseless CR 11 motion without even bothering to research the easily ascertainable underlying facts ahead of time.

...even if you don't believe in karma, you have to wonder about the long-term physical effects of being in the constant adrenaline mode required to earn a reputation as a "takes no prisoners" lawyer.

Traveling around the state with the WSBA's Board of Governors, I've listened to dozens of lawyers talk about the incivility and immaturity of lawyers. It seems to be the perception that it is always the *other* lawyer who has the problem. You never hear someone say, "Boy, I was a real #*@*%# in a deposition the other day!" There appears to be a double standard at work — when the other lawyer does it, he's being abusive. When you do it, you're just being an aggressive advocate.

There's also a certain amount of pride (misplaced or otherwise) in being feared for "scorched-earth" tactics, especially among litigators. The underlying rationale seems to be that you are doing your client a favor by developing a reputation for being unreasonable, obnoxious, prevaricating and unpredictable, as other lawyers will cringe when they hear your name and run screaming toward the settlement table.

But even if you don't believe in karma, you have to wonder about the long-term physical effects of being in the constant adrenaline mode required to earn a reputation as a "takes no prisoners" lawyer. I also question whether the enormous output of energy and money actually results in any significant tactical advantage, as lawyers by nature are known to love a challenge.

While it's certainly true that you can't control opposing counsel's behavior, you *can* control how *you* react to opposing counsel's behavior. Most lawyers could benefit from a little self-diagnostic look at their own maturity levels, especially as it relates to what is referred to as "emotional intelligence." Daniel Goleman, author of *Emotional Intelligence: Why It Can Matter More than IQ*, contends that it is emotional intelligence (including self-control, persistence and the ability to motivate oneself) that often makes the difference between success and failure in people of equivalent intellectual abilities. Goleman takes an in-depth look at the brain circuitry involved in emotional development. Although nature endows each of us with emotional set points, apparently temperament is not destiny. Your brain circuitry is remarkably malleable. While childhood and adolescence are critical windows of opportunity for setting some basic emotional habits into place, you can boost your emotional IQ at any age.

Sifting through the enormous amount of information in Goleman's book, I found the following hints for increasing your emotional IQ particularly useful in the litigation arena:

(1) **Practice increasing your own emotional self-awareness.** When you are aware that your blood pressure is reaching the boiling point, you are more likely to be able to analyze why and take remedial steps to improve the situation. Don't think that it's unprofessional to monitor your own emotional needs; you're human, too, not some kind of legal robot. Failure to be aware of your own emotions can lead to self-sabotage in the form of acting out your emotions in the professional arena, without even knowing why.

(2) **Consider the other side's point of view.** This would seem to be a litigation no-brainer. But if you can't empathize with or listen closely to the other party's underlying issues and emotions, you can't figure out what needs to be offered to settle the case.

(3) **Don't fall for someone else's bait.** If someone is dangling bait in front of you, it's probably to his advantage for you to bite. Take your time, focus on your client's ultimate needs, and don't allow opposing counsel to set the litigation agenda.

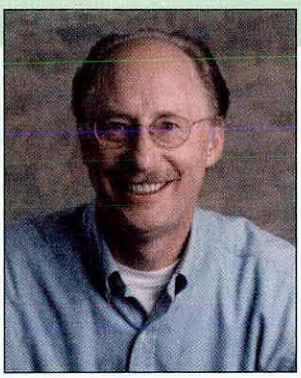
(4) **Keep communication channels open.** It is a definite sign of emotional maturity to be civil and polite to opposing counsel, no matter how rude and obnoxious you perceive them to be. Nothing is learned from burning bridges, and you could seriously injure your client's prospects for settlement by running from difficult personalities and topics.

(5) **Don't take it personally.** While this seems obvious enough, in the throes of heated litigation it's hard to keep in mind that a difficult person is not acting out for reasons that reflect on you personally. Distancing yourself makes it much easier not only to see the other person's point of view, but also to craft some compromise that might meet everyone's needs.

(6) **Recognize your own strengths and weaknesses.** No lawyer excels at every litigation task. Prioritizing and delegating those tasks at which you are less than stellar can benefit your client tremendously.

(7) **Get it off your chest.** If you've got a gripe with your client or someone on your litigation team, vent it and move on, or let it go. Those with high emotional IQs don't hold grudges.

While I can't guarantee that using these tools will transform opposing counsel into a rational and pleasant human being, I'm betting that if you consistently work at raising your own emotional intelligence, opposing counsel's boorish behavior will bother you less and less. And what more could you ask for in the land of litigation?



Mark Your Calendars for Celebration 2000!

by Richard C. Eymann
WSBA President

In October, the *Washington Journal* predicted that Celebration 2000 will be the largest legal gathering in state history. The reality of that prediction is here and now.

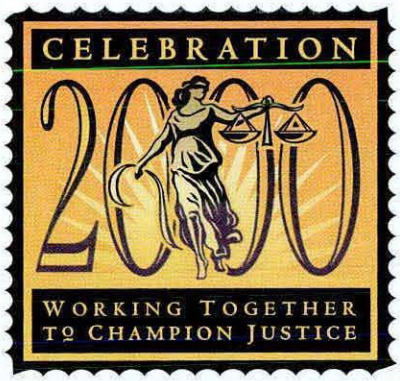
WSBA member and judiciary interest in Celebration 2000 has exploded even beyond our wildest hopes. Pre-registration numbers and hotel reservations are five times what we anticipated by the end of January. Why? To find out the answer and to be better equipped to write this month's column, I asked a few pre-registered members why they would be attending.

"An incredible program of educational and social events — and for a base price of $195, it is the best deal I've ever seen for lawyers in my 27-year career." *(Spokane lawyer)*

"After 52 years of practicing law, I cannot miss this conference. It may be the last chance I have to see some of my friends, my opponents and all the judges. I applaud the Bar for putting this together. It's long overdue." *(Seattle lawyer)*

"I'm an Access to Justice supporter, but rarely get a chance to talk to all these people who work so hard to provide legal services to the poor. I'm a corporate and banking law attorney, and this is a chance to attend a Bar conference and see my alma mater Gonzaga's new law school building." *(Olympia lawyer)*

"I love golf, parties and good times, especially for $195. I've already booked my hotel room. I'll bet you easily get 2,000 lawyers there." *(Tacoma lawyer)*



Spokane
September 13-16

To register for Celebration 2000, please complete the form on pages 17-18.

"As a judge, this is a rare opportunity to attend events with the lawyers outside the courthouse. I also really look forward to seeing oral arguments of the Ninth Circuit Court of Appeals, which I see is listed on the program." *(King County judge)*

"I'm bringing my family and we're going to have a great time in Spokane. I remember the September weather as great, compared to where I live now. A lot of events on the program have caught my interest. It's going to be hard to choose among some of them." *(Hoquiam lawyer)*

"As a paralegal, I'm excited to attend Celebration 2000 and finally see an all-day seminar designed specifically for paralegals and legal assistants on the east side of the state. It will be a fantastic opportunity to meet and network, as well as put faces with the names of people I've worked with and spoken to over the years." *(Kennewick paralegal)*

"The futurist program with Clay Jenkinson as Thomas Jefferson — heck, I'd go just to see that. With all of the other things on the program, I'd be crazy to miss it, even if you have to come from as far as I do. I'm a Washingtonian practicing in California."

"$195, great hotel rates, and a chance to see a bunch of my law school friends — see you there!" *(Bellingham lawyer)*

"This is a unique chance for all who are dedicated to the legal system in this state, from Supreme Court justices to legal assistants, to join with one voice and celebrate the past and future of justice in our society." *(Spokane lawyer)*

"I'm going because Spokane has great golf courses and I'll get to try a couple of them. Plus, I'm excited about the camaraderie this conference will engender." *(Bellevue lawyer)*

"I have really missed the annual WSBA convention. It's about time we had one. Younger lawyers don't know what they miss when we don't have conventions." *(Seattle lawyer)*

"There is something, actually a lot, in Celebration 2000 for everyone. I'm coming early and probably staying through Sunday. I plan to spend at least 18 hours a day learning and having fun." *(Yakima lawyer)*

"Celebration 2000 presents a rare, perhaps first ever, opportunity for the Bench and Bar to learn together, celebrate together and champion justice together. I'm particularly pleased to see both state and federal judiciary playing such active roles in the conference." *(Spokane lawyer)*

There are probably hundreds more reasons why lawyers, judges and the rest of the legal community will be attending Celebration 2000, September 13-16, 2000 in Spokane. Certainly it is the first time since 1992 that your Bar Association has attempted to congregate all of its members in one place at one time. But as you will immediately see from the program, it incorporates three other conferences — Access to Justice, Bar Leaders, and the Annual Fall Judicial Conference. Our pre-registration letter last November received a tremendous response indicating that 1,200 lawyers, judges and legal support staff plan to attend — and we still have eight more months of registration to go. The excitement of the event is rising as fast as the anxiety over getting it all organized. Just take a look at the tentative program. It's awesome!

Quoting Jan Michels, Executive Director of the WSBA, "It will afford the entire Bar and everyone connected to the legal profession with a chance to talk informally about the state of the legal community in Washington, and to learn first hand about the issues facing our system of justice, the judiciary and Access to Justice." Chief Justice Guy of the Washington Supreme Court said, "I really applaud this. I see it as a sign that the Washington State Bar Association has forsaken trying to be everything to everybody. Instead, it's returning to its rightful place as the singular representative of all lawyers and special interest Bar Associations in this state. It is truly a broad effort to bring lawyers, judges and the entire legal community together."

So mark your calendars for September 13-16, 2000. Join your friends, colleagues, the judiciary and legal service providers in working together to champion justice. It will be a truly unique, productive and enjoyable event.

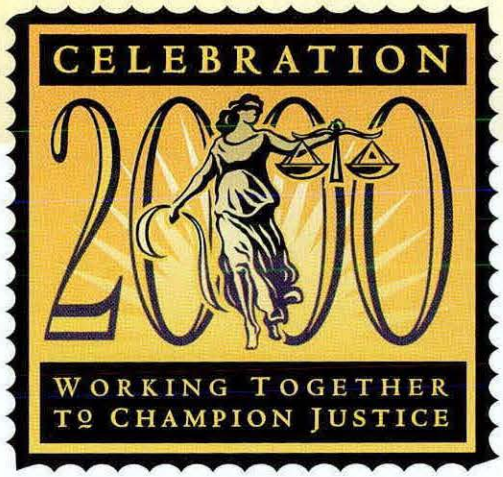
Speak Out!

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

For more information, call Amy O'Donnell at the WSBA Speakers Bureau:

206-727-8213

Spokane *September 13-16*



Celebration 2000

Celebration 2000 — it's a combination of the Annual Judicial Conference, Access to Justice Conference, Bar Leaders Conference, and a revival of the Washington State Bar Association Convention — and it's a once-in-a-lifetime event you won't want to miss! Celebration 2000 will be packed with events to interest everyone, including exceptional speakers, section-sponsored CLE seminars, meetings and workshops, an Exhibitor Fair, and plenty of opportunities to socialize with your friends and colleagues from all around our state.

Highlights include a WSTLA-produced blockbuster CLE featuring **Gerry Spence**, and scholar **Clay Jenkinson** playing Thomas Jefferson at a program produced by the Washington State Judiciary that will "look back to the future." A number of Washington state dignitaries will also be on the program.

Celebration 2000 Preliminary Program

Please note that all events listed below are subject to change, and events may be added. All non-ticketed events are open to all conference registrants and are included in your registration fee. Also included in your registration fee are beverage breaks and four meals (breakfast on Thursday and Saturday, hors d'oeuvres buffet on Thursday, and the Awards Luncheon on Friday).

Wednesday, September 13

8:00 a.m.-5:00 p.m.	WSBA Board of Governors Meeting
8:00 a.m.-5:00 p.m.	Judges' Association Committee Meetings
10:00 a.m.-5:00 p.m.	Registration
10:00 a.m.-12 noon	Elder Law Section Membership Meeting
12 noon	Lunch on Your Own
12 noon-5:00 p.m.	Exhibitor Fair
1:00 p.m.-5:00 p.m.	Section CLEs (separately ticketed events; see registration form for prices); length and times of CLE seminars will vary.

- Access Issues in Administrative Agency Programs (Administrative Law)
- Bankruptcy: 21st Century Style (Creditor-Debtor)
- Electronic Commerce and the Business Lawyer (Business Law)
- Elder Law Update 2000 (Elder Law)
- The Endangered Species Experience in Washington (Environmental and Land Use Law)
- The Law and Hate Crimes (Criminal Law)
- Partnering with Your Clients Across Borders (International Practice)

Afternoon	Minority & Justice Commission Meeting (tentative)
Evening	Dinner on Your Own
6:00 p.m.	Washington Women Lawyers Dinner (tickets available through WWL)
6:30 p.m.-8:00 p.m.	Town Meeting/Public Forum: Definition of the Practice of Law (tentative)

Thursday, September 14

6:30 a.m.- 8:00 a.m.	"Friends of Bill W." Meeting
8:00 a.m.-9:30 a.m.	All-Conference Buffet Breakfast
8:00 a.m.-9:30 a.m.	WSBA Minority Members Breakfast with the WSBA Board of Governors
8:00 a.m.-5:00 p.m.	Registration
8:00 a.m.-5:00 p.m.	Exhibitor Fair
10:00 a.m.-12 noon	Official Grand Opening Ceremony featuring Clay Jenkinson as Thomas Jefferson. This program will "look back to the future" with a conversation between Jefferson and 21st century futurists; sponsored by The Washington State Judiciary
12 noon	Lunch on Your Own (possible ticketed luncheon event)
12 noon-2:00 p.m.	Access To Justice Board Meeting
12 noon-3:00 p.m.	LAW Fund Board Meeting
12 noon-5:00 p.m.	Northwest Justice Project Board Meeting
12 noon-5:00 p.m.	Legal Foundation of Washington Meeting
12 noon-5:00 p.m.	Courthouse Facilitators Meeting
12 noon-5:00 p.m.	Volunteer Legal Service Programs Meeting
12 noon-5:00 p.m.	Specialized Legal Services Meeting
Afternoon	WSBA Break-out Sessions (may include multi-disciplinary practice, public legal education, public trust and confidence in the justice system, technology and the law)
1:00 p.m.-3:00 p.m.	Bar Leaders Conference Workshop: Ethics, Professionalism and Civility: The Hard Questions, produced by the WSBA Professionalism Committee
1:00 p.m.-5:00 p.m.	Section CLEs (separately ticketed events; see registration form for prices); length and times of CLE seminars will vary.

- ADR for ATJ — Ways that Appropriate Dispute Resolution Can Enhance Access to Justice (Alternative Dispute Resolution)
- Counseling Challenges for the Corporate Lawyer (Corporate Law)
- Ethics and Family Law: The Perfect Marriage" (Family Law)

- Federal Civil Litigation: An Appropriate Tool for Social Reform? (Litigation, in conjunction with the Federal Bar Association)
- Nuts and Bolts of Construction Law (Public Procurement and Private Construction Law)
- Nuts and Bolts of Litigation: Basic Trial Skills and Practice Tips (Young Lawyers Division)
- Taxation in the New Millennium: A Look Back and to the Future (Taxation Law)

1:00 p.m.-5:00 p.m.	Judicial Conference Choice Sessions
1:00 p.m.-5:00 p.m.	Washington State Paralegal Association Board Meeting
2:00 p.m.	Golf Tournament at Downriver (separately ticketed event)
3:15 p.m.-5:15 p.m.	Bar Leaders Conference Workshop: "Getting to Know You" and Current Issues Facing the Bar
6:00 p.m.-midnight	Welcoming Reception and Hors d'oeuvres Buffet hosted by WSBA President Richard Eymann and Washington Supreme Court Chief Justice Richard Guy; Access to Justice Skit, featuring *The Moderately Talented (Yet Plucky) Repertory Theatre of Justice* and *Func Pro Tunc*, sponsored by the ATJ Conference; "Bar Mixer" with dancing featuring *Nobody Famous*, sponsored by the Spokane County Bar Association
9:30 p.m.-11:00 p.m.	"Friends of Bill W." Meeting

Friday, September 15

6:30 a.m.-8:00 a.m.	"Friends of Bill W." Meeting
7:00 a.m.-8:00 a.m.	Fun Run Fundraiser and Continental Breakfast "On the Run" (separately ticketed event)
8:00 a.m.-1:00 p.m.	Exhibitor Fair
8:15 a.m.-9:45 a.m.	ATJ Track Programs
8:15 a.m.-9:45 a.m.	Multi-Disciplinary Practice Seminar
8:15 a.m.-9:45 a.m.	Association of Legal Administrators and WSBA Law Office Management Program Joint CLE Seminar
8:15 a.m.-11:30 a.m.	Bar Leaders Conference Workshop: Leadership Development, featuring Janet Boguch, "Non-Profit Works"
8:15 a.m.-11:30 a.m.	Judicial Conference Plenary: "When Bias Compounds"
9:00 a.m.-11:30 a.m.	Ninth Circuit Court of Appeals — Sitting of the Court with Oral Arguments followed by Q&A Session and Discussions with Judges
9:00 a.m.-5:00 p.m.	Washington State Paralegals Association Meetings and Seminars
10:00 a.m.-11:30 a.m.	ATJ Track Programs
10:00 a.m.-11:30 a.m.	WSBA Break-out Sessions
10:00 a.m.-11:30 a.m.	WSBA Civil Rights Committee Seminar
11:45 a.m.-1:45 p.m.	WSBA Awards Luncheon and Annual Business Meeting
2:00 p.m.-5:00 p.m.	Blockbuster CLE produced by WSTLA: "The Jury Trial" featuring Gerry Spence, Part One
2:00 p.m.-3:30 p.m.	ATJ Track Programs
Afternoon	WSBA discussion groups (may include multi-disciplinary practice, public legal education, public trust and confidence in the justice system, technology and the law)
3:45 p.m.-5:15 p.m.	ATJ Track Programs
5:30 p.m.-7:00 p.m.	Gonzaga Law School Opening Ceremony and Reception
7:00 p.m.-midnight	Receptions
8:30 p.m.-10:00 p.m.	"Friends of Bill W." Meeting

Saturday, September 16

6:30 a.m.-7:30 a.m.	"Friends of Bill W." Meeting
7:30 a.m.-8:30 a.m.	All-Conference Buffet Breakfast
9:00 a.m.-12 noon	Blockbuster CLE produced by WSTLA: "The Jury Trial" Part Two, followed by Closing Keynote Speaker and Passing of the WSBA Presidential Gavel
9:00 a.m.-10:30 a.m.	ATJ Track Programs
9:00 a.m.-10:30 a.m.	Bar Leaders Conference Workshop: Membership Issues
10:45 a.m.-12:15 p.m.	ATJ Track Programs
10:45 a.m.-12:15 p.m.	Bar Leaders Conference Workshop: The Future of Law
12:00 noon-5:00 p.m.	Columbia Legal Services Board Meeting
12:30 p.m.-2:00 p.m.	Family BBQ in Riverfront Park (separately ticketed event)
1:30 p.m.	Golf Tournament at Indian Canyon (separately ticketed event)
4:00-6:00 p.m.	Cruise on Lake Coeur d'Alene (separately ticketed event)

Hotel Information

Hotels listed below are within walking distance of each other and the Spokane Center, and shuttle service will also be available. **Please note that room reservations must be made directly through the hotel.** When making your reservation, be sure to state that you are part of the Washington State Bar Association, WSBA Celebration 2000, or Access To Justice Conference room block in order to get the special room rate. Rooms will be released to the general public on **August 13**, so please make your reservation before then. **Reserve early to get your choice of hotel!**

Hotels with Room Blocks

Cavanaughs Inn at the Park
303 West North River Drive, Spokane, WA 99201
509-326-8000 or 800-325-4000
room rates start at $92
Access to Justice Conference and most Bar Leaders Conference meetings will be held here

Cavanaughs River Inn
700 North Division Street, Spokane, WA 99202
509-326-5577 or 800-325-4000
room rates start at $92

Doubletree
322 North Spokane Falls Court, Spokane, WA 99201
509-455-9600 or 800-222-8733
room rates start at $89
Judicial Conference meetings will be held here

Holiday Inn Express – Downtown
North 801 Division, Spokane, WA 99202
509-328-8505 or 800-HOLIDAY
room rates start at $67

Travelodge
33 West Spokane Falls Boulevard, Spokane, WA 99201
509-623-9727
room rates start at $76

Other Nearby Hotels (no room blocks)

Cavanaughs Ridpath
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509-838-2711 or 800-325-4000
room rates start at $92

Courtyard Marriott
North 401 Riverpoint Boulevard, Spokane, WA 99202
509-456-7600 or 800-321-2211
room rates start at $89

Celebration 2000 Registration

General Celebration 2000 Attorneys

•

General Celebration 2000 Non-attorneys and Students

•

Access to Justice Conference

•

Annual Judicial Conference *(register with OAC)*

•

Bar Leaders Conference

•

Guests

•

Separately Ticketed Events — Social Activities

•

Separately Ticketed Events — Section CLE Seminars

Registrant's Name: _____ Bar No. (if WSBA member): _____

Name as you would like it to appear on your name badge: _____

Law Firm or Organization: _____

Address: _____

Phone: _____ Fax: _____ E-mail: _____

❑ Please check here if you require vegetarian meals.

Notify in Case of Emergency: Name _____ Phone: _____

Important: Please find the category which best describes your participation in Celebration 2000 and use the corresponding area of this form to register (e.g., general Celebration 2000 attorneys use the purple section). If you are unsure about the category in which you should register, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org. **All registrants are welcome to attend any non-ticketed event in any conference.**

Cancellation policy: If canceling before September 1, 2000, you will receive a refund of all fees paid, minus $25. After September 1, 2000, you may transfer your registration, but no refunds can be given.

Scholarships: A limited number of scholarships are available for those attending the Access to Justice or the Bar Leaders Conference. For information and an application, please contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org.

Hotel reservations: All Celebration 2000 registrants are responsible for their own hotel reservations and must contact the hotel directly. See previous page for hotel information.

Childcare: Please check here if you anticipate needing childcare. ❑ Information will be sent to you.

General Celebration 2000 Attorneys

Early registration (received no later than March 31)	$195	$____
Regular registration (received April 1 to June 30)	$245	$____
Late and on-site registration (received July 1 or later)	$295	$____

General Celebration 2000 Non-attorneys and Students

Early registration (received no later than March 31)	$95	$____
Regular registration (received April 1 to June 30)	$145	$____
Late and on-site registration (received July 1 or later)	$195	$____

Access to Justice Conference

Registration fees for ATJ Conference participants are being subsidized by ATJ Conference grants. Attorneys are eligible for this reduced fee if employed by, or volunteering for, a program providing civil legal services to low-income people. Name of legal service provider you are working or volunteering for: _____

Access to Justice Attorneys

Early registration (received no later than March 31)	$80	$____
Regular registration (received April 1 to June 30)	$90	$____
Late and on-site registration (received July 1 or later)	$100	$____

Access to Justice Non-attorneys or Students

Early registration (received no later than March 31)	$50	$____
Regular registration (received April 1 to June 30)	$60	$____
Late and on-site registration (received July 1 or later)	$70	$____

Annual Judicial Conference

Judges: Please do not return this form to the WSBA; you will register through OAC. If you have questions, please contact Karen Allen at 360-705-5308 or karen.allen@courts.wa.gov.

Bar Leaders Conference

Early registration (received no later than March 31)	$195	$____
Regular registration (received April 1 to June 30)	$245	$____
Late and on-site registration (received July 1 or later)	$295	$____

Guests

Use this section for guests who are not registered for any conference but want to attend some meals. Guests are also invited to participate in any social events or purchase tickets for any "Separately Ticketed Events — Social Activities," listed on the next page.

Name(s) of guest(s): _____

(Please see next page for a list of meals.)

Registrant's Name: _____ Phone: _____

Thurs., Sept. 14 Buffet Breakfast (8:00 a.m.-9:30 a.m.)	___ @ $11.50	$_____
Thurs., Sept. 14 Reception and Hors d'oeuvres Buffet (6:00 p.m.)	___ @ $19.50	$_____
Fri., Sept. 15 Awards Luncheon (11:45 a.m.-1:45 p.m.)	___ @ $16.00	$_____
Vegetarian meal(s) required for guest(s)?_____ If yes, how many? _____		
Sat., Sept. 16 Buffet Breakfast (7:30 a.m.-8:30 a.m.)	___ @ $15.00	$_____

Separately Ticketed Events — Social Activities

All registrants and guests desiring to attend any of the following must purchase a ticket. Depending upon space, some tickets may be available at the event. Prices for Golf Tournaments and Lake Coeur d'Alene Cruise include ground transportation. Prices for Golf Tournaments include golf cart rental and prizes.

Golf Tournament at Downriver (Thurs., Sept. 14, 2:00 p.m.)	___ @ $60	$_____
Fun Run & Continental Breakfast (Fri., Sept. 15, 7:00 a.m.-8:00 a.m.)	___ @ $15	$_____
Family BBQ in Riverfront Park (Sat., Sept. 16, 12:30 p.m.-2:00 p.m.)		
Adults	___ @ $12	$_____
Children 12 and under (hotdogs will be served to children)	___ @ $4	$_____
Golf Tournament at Indian Canyon (Sat., Sept. 16, 1:30 p.m.)	___ @ $60	$_____
Cruise on Lake Coeur d'Alene (Sat., Sept. 16, 4:00 p.m.-6:00 p.m.)		
Adults	___ @ $29	$_____
Children 12 and under	___ @ $19	$_____

Separately Ticketed Events — Section CLE Seminars

All registrants desiring to attend any of the following must purchase a ticket. Depending upon space, some tickets may be available at the seminar.

Wednesday, September 13, afternoon

- Access Issues in Administrative Agency Programs (Administrative Law); $35 $_____
- Bankruptcy: 21st Century Style (Creditor-Debtor); $35 $_____
- Electronic Commerce and the Business Lawyer (Business Law); $10 for section members; $30 for non-members $_____
- Elder Law Update 2000 (Elder Law); $10 for section members; $30 for non-members $_____
- The Endangered Species Experience in Washington (Environmental & Land Use Law); $50 $_____
- The Law and Hate Crimes (Criminal Law); $35 $_____
- Partnering with Your Clients Across Borders (International Practice); $15 for section members; $30 for non-members $_____

Thursday, September 14, afternoon

- ADR for ATJ — Ways that Appropriate Dispute Resolution Can Enhance Access to Justice (Alternative Dispute Resolution); $15 for section members; $30 for non-members $_____
- Counseling Challenges for the Corporate Lawyer (Corporate Law); $35 $_____
- Ethics and Family Law: The Perfect Marriage (Family Law); $50 $_____
- Federal Civil Litigation: An Appropriate Tool for Social Reform? (Litigation, in conjunction with the Federal Bar Association); $10 for section or Federal Bar Association members; $25 for non-members $_____
- Nuts and Bolts of Construction Law (Public Procurement & Private Construction Law); $50 $_____
- Nuts and Bolts of Litigation: Basic Trial Skills & Practice Tips (Young Lawyers Division); $25 $_____
- Taxation in the New Millennium: A Look Back and to the Future (Taxation Law); $20 for section members; $30 for non-members $_____

Registration Fee	$_____
Total of Guest Meals	$_____
Total of Separately Ticketed Events — Social Activities	$_____
Total of Separately Ticketed Events — CLE Seminars	$_____
TOTAL ENCLOSED	$_____

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Authorized signature: _____

Card number: _____ Expiration date: _____

Office Use Only:

Date: _____ Check #: _____ Total $: _____ Initials _____

To register for Celebration 2000, please complete this form and return with your check (payable to the Washington State Bar Association) or credit card information to:

Washington State Bar Association
Celebration 2000 Registration
2101 Fourth Avenue
Fourth Floor
Seattle, WA
98121-2330

If you are paying by credit card, you may fax this form to: **206-727-8320.**

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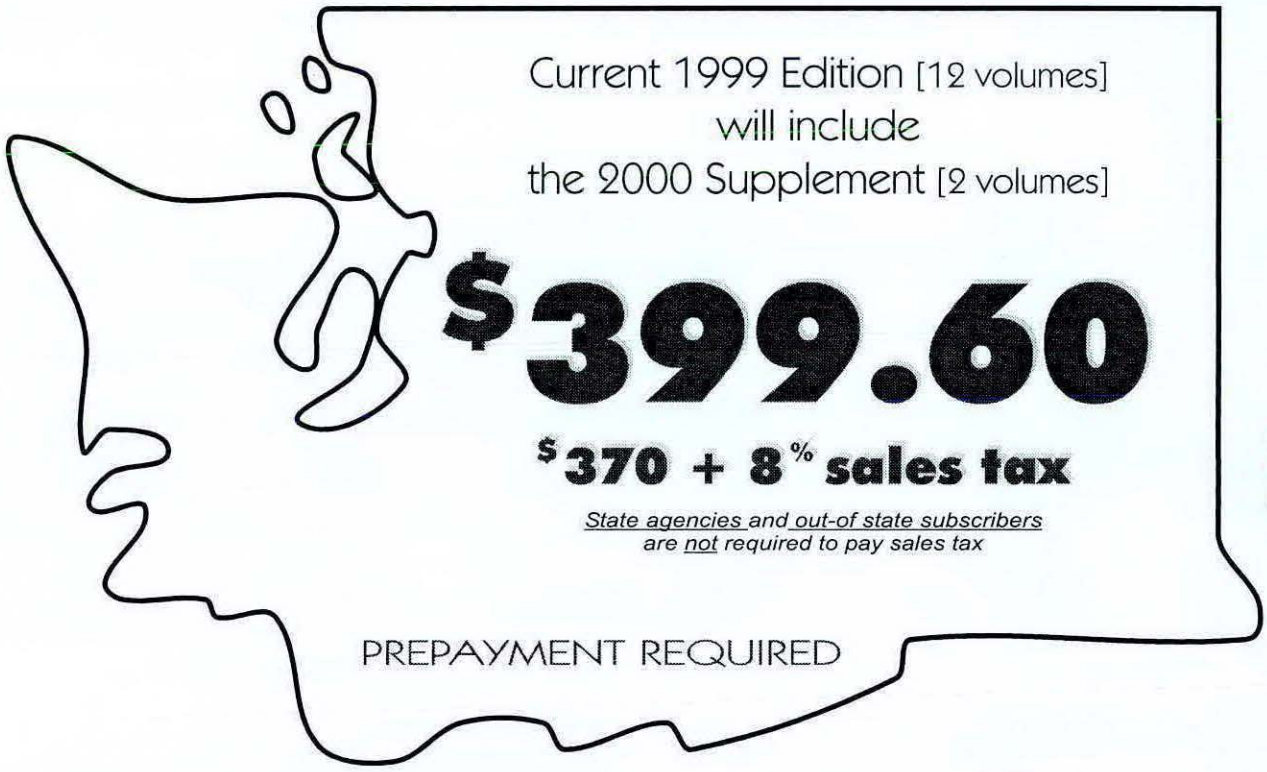

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Reaching for Professionalism in the Practice of Law

by Jan Michels
WSBA Executive Director

Through LSAT, MCLE and ongoing regulation, persons become and stay lawyers. The WSBA's Strategic Goals #3 (Professional Development of New Lawyers) and #4 (Increase Professionalism and Civility in the Practice of Law) recognize the need to examine the factors that influence the making and maintaining of ethical and professional lawyers in Washington.

This investigation of how these pieces fit together (or, some would say, don't fit together) was kicked off at a panel presentation at the June 1999 Bar Leaders/ATJ Conference. Chief Justice Richard Guy, former WSBA President Wayne Blair, Dean John Clute, incoming chair of the Professionalism Committee Stella Rabaut, and Chief Disciplinary Counsel Barrie Althoff discussed the interrelationship of law school, professional development, practice conundrums, lifestyle and discipline. At the Chief Justice's prompting, the WSBA followed up on the questions and issues highlighted at this meeting about the disjointed approach to screening, testing and regulating lawyers.

The WSBA hosted two meetings among the deans of Washington law schools, law examiners, the state Supreme Court, the WSBA's Board of Governors and Long-Range Planning Committee members charged with developing strategies to achieve Goals #3 and #4. The first meeting explored the relationship of law school testing and screening, law school curriculum and the WSBA admission processes. At the second meeting, a panel of newer lawyers discussed the relationship of law school and the admissions test to their practice. A third meeting, scheduled for the spring, will address law school curricula and structure. Highlighted below are some of the things we're learning from this investigation.

- The LSAT tests for reading and verbal reasoning skills.
- Law schools see their role as *educating*, not as screening for admission to the practice of law or for molding of lawyer character.
- There are law school trends toward skills training, though specific skill testing is not part of admissions testing.
- The WSBA's admission test, while still predominantly about applying substantive law to particular cases, *does* probe on ethics and professionalism.
- Few new lawyers are in situations where mentoring or structural continuation of legal education can occur. They must "fend for themselves."
- In Washington, the ratio of lawyers to citizens is parallel to other similar states at 280:1. If speculation that saturation causes combativeness or unprofessionalism is accurate, then it is a national phenomenon.
- Research done by the Chief Justice of the Washington Supreme Court indicated that it is not debt or years of practice that correlate with discipline. In fact, the highest risk factors for attorneys are in practice areas where large trust accounts are common, and being 40-50 years old. (This is the most common age of lawyers in Washington, so it may not be significant as to discipline.)
- While clinical education is valued highly by students and new lawyers, it is also the most intense and expensive element of law school curricula. The economics of law schools constrain what law schools can offer.
- New lawyers suggest that law school curricula should be reconsidered and paced differently.
- The skills new lawyers feel the most need for are trial skills, business skills and working with clients.
- The WSBA should seek and foster an earlier relationship with law students and offer more assistance with CLEs and training early in the practice of new lawyers.
- New lawyers feel they acquire the skills they need from (in descending order) law school practicums and clinics, actual client experience, trial and error, legal services volunteering and CLEs.
- New lawyers' most pressing issues are law school debt-driven decisions, pressing time constraints, and inability to "give back" to the community (a very real aspiration for newer lawyers).
- The attraction of law school may not fit the realities of law practice.

(continued on next page)

The WSBA should seek and foster an earlier relationship with law students and offer more assistance with CLEs and training early in the practice of new lawyers.

- More outreach to law students earlier and more meaningfully would be valuable.
- The WSBA could offer more business practice skills to new lawyers and trust fund management "best practices" at all levels.
- The WSBA could offer CLEs near law school campuses with "audit" registration for students.
- The WSBA could increase awareness among members of Law Office Management and Assistance Program resources.

It is clear that the transition between law school and the practice of law is too abrupt. These findings will feed the development of strategic Goals #3 and #4, assist the professional development of new lawyers, and increase professionalism and civility in the profession.

The Future for Access to Justice — We Shall Overcome!

by Leonard W. Schroeter

The Past Reviewed

This is my first *Bar News* article written in the 21st century. This occasion makes appropriate an appraisal of where the Access to Justice (ATJ) movement has been, and what the future may hold. Eight previous articles[1] covered the historical antecedents of the fundamental right of access to justice, establishing it as the most basic of all individual rights in our constitutional and common law heritage. We have explored the changing nature of the legal profession, and the responsibility of lawyers and the organized bar in a society where massive disparities in wealth and power exclude many people from meaningful access to equal justice under law. I have described the incompatibility of that reality with the constitutional Scriptures of the Declaration of Independence, the Gettysburg Address, and our constitutional incorporation of charters of freedom, from the Magna Carta to the Universal Declaration of Human Rights. The duty of the judiciary to ensure meaningful access to equal justice has been clear at least since *Marbury v. Madison* (1803), and remains the most essential safeguard of individual rights. The obvious linkage of that duty to judicial independence has been discussed elsewhere.[2]

The last four articles in *Bar News* explored the right to attorney representation (sometimes referred to as "Civil Gideon"). Most lawyers understand that, absent the right to counsel, the justice system would be effectively closed for most people. The focus on the necessity of competent and committed counsel cannot be overstated. But access to justice can be impeded by many other factors. If the courthouse itself is closed by lack of funding, dockets are overcrowded, or there are excessive court delays, justice is hollow and unreachable. Failure by the legislative or executive political branches to facilitate the installation of independent and competent judges makes separation of powers a mockery. Yet, these increasing impediments to equal justice under law have become widespread and require detailed scrutiny and far-reaching changes in the selection of judges and the corruption of the electoral processes.

If the courthouse itself is closed by lack of funding, dockets are overcrowded, or there are excessive court delays, justice is hollow and unreachable.

The Access to Justice Board: An Instrument for Change

In response to the need for coordination of ATJ activities, the ATJ Board was established as an independent body by Order of the Washington State Supreme Court in April 1994 at the request of the WSBA. The WSBA staffs the ATJ Board and supports its mission to promote and facilitate equal access to justice in Washington state's justice system. The Supreme Court's affirmation of that mission statement incorporated principles and goals that recognize that "meaningful access to justice entails the removal of unnecessary impediments within the justice system." Thus, the Board has a responsibility of reporting to the Supreme Court what those impediments are, and how they can be remedied. Consequently, committees of the Board investigate and report to the creating bodies — the Washington State Supreme Court and the WSBA Board of Governors.[3]

In order to implement the principle that "meaningful access to justice entails the removal of unnecessary impediments within the justice system," a Systems Impediments to Access to Justice Committee (SIATJ) was formed, chaired by the Honorable Cynthia Imbrogno.[4] Its 27-page report in May 1997 identified and developed strategies "to overcome legislative, administrative and judicial rules, practices and procedures that serve as barriers to civil access to justice." Among the impediments identified were "the politicization of the funding process for legal services." The report recognized that there were more than 60,000 case filings a year in Washington for state administrative hearings, and noted that the impediment of "dinosaur statutory administrative procedures which are not user-friendly for pro se parties," and lack of attorney representation at administrative levels impaired fundamental rights. Multiple administrative impediments were investigated and described by the Committee, with recommendations for potential remedies.

The Committee also concerned itself with the possibility of "losing what is already in place," stating that:

> Access to justice requires both the enactment of changes to the civil justice system, and resistance to other changes through the civil justice system. During the past decade, there has been a steady attempt to enact tort reform in the form of "loser pays." Loser pays should continue to be resisted by those who are concerned with access to justice.

Thus, the adoption of the so-called "English Rule" and the burdening of the

"American Rule" are seen as important access issues, with constitutional implications. In addition, the Committee noted that "access to the civil justice system is also threatened by attempts to weaken the contingent fee system." The Report recognized that impediments arising from the presence, or absence, of civil rules and procedures insensitive to serious disparity of parties in resources and power could significantly impair constitutional rights to meaningful access to equal justice under law. This risk is compounded by "lack of awareness of some members of the judiciary of access to justice issues" and the hostility at times exhibited by legislative bodies that exacerbate, or even create impediments by limiting existing rights.[5]

It is not instantly intuitive to think of violations of fundamental rights occurring in administrative proceedings, or as a consequence of civil justice system rules of evidence or procedure. Virtually nothing in law school training focuses on access to justice as a fundamental right. We have previously noted that, although these fundamental principles are synonymous with the basic idea of rule of law, constitutionalism is most often equated with the Federal Constitution. The United States Supreme Court's jurisprudence focuses on Bill of Rights phrases, in their interpretations of "due process," "liberty" and "equal protection," which are all derivative from, or secondary to, the most fundamental right: meaningful access to justice itself. One cannot reach the others if this primary requirement of the rule of law cannot be met.

That is the reason why the fundamental character of access is the first principle of the ATJ Board, the Supreme Court and the WSBA. The second principle is "access to justice is dependent on the availability of affordable legal representation," but that availability is dependent upon adequate funding. Other principles are that ATJ "means access to all forms in which legal rights are determined," that "the legal profession has a special duty to assure that ATJ is recognized as a fundamental right," and that the judiciary "must make ATJ a high priority."

One indicia of judicial concern can be found in an analysis of the Washington State Supreme Court and Appellate Court decisions addressing access to justice.[6] From 1969 through 1996, there was an average of approximately one case per year, many of which did not rely upon the right of access, but rather referenced other constitutional provisions. This was despite the vigorous access jurisprudence of Justices Finley, Utter and Horowitz a quarter century ago. Much of the subsequent judicial indifference to this fundamental right can be attributed to the malignant effects of *Housing Authority of King County v. Saylors*, 87 Wn.2d 732 (1976), which cast a precedential pall on even thinking about access to justice. Lawyers failed to make ATJ an issue, and judges continued to cite *Saylors*, despite its jurisprudential illegitimacy. But in the five years since *In re Grove*, 127 Wn.2d 221 (1995) and the Court's creation of the independent ATJ Board, new interest and understanding about this fundamental right has led to a burgeoning of Washington appellate court decisions addressing access. Within the past year, these issues have been raised on an almost monthly basis.

As recently as *Miranda v. Sims, et al.*, (CA Div. I. Jan. 19, 2000), Judge Ellington, in a concurring opinion, stated:

> I agree with appellants that the right to access to the courts is fundamental to our system of justice. Indeed, it is the right "conservative of all other rights." *Chambers v. Baltimore & Ohio RR Co.*, 207 U.S. 142, 148 (1907). I also agree with appellants that meaningful access requires representation. Where rights and responsibilities are adjudicated in the absence of representation, the results are often unjust. If representation is absent because of a litigant's poverty, then likely so is justice, and for the same reason.... The majority also is correct that our state supreme court has not viewed the right of access as carrying a right to representation at public expense in the absence of statute, unless fundamental liberty interests are at stake in the litigation.... While I would urge a broader view of the circumstances that call for representation at public expense (see, e.g., *Housing Auth. of King County v. Saylors* ... Horowitz and Utter, dissenting), this case does not present those issues.

The Equal Protection clause of the Fourteenth Amendment was construed to permit racial segregation, from *Plessey v. Ferguson* (1896) to *Brown v. Board of Education* (1954). The *Saylors* precedent has survived for almost a quarter century. The Bench and Bar commitments to the fundamental right of access to justice mandates a frontal attack on *Saylors*, rather than a strategy of slow attrition and evasion.

Broadening Our Understanding of Access in the 21st Century

As we begin the new century, the most promising trend in the protection of the right of the individual to be able to meaningfully access equal justice under law is in the area of state constitutional challenges to "tort reform." Coined early in the Reagan Administration, this phrase was a euphemism for a concerted policy by corporate America to prevent individuals who were utilizing the common law

tort system from securing remedies for harm suffered. Essentially, multi-faceted legislation sought not only in state legislatures but also in Congress was designed to take away the right to a remedy or to curtail that remedy. Legislation included immunizing habitual defendants, capping damages, abolishing or curtailing exemplary damages, avoiding or limiting jury trials, curtailing or abolishing rights to proffer certain testimony or to present certain kinds of evidence, and abolishing or limiting the accountability of the insurance industry and corporate America generally.

Constitutional challenges to "tort reform" did occur, and in some states were successful. In Washington, for example, *Sofie v. Fibreboard*[7] relied upon state constitutional provisions such as trial by jury.[8] But it is only in the past few years that attorneys for those whose rights have been violated came to understand that their most powerful protection is the fundamental right to meaningful access to the civil justice system. On July 16, 1999, a *New York Times* front page headline declared, "State courts are sweeping away laws limiting injury lawsuits." The article by William Glaberson began:

> More than a decade after states began enacting laws to cut back big jury awards and curtail injury lawsuits, state courts across the country are overturning one measure after another, concluding that Americans have a powerful right to settle their disputes in court. Top courts in such states as Illinois, New Hampshire, Kentucky, and most recently Indiana on July 8th, and Oregon yesterday, have relied on provisions of state constitutions like guarantees of fair access to justice to the courts to strike down all or part of the new laws that were passed under the banner of "tort reform."

The article reported on "dozens of new challenges to such laws" which were working their way to their state supreme courts. It explained that these cases rely upon state constitutional guarantees, such as "open courts" provisions in approximately 40 states. These constitutional provisions are also called "right to access of justice," or "right to a remedy." The *New York Times* further reported that at least 87 decisions invalidating tort reform laws had occurred in recent years.

On August 16, 1999, the court in *State ex rel Ohio Academy of Trial Lawyers, et al. v. Showard, et al.*[9] held that a broadly sweeping tort reform statute by the Ohio legislature (which had as a primary purpose overruling an earlier Ohio Supreme Court determination that a similar act was unconstitutional) was a violation of multiple provisions in the Ohio state Constitution. Organizations and individuals brought the case as an original action, seeking prohibition and mandamus of Ohio state trial courts from enforcing the legislation. It also challenged the constitutionality of most of the legislative enactments that had broadly amended statutes and rules relating to torts. The Court held that, since the action was an effort to secure enforcement and protection of a public right, there was standing, and that the effort by the legislature to reenact provisions previously held unconstitutional

usurped judicial power in violation of doctrines of separation of powers. The legislature was also precluded by state constitutional provisions from depriving claimants of the right to a remedy and rights to a jury and due process. It was the sworn duty of the Supreme Court to uphold the state constitution and implement fundamental constitutional doctrines that were involved. Principles of separation of power required the Court to uphold the rule of law, even though the legislative invasions may have been a reflection of majoritarian preferences. But as the Court held, these are transitory, while the Constitution is enduring and fundamental.[10]

The American Tort Reform Association (ATRA), which described itself as "a coalition of more than 300 businesses, corporations, municipalities, associations and professional firms," lamented that:

> Because the decision was rendered under the Ohio Constitution, it cannot be appealed to the Supreme Court of the United States. In effect, the Supreme Court of Ohio has created a Catch-22 system that deprives the people of Ohio of their wishes for fundamental civil justice reform. Today's decision in Ohio means that there are now 91 decisions nationwide in which state constitutions have been used by activist courts to overturn liability reform.

The lamentations regarding "activist courts" limiting legislatures by utilizing state constitutionalism is historically and jurisprudentially unfounded. States are the jurisdictions where common law remedies find their primary jurisdiction, and where such remedies are protected by state constitutional access to justice/remedy clauses. This is implicit and explicit in the jurisprudence of federalism. It is historically clear that the ancient and honorable remedial powers of courts of equity to provide effective remedies for the enforcement of legal rights are found in state common law jurisdictions. The idea of equity as part of a jurisprudential system is hardly a recent invention. It dates back at least to Aristotle, who referred to it as "justice that goes beyond written law." The Ohio

Court utilized its equitable powers to perform its constitutional functions, just as Justice Marshall did in *Marbury v. Madison,* to ensure that the other branches adhered to constitutional restraints upon their exercise of power.

Conclusion

In this new century, we should and will ascribe to the right to meaningful access to equal justice under law as the primary, most fundamental right. As disparities between the rich and powerful and the poor and powerless accelerate, we will insist that the full protection of the law be equally provided and secured as a duty of constitutional courts, and as a responsibility of government at all levels of the justice system. We will recognize that tort actions are an integral part of a constitutional system of great antiquity, basic to the common law and designed to provide remedies for those whose rights have been violated, whether by government or private abuses of power. As a part of our understanding of government of the people, by the people, and for the people, we will apply our American jurisprudence where the triers of the facts are the jury, and the constitutional duty of the courts is to provide a remedy, and permit the parties to present their evidence.

These are not simply projections for the future. They are pressing mandates for this country if it is to be the last best hope of mankind.

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NOTES

1 These publications can be seen at www.wsba.org.

2 *See* "KCBA Attacks the Erosion of Judicial Independence," *King County Bar Bulletin* (Fall 1999), and "Civil Gideon: If Not, Why Not?" Presentation at: Washington State Access to Justice Annual Conference, Jurisprudence Workshop, Wenatchee, Washington, June 27, 1999.

3 The Board's Jurisprudence Committee, in implementation of its roles, has explored and reported on basic ATJ principles such as "access to justice as a fundamental right," on the subject matter of the articles published in *Bar News,* by conference, and by seminar papers, reports and studies.

4 United States Magistrate Judge in the Eastern District of Washington.

5 The detailed analysis of the SIAJC can be found in the Report and subsequent reports of the Committee. Requests can be made to the ATJ Board at the WSBA.

6 Hugh Spitzer compiled a compilation of a "Jurisprudence of Access to Justice Subject List of Those Cases" several years ago for a state constitutionalism law school class he taught. A copy will be provided upon request.

7 112 Wn.2d 636, 771 P.2d 711, 780 P.2d 260 (1989).

8 Washington Constitution Article I, Section 21, reads: "The right of trial by jury shall remain inviolate."

9 86 Ohio St. 3d 451, – N.E. 2d –, 1999 WL 617856 (Ohio).

10 The Ohio opinion, along with the recent Oregon, Indiana and Illinois Supreme Court cases will be the subject matter of a subsequent article.

Spousal Liability
for Federal and State Taxes

by Martin Silver

This article addresses questions dealing with the liability of spouses and ex-spouses for federal taxes and Washington state business taxes. To what extent is the community and separate property of each spouse liable for prenuptial tax debts of one spouse? To what extent is the community and separate property liable for tax obligations that accrue during marriage? What is the tax liability of separated and former spouses? Finally, to what extent may spouses, by contractually varying how they hold property and earnings, also vary which property and earnings become liable for unpaid taxes?

General Liability Principles

Federal Taxes

Under the rule announced by the United States Supreme Court in *Poe v. Seaborn*, 282 U.S. 101, 51 S. Ct. 58 (1930), each spouse in a community property state is individually liable for the tax on one-half of the community income, regardless of which spouse actually earns the income, and regardless of whether a joint or separate return is filed. If the parties file a joint return during marriage, their liability is joint and several as to the entire debt, and extends to the community property and the separate property of each. If they file as married filing separately, each must pick up one half of his/her own income and one half of the other's. The potential for havoc is evident if the spouses separate in anticipation of a divorce, especially where one will not disclose income to the other.[1] Spouses may by agreement convert separate property (including future acquisitions) into community property, and may also agree that their existing property and future acquisitions shall be separate property.[2] The Internal Revenue Service has generally indicated that agreements affecting the status of property or income by couples in a community property state will be valid for federal income tax purposes.[3] As will be discussed later, a question arises as to whether, and to what extent, altering the form by which property is held also alters the property subject to collection.

Washington State Taxes

Washington state does not have an income tax. Where one or both spouses run a business, however, liability for unpaid taxes may fasten to the spouses. Liability will extend to the separate property of the spouse active in the business and to the community, even if only one spouse is active. Washington has not enacted legislation similar to the federal legislation which offers protection to an innocent spouse. Therefore, liability for unpaid state taxes is affixed on the basis of community property law, so that the community is generally liable for the whole debt.[4]

Prenuptial Tax Obligations

Federal Taxes

Not uncommonly, a federal tax liability exists against one spouse at the time he or she marries. The enforceability of that debt against community property constitutes one of the few exceptions to the "marital

... for federal tax collection purposes, state law determines what property rights a party has, while federal law determines what collection powers the federal government has as to that property.[7]

bankruptcy" rule.[5] The Ninth Circuit has ruled that community property may be levied and sold, and one-half of the proceeds applied to a spouse's premarital federal tax debt.[6] But for the *Overman* case, the most the federal government might have laid claim to would have been the liable spouse's separate property, earnings and accumulations.

Suppose that the spouses-to-be have entered into a prenuptial agreement making their future earnings separate property. Can this insulate one-half of the nonliable spouse's erstwhile community earnings from governmental levy, the *Overman* case notwithstanding? There is no Washington case law directly on point, but it would seem that such an agreement should be successful if, under Washington law, it would serve to establish the separate property status of the nonliable spouse's earnings. This is so, because for federal tax collection purposes, state law determines what property rights a party has, while federal law determines what collection powers the federal government has as to that property.[7] A recent district court ruling in Texas rejected an IRS assault on a prenuptial separate property/future earnings agreement, and found that since the wife's earnings would be regarded as separate under Texas law, they were not subject to levy by the IRS.[8]

It should be noted, however, that the government may challenge whether a separate property agreement covering earnings has been observed by the spouses.[9] Thus, a federal revenue officer may look to whether one party used her earnings to pay the admittedly separate property expenses of a spouse, such as auto or student loan payments. The spouses are also well advised to deposit separate earnings into separate accounts, and to pay into a third account from which community living expenses are paid out in as nearly equal amounts as possible.

Suppose the separate property/separate earnings agreement is executed during marriage. The relevant question would appear to be whether the agreement was executed after the debt was incurred, not whether the agreement was entered into before or after marriage. RCW 26.16.120 provides that a marital agreement "shall not derogate from the rights of creditors." As the premarital tax liability of one of the spouses was not a community obligation to begin with, execution of the agreement even after marriage does not deprive a community creditor of community property against which it might have levied but for the agreement.[10] If a post-marital agreement making a spouse's earnings separate property would be effective under Washington law, the IRS should be bound by it also.[11]

Washington State Taxes

Suppose a spouse has a Washington state tax liability (or warrant) at the time of entering the marriage. Can collection be made against the taxpayer spouse's one-half interest in all community property? The answer should be no because of RCW 26.16.200.[12] Even assuming the tax debt is reduced to a filed warrant (i.e., judgment status), RCW 26.16.200 would appear to limit the Department of Revenue to a claim against the liable spouse's separate property and his or her post-marital "earnings and accumulations." The *Overman* case exception created with regard to federal tax liens relied on the supremacy of federal law over Washington law regulating the rights of creditors generally, a consideration which should not apply to Washington state taxes.

Tax Obligations Incurred During Marriage

Federal Taxes

As discussed earlier, taxpayers who sign a joint return are jointly and severally liable on the resulting liability. Frequently, one taxpayer works for a family business which may itself be either community or separate property. Even if the business is operated in the corporate or LLC form, failure on the entity's part to make federal tax deposits may result in imposition against the working spouse of an IRC Section 6672 assessment (100 percent penalty) in the amount of the FICA, Medicare and income tax withheld but not remitted to the government. While the resulting personal tax liability and lien typically run only in the name of the spouse deemed responsible for the failure to deposit, the obligation would appear to be against the community, even if the business entity itself is separate property. This is because of the presumption that debts incurred during marriage are community obligations, and because the community had the economic benefit from the earnings of the spouse working for the business.[13] The noninvolved spouse's separate property should not be accessible. Moreover, under the reasoning of the *Calmes* case, it may also be possible to insulate the noninvolved spouse's earnings by a separate earnings clause in a separate property agreement. If the 100 percent penalty accrues during marriage but before the agreement is executed, the IRS may argue that the agreement was voidable under state law as being in derogation of the rights of creditors.[14]

Washington Taxes

The Washington State Department of Revenue takes a different position as to the effectiveness of a prenuptial separate property agreement. In Determination 97-168, 17 WTD 142 (1998), the husband and wife entered into a prenuptial separate property agreement. The agreement did not discuss future earnings. The husband's family corporation, for which he continued to work during the marriage, was scheduled as separate property. The corporation failed to remit retail sales tax during a period of the marriage, and the husband was found personally liable as a responsible officer for the defunct corporation's taxes. The taxpayers appealed the assessment and argued, inter alia, that because of the prenuptial agreement, the Department could not collect any portion of the debt from the separate assets or earnings of the wife. In a broadly worded decision, the Department of Revenue ruled that the agreement was not binding on the Department, as it had no effect on creditors under RCW 26.16.120. Analyzing the matter under "traditional community property law," the Department of Revenue found the community, and therefore the wife's community property earnings (but not her separate property), liable under the economic benefit doctrine and under RCW 26.16.030.

While the ruling may be correct because the prenuptial agreement appears not to have specifically referenced "future earnings" as remaining separate, the reasoning of the Department of Revenue is incorrect in concluding that the prenuptial agreement did not apply to the Department. The Department was not a creditor of the unmarried parties at the time the antenuptial agreement was signed and so the agreement was effective against subsequent creditors.[15] Had the agreement made earnings separate, as did the agreement in *Calmes*, there would seem no ground for disregarding it. The Department appears also to have erred, although in the taxpayer's favor, in holding that after divorce the wife's earnings (no longer community property) would not be liable for the tax debt. The tax debt, having been characterized as a community debt, would

If relief is not ordinarily available, the IRS will look to additional factors as favoring relief, such as whether the requesting spouse was abused by the other spouse, or whether the divorce instrument obligated the nonrequesting spouse to pay the liability.

seem to follow former community property even after it became separate property in the hands of a divorced spouse.[16]

Tax Liabilities During and After Divorce: Federal Statutory Relief

Federal Taxes

Under *Poe v. Seaborn*, each spouse has an obligation to report for federal income tax purposes half of her own income and half of her spouse's. Parties who have separated and may be in the process of divorce often become concerned that they cannot get information on income earned by their spouses, and may also complain that they would like to file joint returns but cannot get their spouse's cooperation. As to the second concern, there is no right to file a joint return if one spouse is unwilling, but nothing prevents the other spouse from filing as married filing separately. As to the first question, there are several ways to approach the problem posed by *Poe v. Seaborn*.

Relief under RCW 26.16.140

First, if the parties are living separate and apart, post-separation earnings are separate income.[17] But where the spouses have commenced to live apart in the middle of the year, pro-rating the earnings between community and separate would appear to be necessary even if a spouse receives no benefit from the other spouse's earnings. Moreover, since community property does not lose its character merely by separation, each spouse presumably remains liable for the tax on (and deductions with respect to) one-half of nonearned community income. The responsibility for reporting one-half of the community income prior to divorce would continue until the community property is actually divided by agreement.[18]

Relief under IRC Section 66

A second approach to overriding the rule in *Poe v. Seaborn* is through use of IRC Section 66. Unfortunately, the section is both complex and unnecessarily restrictive. Section 66(a) provides that if spouses file separately, live apart at all times during the year, and do not transfer earned income from one to the other, the nonearning spouse will be responsible only for his or her own earned income.[19]

Sections 66(b) and (c) appear to provide relief from taxation for any community income, not just earned income, even if the parties live together for a portion of the year, although here, too, the requirements for relief are stringent. Section 66(b) is not a relief provision. In other words, it cannot be used by one spouse to avoid liability for tax on community income earned or received by the other spouse. It "allows" (but does not require)

the IRS to disregard the "benefits" of income-splitting to a spouse if that spouse treated any income as his or her own and "failed to notify" the nonearning spouse of the nature and amount of the community income before the due date of the return. Therefore, the spouse receiving the community income can avoid application of Section 66(b) by giving the other spouse the required notice, even if that spouse does not benefit from the income.

Section 66(c) relieves a spouse of liability for community income if certain conditions are met. The section affords relief to a separately filing spouse only if she "did not know of, and had no reason to know of" the other's income and if it would be inequitable to tax community income to her. Section 66(c) extends not only to earned income but also to trade, business and partnership income, as well as to income derived from separate property. Section 66(c) generally leaves the spouse receiving the income in the driver's seat as to whether to notify the other spouse of the community income, regardless of who controlled it or whether the noncontrolling spouse even had enough of the income to pay the taxes. Court decisions construing whether a spouse knows, or has reason to know, of the other's income further limit the utility of Section 66(c). For example, in one case where a husband earned real estate commissions, deposited them secretly into an account with his mother, and then withdrew funds from the account and deposited them into a joint account with his wife to be used for living expenses, the wife did not qualify for Section 66(c) relief because, while she was not aware of the arrangements her husband had with his mother, she was aware that he earned commissions.[20] Other cases have held that the mere knowledge of the income-producing activity, but not necessarily the exact amount or specific items of income, is enough to disqualify a spouse for Section 66(c) relief.[21] The courts also look for evidence of whether the spouse benefited from the income, although there is some disagreement as to what constitutes "benefit."[22]

The 1998 Reform and Restructuring Act added an additional equitable relief provision to Section 66(c), providing that:

> [I]f taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or deficiency (or any portion of either) attributable to any item for which relief is not available under the preceding sentence, [i.e., Section 66(c) requirements] the Secretary may relieve such individual of such liability.

This language is identical to that found in Section 6015(f), the section dealing with relief from joint return liability for an innocent spouse, also added by the 1998 Act. On December 21, 1998, the IRS issued Notice 98-61 to provide interim guidance.[23] Presumably, the IRS will apply the notice to the new equitable relief provisions under Section 66(c). The notice sets certain threshold requirements for equitable relief and lists circumstances under which relief will ordinarily be granted. Pro and con factors to be considered in determining where relief will be granted in other cases are also listed.

Relief will ordinarily be granted when, in addition to other criteria which normally will be met, the requesting spouse had no reason to know that the tax would not be paid, would suffer undue hardship if relief were not granted, and the tax liability for which relief is sought is attributable to the nonrequesting spouse. If relief is not ordinarily available, the IRS will look to additional factors as favoring relief, such as whether the requesting spouse was abused by the other spouse, or whether the divorce instrument obligated the nonrequesting spouse to pay the liability. Factors weighing against relief include whether the tax liability is attributable to the requesting spouse, and whether the requesting spouse received a significant benefit (beyond normal support) from the unpaid liability or items giving rise to the deficiency.

Innocent Spouse Treatment

Relief from the joint and several liability resulting from the filing of a joint return may be available under IRC Section 6015.[24] Section 6015(a) generally addresses the case where one spouse, unbeknownst to the other, has either excluded income from the return or misreported in some other respect. While there is nothing to prevent application of the innocent spouse provisions to married couples, for obvious reasons it is usually in a case where

spouses have separated or divorced that one spouse wants to be relieved of his or her share of the joint tax liability. Qualifying for innocent spouse relief is technical, but suffice it to say that the 1998 act liberalized the rules and eased qualification, including apportioned relief if the innocent spouse knew of the fact of, but not the extent of, the understatement. Basically, a spouse may be relieved of liability on a joint return upon establishing that he or she did not know and had no reason to know that there was an understatement on the return. The spouse may elect innocent spouse relief within two years from the date the IRS begins collection against the electing spouse, such as wage garnishment or other levy. In addition, IRC Section 6015(f) as added in 1998 contains a catchall provision allowing the IRS to provide equitable relief in cases where innocent spouse relief may be unavailable. Notice 98-61, already discussed in connection with the same relief provision under Section 66(c), delineates the factors the IRS will consider in determining entitlement to equitable relief.

Section 6015(c) provides for divorced or separated persons to elect "separate liability" with respect to a joint return. Such an election limits exposure to the amount of tax which would have resulted from the filing of a separate return. The election for separate liability should ordinarily be easier than seeking innocent spouse relief because it is available, unless the IRS shows the taxpayer had actual knowledge of the item giving rise to the deficiency (as opposed to the "known or should have known" standard for innocent spouse relief). The procedure for electing separate liability is the same as that for electing innocent spouse relief.

In keeping with the philosophy of the 1998 legislation overall, a joint filer may seek review by the Tax Court of IRS denial of innocent spouse or separate liability relief.

State Taxes

A liability with the Department of Revenue incurred by one spouse during separation, but before divorce, presents different concerns because of the absence of statutes such as IRC Sections 66 and 6015. Should the business be a sole proprietorship run by one spouse, or should personal liability for retail sales tax be assessed against the spouse active in a corporate business, the state would presumably regard its assessment as running against the marital community. The nonactive spouse would presumably argue that under RCW 26.16.140 the liability for taxes should follow the spouse earning income from the business. The nonactive spouse could also argue that the community had terminated, so that any business tax liability incurred by the spouse active in the business became a separate tax liability of the active spouse only.[25]

Under Determination 97-168, discussed above, a community liability attributable to the business activity of one spouse might not reach the earnings of the nonactive spouse after a divorce. By extension of that reasoning, an assessment against the active spouse might not reach the former community property awarded to the nonactive spouse in a divorce.

Right to Participate in Collection

One frequent complaint of formerly married persons is that one spouse, generally the more visible and responsible, becomes the target of collection with respect to a large federal income tax liability on which

both ex-spouses are jointly liable. If the target spouse cannot establish "innocent spouse" status or elect separate liability status, it may nevertheless help his or her position to get information as to what efforts the IRS is making to collect from the other spouse, and how much if any has already been collected. The ability to obtain this information, previously unavailable because of privacy rules, was added in the 1996 Taxpayer Bill of Rights. Section 6103(e)(8) allows for disclosure of collection activities on a joint income tax return. This applies to divorced taxpayers and those who are no longer living in the same household. The information which may be disclosed includes the nature of the collection activity undertaken against the other spouse and the amount collected in toto.

There is no similar opportunity with respect to a Washington state tax debt because of nondisclosure rules. Legislation similar to IRC Section 6103 will probably be required to allow the target spouse to share in information as to collection being undertaken with regard to his or her former spouse.

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NOTES

1 This problem is ameliorated for federal income taxes by RCW 26.16.140 and IRC Section 66, both discussed later in this article.

2 RCW 26.26.120, 26.16.050. Cross, *Community Property*, (*rev.* 1985, 61 Wash. L. Rev. 13, 101 (1986). This includes the power to contractually make future earnings separate. *See* discussion and cases cited in Cross, p. 105.

3 Rev. Pub. 555 (1998). Rev. Rul. 77-359, 1977-2 C.B. 24

4 Moreover, the basic presumption that a debt incurred by either spouse is a community debt, and thus enforceable against the community property, is not easily overcome. Cross, *Community Property*, at 116.

5 The 1969 and 1983 amendments to RCW 26.16.200 permit enforcement against the earnings and accumulations of either spouse for that spouse's premarital debts if reduced to judgment within three years of marriage. The separate property of the obligated spouse is, of course, reachable by the taxing authorities.

6 United States v. Overman, 424 F.2d 1142 (9th Cir. 1970). The court based its holding on two grounds: the reasoning that a spouse has a sufficient "right to property" under Washington community property law to be leviable under IRC Section 6321, and federal supremacy as to the right of the United States as a creditor of the taxpayer.

7 United States v. Rodgers, 461 U.S. 677 (1983)/ The reasoning of the court in Overman was, in fact, that the taxpayer had a sufficient property interest under Washington law to be lienable, while federal law determined the powers of the federal government to execute on the liened property.

8 Calmes v. United States, 926 F. Supp. 582 (N.D. Tex 1996). The court said that since federal law followed state law as to property *rights* (the same having also been the reasoning in the Overman case), and since Texas law would respect such an

agreement, the federal government was bound by the agreement. The court also said that such an agreement was not a fraudulent conveyance, noting that among other things, the parties exchanged equally valuable consideration in renouncing an interest in each other's future earnings.

9 It may be difficult to say whether parties have observed an agreement. Clearly, commingling of earnings will do the separate status argument no good. Consider also the case of Kolmorgan v. Schaller, 51 Wn. 2d 94 (1957), where the court concluded that despite a separate property agreement, a wife's earnings had not lost their community character because the wife had used her earnings to pay ordinary family expenses. This case is criticized in Cross, *Community Property*, p. 105. In a questionnaire the IRS circulates to taxpayers making an offer in compromise, the Government requests "copies of any and all pre/ante [sic] or separate property agreement(s), with affidavits from each of the parties, under penalty of perjury, regarding adherence to said agreement(s)."

10 The matter is put this way by Cross: "The separate property agreement will not be given effect to insulate what otherwise would be community property from the community creditor whose basic claim existed at the time of the agreement. It will be effective against the subsequent creditor whether he knows of the agreement or not." (citations omitted), at 107. In fact, the case cited by Cross in support of the first sentence is one in which the separate property agreement was one entered into during the marriage. Marsh v. Fisher, 69 Wash. 570 (1912).

11 *See* footnotes 3 and 6, *supra*. Should the IRS not agree with the taxpayer's position, the taxpayer may appeal the proposed collection action to the IRS Appeals Division. If a satisfactory result is not obtained, the taxpayer may seek review of the proposed collection activity in U.S. District Court and, in most cases, the U.S. Tax Court. The statutory codification of the appellate review and the broadening of review rights to include court review occurred under the 1998 legislation.

12 Subject to the well-known exemptions and the "earnings and accumulations" rule, RCW 21.16.200 provides that, "Neither husband or wife is liable for the debts or liabilities of each other incurred before marriage..."

13 Cross, *Community Property*, 116.

14 RCW 26.16.120.

15 The Determination relied without analysis on the proviso in RCW 26.16.120 that the agreement not be in "derogation" of creditors. The Determination failed to consider that the Department was at the time the agreement was entered into neither a creditor of the marital community, nor of the wife in her separate capacity. It has been observed that the language of RCW 26.16.120 just cited in its "naive simplicity...does not define what rights the creditors have, nor does it provide any procedure for the creditor to enforce those rights." Brachtenbach, *Community Property Agreements — Many Questions, Few Answers*, 37 Wash. L. Rev. 469, 471 (1962).

16 Bureau of National Affairs Portfolio No. 638, A-22; Kalinkas, *Taxation of Community Income: It is Time for Congress to Override Poe v. Seaborn*, 58 La. Law Rev. 73, 74 (1997); Cross, *Community Property, supra*, 144.

17 RCW 26.16.140; Rev. Rul 68-66, 168-1 CB 33

18 *Gilbert B. Hay*, 13 T.C. 840 (1949); *Phillip S. Coffer*, 11 T.C.M. 346 (1952), discussed in *Community Property Deskbook*, section 7.20.

19 Section 66(a), like RCW 26.16.14, applies only to earned income, but is more restrictive than the RCW in that the spouses must live apart at all times during the year.

20 Bozek v. Comr., T.C. Memo 1986-37

21 McGee v. Comr., 93-1 USTC ¶50,015 (5th Cir. 1992), aff'g T.C. Memo 1991-510; Costa v. Comr., T.C. Memo 1990-572

22 Compare Trout v. Comr., T.C. Memo 1992-696, granting relief where spouse did not benefit from the income beyond normal support, with Bozek v. Comr., *supra* note 20, where payment of common household benefits disqualified the spouse seeking relief.

23 Notice 98-61, 1998 I.R.B. 13.

24 The innocent spouse and separate liability election rules, discussed hereinafter, provide that community property laws are disregarded so that the rule of Poe v. Seaborn does not override the intended effect of the innocent and separate liability relief.

25 *See* the discussion in Cross, *Community Property* at 124.

Calculating Child Support Transfer Payments: *A New Approach*

by John Mills

No family law proceeding is complete without lawyers talking about the "primary residential parent" or simply "primary parent." Despite the fact that RCW Chapter 26.09 does not define "primary caregiver" or "primary parent," lawyers and judges use that phrase every day. The Court of Appeals has observed that the term "primary residential parent" does not appear in the Parenting Act.[1] The court also says that the "primary parent" concept is not to be used interchangeably with the now defunct "custodial parent" concept. Then why is family law rife with litigation over who is the "primary" parent?

Under the old law, the court's involvement in post-dissolution parenting was pretty limited. The court selected the "better" parent, designating that parent the "custodial" parent. Having done so, all issues were implicitly decided. Place the children in parochial school? The custodian decides. Allow a minor to marry? The custodian decides. Permit a tattoo or body piercing? The custodian decides. But under the new law all these kinds of decision-making issues are addressed separately in a parenting plan.

Because the new parenting plans address almost all of the issues formerly left to the discretion of the custodian, there would appear to be no particular reason to seek designation as "primary" parent. Yet every family law practitioner knows that there is unending litigation over primary parent status.

Let's be honest. One of the principal reasons for arguing about primary parent status is financial, as the current method of calculating child support transfer payments gives a financial windfall to the so-called primary parent.

P.O.P.S. v. Gardner[2] held that the support schedules represent a legislative determination of the combined amount that parents should be spending to support their children. Basic child support obligations are pretty easy to figure out, straightforward and sensible. Start with each party's net income and combine those for total income. Based on total income, the table at RCW 26.19.020 reveals the total support obligation of the parents. The more total combined income available, the more money should be spent on children, and that's what happens when the schedules are applied.

Next, under the statutes, the total support obligation is divided and allocated to each parent in proportion to his or her share of total income. For example, suppose Jim and Jane have two young children. Jim earns $3,000 and Jane earns $1,500 net each month. With total income of $4,500, the schedules tell us they should be spending $1,050 total on their children's support. Because Jim has two-thirds of the total income, the statutes tell us he should be contributing two-thirds of the total support. Accordingly, Jim's share of the support obligation is $700 a month. Jane has one-third of the total income, so she is obligated for one-third of the total support obligation, or $350 a month. This seems pretty obvious, logical and fair.

> ***The transfer payment should be the difference between a party's respective support expense and the party's proportionate support contribution based on income.***

But then the courts do something irrational with these figures. The parent having more care time — the so-called primary parent — is awarded the *total* support obligation of the secondary parent. So, if Jim wins the status of primary parent, he gets $350 a month from Jane. If Jane wins the status of primary parent she pays nothing and instead receives $700 a month in transfer payment from Jim. Why should the primary parent automatically receive *all* the support money? The statutes do not require that result.

If Jane wins primary parent status, then Jim pays her $700 a month. That means Jane has $1,050 every month to spend on the children. What does Jim have? Nothing. Suppose Jim buys new jackets for his two children. He is still obligated to pay Jane the $700 transfer payment. Is that what the statutes contemplate? If Jane buys the jackets, the costs come out of her $1,050 in support funds. How is it accounted for if Jim buys the jackets? Jane takes the children to Disneyland with part of her $1,050 monthly support money. What does Jim get to do with the children? Nothing. Part of Jane's support money underwrites the bigger home she has to own to accommodate the children. But then Jim needs a bigger home to accommodate the children every other weekend. How is that expense covered? These problems arise because the courts treat the "support obligation" as a support obligation to the primary parent. But actually the respective support obligations are obligations to the child, not to either parent.

The support obligation is different from the transfer payment. Support obligation is defined at RCW 26.09.011 as the monthly child support obligation determined from the economic table. Transfer payment is defined as the amount of money the court orders one parent to pay to another parent or custodian for child support. While the statute describes how to arrive at the parties' respective support obligation, it does not provide any guidance about how the court is to arrive at the appropriate transfer payment.

Here's the way I think the transfer payment should be calculated, and why it differs from, but is related to, calculation of the support obligation. Going back to Jim and Jane, the statutes and support schedule tell us that their total support obligation is $1,050. That's how much these parents should be jointly spending on their children. The statutes don't tell us, however, which

parent should pay what expenses. Based on the "now defunct" notion of the custodial parent, courts today simply give all the money to the primary parent, as if the primary parent has all the expenses of childrearing. Yet we know that both parents have child-rearing expenses, at least if they share parenting time.

Suppose Jane has care of the children 75 percent, and Jim, 25 percent, of the time. Then can't we agree Jane should be incurring 75 percent and Jim should have 25 percent of the expenses? In other words, of the $1,050 total that should be spent on their children each month, Jane should be spending $787.50 and Jim should be spending $262.50. If we trust Jane to spend $787.50 on the children each month (75 percent of the total support obligation), then we should trust Jim to spend $262.50. More importantly, we should *give* Jim $262.50 to spend on the children each month, so that Jim has the same per diem support money to spend on the children as does Jane.

Against this we should consider each parent's respective support obligation based on income pursuant to the statutory schedule. The transfer payment should be the difference between a party's respective support expense and the party's proportionate support contribution based on income. For Jim, we find he should have $262.50 per month to spend on the children, but his financial obligation (based on income) is to contribute $700 per month. That means he is holding $437.50 from earnings more than the amount he should be spending each month on the children. For Jane, we find that she gets $787.50 to spend on the children each month, but her financial obligation (based on income) is to contribute $262.50. Thus, it is apparent she is short $437.50 of support money each month, while Jim is holding precisely the amount that Jane is short. Accordingly, it is $437.50 per month — not $700 — that is the appropriate transfer payment.

Rather than making support a "winner-take-all" proposition, we should observe that the support obligation by statute should be divided between the parents in proportion to their income. But the respective support obligation is not statutorily the same as the appropriate transfer payment. The transfer payment should be a function of shared child-rearing expenses as well as a function of the parties' respective incomes.

There are hundreds of thousands of "secondary" parents in Jim's shoes, paying $700 per month as a transfer payment, yet having responsibility for care of the children alternate weekends plus other times. Because the transfer payment represents Jim's entire support obligation, it is little wonder he feels slighted by having virtually no money to spend on the children during his parenting time.

The system proposed here is not perfect, as it probably still understates the childrearing expenses incurred by the so-called secondary parent.[4] For example, both parents incur extra housing expenses even if one parent only has the children alternate weekends. These extra housing expenses can't realistically be limited to weekend per diems because landlords and mortgage companies don't charge like hotels. So, dividing the support money per diem is not totally fair. Yet, for all its faults, this system is far better than the current status quo.

We need to quit supporting primary parents at the expense of secondary parents by equating presumptive support obligations with presumptive transfer payments. If we fairly allocate the financial burdens of childrearing, then we will go a long way toward eliminating fighting over parenting time. We might even find no further need for designating a primary or secondary parent. Then the outdated concept of "custodial parent" will be truly defunct.

John Mills has a general civil law practice in Tacoma, including a significant number of family law cases.

NOTES

1 *See* Marriage of Pape, 93 Wn. App. 96, 968 P.2d 417 (Div. II 1998) at n.8. Actually the phrase surfaces in 1999 amendments to RCW 26.09.260 (amendments post-dating the Pape decision). But, there still is no legislative definition of what the phrase means. The phrase still is used as shorthand for the person having the majority of care time, as if sheer numbers of hours defines the primary parent. In fact, a parent with the minority of care time may perform such critical parenting functions as providing discipline. The entire notion of dividing parents into "primary" — and by implication "secondary" — parents is highly suspect.

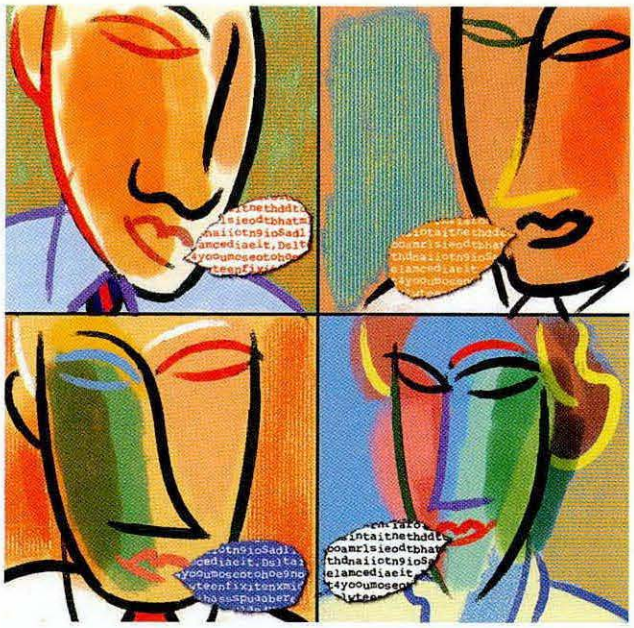
2 P.O.P.S. v. Gardner, 999 F.2d 764 (9th Cir. 1993).

3 The accountants among our readers aren't surprised that these columns balance precisely.

4 Lawyers commonly refer to this parent as the "non-primary" parent because, although treated as a secondary parent, actual use of that word is unseemly.

Collaborative Mediation:

An Alternative Approach to Case Management in Family Law Cases



by Don P. Desonier *and* **Andrew D. Kidde**

The Traditional Eleventh-Hour Mediation

You've been in mediation for six hours, and everyone, including the mediator, is getting edgy. After a brief opening presentation, the mediator moved you and your client to a separate room and started shuttling back and forth. Just now, she extracted another concession from you, your client agreeing to reduce the spousal maintenance from seven to six years. The mediator kept asking how much it would cost to take the case to trial and drawing attention to weaknesses in your case, until you realized that you had to take the next step. She went to present your most recent offer to the other side, leaving you alone with your client, a soon-to-be-divorced woman in her late 40s. Right now she seems unhappy, perhaps wondering about the thousands of dollars she's spent so far on this litigation. She's complaining about how this mediation isn't addressing the real issue — how she wasted 20 years with that creep across the hall "who has never, and will never, give me the respect and recognition I deserve for being a stay-at-home mom." She tells you, "No amount of maintenance will do that for me." When you explain that these sentiments have limited legal relevance, she glares at you and states firmly that she will not concede another dime to that jerk.

Even if she were willing to make more concessions, you're not hopeful of settling, as the other side is a long way from making a reasonable offer on maintenance. With the trial scheduled 10 days away, you're anxious to be in your office preparing. If the mediator doesn't come back with some really good news, you figure it's time to cut your losses and march out.

The mediator has returned, and she tells you that the other side has agreed to your maintenance package. Finally, the big concession you've been waiting for! You turn to your client, expecting an expression of relief. With a look of defeat she says, "Fine, just write it up and let's get out of here."

Mediations such as these can be arduous, tense and frustrating tug-of-wars. Even when the case settles, clients may leave unsatisfied, feeling that the mediation did not allow them to fully participate or address the issues that were really meaningful to them. They may also resent having had to make repeated concessions, and may feel that they settled simply to cut their losses.

In the description above, the parties used what is known as an "evaluative" approach to mediation or settlement conference. Attorneys typically use this approach to the exclusion of other forms of mediation. The popularity of this model is due in part to the fact that it typically has a high settlement rate. After all, if the substantive issues are resolved and the disputants avoid trial, they should be happy. In reality, however, the parties are often not fully satisfied.

An Alternative Approach

"Collaborative" mediation, frequently used by mediators but not fully embraced by the legal community, often provides a more satisfying experience for clients. Collaborative mediation typically happens over several short sessions, usually one to two hours. Most of the mediation sessions take place with both parties present, although there may be brief private meetings or caucuses. The first session should occur early in the development of the case, in order to establish a spirit of cooperation and set the stage for productive discussions. Mediators try to create an informal atmosphere where the parties can directly negotiate the issues. Consequently, attorneys can attend sessions but usually don't. If they are not present, the parties make only tentative agreements subject to attorney review.

The early use of collaborative mediation can provide an effective approach to managing family cases. The parties, with proper assistance from their counsel, can specifically define the issues they are facing, and exchange the information that is relevant to those issues. This can be a cost-effective and efficient alternative to traditional discovery. How many attorneys have silently cursed the receipt of 100 pages of interrogatories where only a quarter of the questions appeared relevant to the issues?

Collaborative mediation is also effective for negotiations on issues such as parenting plans that contain many details. Using traditional channels of negotiation, parenting plans can consume an extraordinary amount of time and energy. Com-

munication goes from client to attorney to attorney to client. Not only does this take a lot of time, but this "telephone" approach also increases the likelihood of miscommunication. Collaborative mediation, with the emphasis on direct, real-time negotiation, is an efficient way to resolve these detailed parenting issues. Furthermore, interactive dialogue between the parents, with the guidance and facilitation of the mediator, allows for the creation of a parenting plan that is truly tailored to the needs and interests of the children.

Face-to-face mediation also offers a better process for handling the emotional issues that are often present in the process of separation. The traditional settlement conference style of mediation occurs late in the process, often well after the separation. These emotional issues have either been ignored in the legal process (because they are not legally significant) or have been handled in an overly draconian manner, such as restraining orders. Although essential in many cases, restraining orders are all too often used not because they are necessary or even best for the parties, but rather because they are the default choice in a legal system that is not well-designed for the emotional aspects of divorce.

These emotional issues may be the most important issues to the clients and their children. Collaborative mediation allows the parties to negotiate these issues as they emerge, and come up with solutions that address their needs. For example, parties can negotiate rules around contact and privacy that are specifically related to their emotional situation. This approach is significantly less damaging to post-divorce family relations than the traditional one-size-fits-all restraining orders.

Assessing Your Client's Needs

Assessing whether your client and the other party are appropriate candidates for collaborative mediation is a complex task that involves weighing several factors, such as:

- Your client's ability to negotiate
- Power disparity between the parties
- Any history of abuse
- Any history of bad faith

This is not a simple checklist; one negative factor does not automatically mean the case is not suitable for this mediation process. Instead, after fully discussing these matters, lawyer and client can together determine whether a collaborative process best serves the client's needs.

Regarding your client's skills as a negotiator, consider your role as their coach. As legal counsel, you can empower your client by giving them information about their legal rights and options, and assisting them in developing a negotiation strategy. If your client is concerned that the other party is a more powerful negotiator, it is important to note that a capable mediator may be able to intervene to assist the weaker party to participate more effectively. It is the mediator's responsibility to ensure that negotiations proceed on a level playing field.

A pattern of physical or emotional abuse is probably the most important factor to consider in determining whether the parties should try collaborative mediation.

Face-to-face mediation also offers a better process for handling the emotional issues that are often present in the process of separation.

If abuse was historically used to coerce your client into complying with the other party's demands, then you should advise your client not to engage in collaborative mediation. If your client feels comfortable and safe with the idea of joint sessions, however, and the mediator being considered is well-trained and experienced, then this process may still be effective.

Discuss with your client whether there is a history of bad faith, such as concealing important information, or failing to follow through on specific agreements. Inherent in the mediation process is the defining of issues and the determination of what information needs to be exchanged. In cases where a history of bad faith exists, some preliminary formal discovery may be appropriate.

Increasingly we live in a world of multiple dispute resolution options. To keep up with this changing world, family lawyers need to see themselves not as gatekeepers of the justice system, but as air traffic controllers, directing clients to the appropriate dispute resolution process.

Collaborative mediation is an option that many family law attorneys have under-utilized. There are several reasons for this. Family law attorneys may perceive collaborative mediation as new, unfamiliar territory where they have little control over the outcome. There may also be the perception that the attorneys have significantly less to do if their clients are working with collaborative mediation. These perceptions are not really accurate. If collaborative mediation is properly conducted, attorneys play several crucial roles in the process. First, as described above, attorneys should assess the clients to make sure they are good candidates for collaborative mediation. Attorneys also ensure that all the necessary information is exchanged at the appropriate stage. While the clients themselves typically do most of the negotiating, attorneys should meet with clients prior to each session to advise them on the legal aspects of the issues to be discussed, and coach them on negotiation strategy. Attorneys also review tentative agreements as they are reached. They may recommend items for the agenda, and they generally ensure that all the legal issues are addressed. Once the agreements are acceptable to both parties, the attorneys transcribe them into legal documents. If the mediation doesn't settle all the issues, the attorneys are there to move the parties into litigation on those issues.

Divorcing couples going through collaborative mediation need the assistance of family lawyers who understand the process and can play the appropriate role. There may well be increasing business in this kind of work. Further, developing this side of one's practice may be good for future business. Studies show that divorcing couples going through collaborative mediation are usually more satisfied with the process. Satisfied clients bring referrals and are good for business.

Don P. Desonier, J.D., is an attorney and mediator in private practice in Bellevue. He conducts mediations and settlement conferences, and is a Certified Mediator in Domestic Relations with the Washington Mediation Association. Don can be reached at desonier @halcyon.com.

Andrew D. Kidde, J.D., is an attorney and mediator in private practice in Seattle. He is a Certified Mediator in Domestic Relations with the Washington Mediation Association. Andrew can be reached at adk@ halcyon.com.

Gems of the Week

from the Law Office Management Assistance Program

by Marty Potter • *LOMAP Advisor*

Kaitlin Mee, LOMAP Coordinator, and I read a lot about law office management. Sometimes we come across information that is too good to keep to ourselves. For the past year we have been posting these to the WSBA website (www.wsba.org) as "Gems of the Week." Here are a few of our favorites:

RE: Records Retention

Whenever possible, clients should be consulted concerning the disposition of their files and encouraged to preserve them on their own. Lawyers are advocates and advisors, not warehousemen or perpetual repositories for the files of their clients. A good lawyer need not retain clients by holding on to their files, and a poor one will soon learn that such tactics avail nothing but additional expense.

From: New York State Bar Association, Opinion 460

RE: Communicating with Clients

Do not assume that your clients can absorb legal technicalities, language or complicated advice on first hearing. Ask your client to repeat back what he or she thinks your advice is, and listen carefully for understanding. Significant information received and significant advice given should always be confirmed in writing.

From: "Office of the Practice Advisor" by Paul McLaughlin, *LSA/CBA Newsletter*, July/August 1992

RE: Malpractice Insurance

The ABA Standing Committee on Lawyers' Professional Liability has a very helpful workbook entitled *Selecting Legal Malpractice Insurance*. The book provides easy-to-understand information about malpractice insurance policies, a glossary of terms, insurance policy checklists, a pull-out comparison chart to help you choose a policy, and a state-by-state listing of malpractice insurance carriers. A "real deal" for only $15 (plus $3.95 shipping); call 1-800-285-2221 to order. An even better deal: access the online version that is available at www.abanet.org/legalservices/pl/home.html.

RE: Office Sharing

If you are in an office-sharing arrangement with other lawyers or non-lawyers, practice the following tips to ensure client confidentiality:

- Lock the door when out of the office — even for lunch.
- Lock up all client files. Don't forget the ones on your assistant's workstation or in file cabinets that may be in a public area.
- Keep your computer system separate. Don't use a networked PC with the other tenants.
- If you share a receptionist, be sure to periodically remind him or her not to discuss your business or clients with others sharing the suite.

From: Practice Management Advisors Committee of the ABA Law Practice Management Section

RE: Disaster Planning

Disaster planning is the most overlooked element of business management. Long-term business survival, not to mention professional and ethical implications, depends on an emergency plan. A comprehensive emergency plan includes the identifiable risks that threaten operations, and consideration of the following central elements vital to every business:

- Employee safety
- Facilities damage
- Preservation of files and records
- Preservation of systems and equipment
- Insurance coverage
- Client communications

From: "Be Prepared" by Phil Guerra, *Legal Management* (November/December, 1998)

RE: Collecting Fees

When collecting fees, remember that clients are more eager and willing to pay before the work is done than after the work is done. You and the client will both feel better if you get the advance retainer check before you do the work.

From: "Foonberg's Short Course in Good Client Relations," *How to Start and Build a Law Practice* by Jay G. Foonberg, 1999

RE: Managing Your Time

The first step in managing our time is making sure where we want to go. With a big-picture plan of both our professional and personal goals, we are better attuned to how our time would best be spent. The following reminders help steer you toward enjoying more of a balance between your personal and professional lives:

- The more often you say "no," the more you increase the value of your word when you say "yes."
- Know what times of the day you work best, and schedule your hardest tasks at your peak times.
- Instead of working from a long list of to-dos, use a daily short "hot" priority list reminding you of three to five "must-do today" things.

From: *Easy Self-Audits for the Busy Law Office* by Nancy Byerly Jones, ABA Law Practice Management Section, 1999.

For more information on these subjects, contact the Law Office Management Assistance Program at 206-727-8237 or martyp@wsba.org.

Changing Venues

Honors and Awards

Newly elected trustees on the East King County Bar Association include **Jason H. Grover**, **Loretta S. Story** and **David M. Tall**.

Washington State Supreme Court Justice **Faith Ireland** recently won a powerlifting contest. She has been lifting weights for several years as physical therapy following a car accident. She describes it as a centering experience that leaves her energized.

University of Washington law professor **Louis Wolcher** received a $15,800 prize, taking second place overall in the International Essay Prize Contest. Wolcher's philosophical treatise on Eastern and Western concepts of time is entitled "Time's Language."

New officers and trustees for the Federal Bar Association for the Western District of Washington include **Merrilee A. MacLean**, President; **Michele A. Gammer**, Vice-president; **Thomas C. Wales**, Secretary; **Kevin D. Swan**, Treasurer; **Sheryl Gordon McCloud**, Trustee; **Laura J. Buckland**, Trustee; **James M. Shaker**, Trustee; **Philip E. Cutler**, Trustee; and **John C. Guadnola**, Trustee.

Robert C. Mussehl has been elected Vice-chair of the ABA Dispute Resolution Section.

The Okanogan County Bar Association recently elected new officers for 2000. **Dale L. Lehrman** was elected President, and **Gretchen H. Wallace** is the new Secretary/treasurer. Mr. Lehrman is an Okanogan County deputy prosecuting attorney, and Ms. Wallace has a law practice in Tonasket.

The Honorable Gregory J. Tripp (District Court of Spokane) was recently elected President of the Legal Foundation of Washington. **The Honorable Cynthia Imbrogno** (U.S. District Court, Eastern District of Washington), **David K.Y. Tang** (Preston, Gates & Ellis), and **Jeanne Dawes** (Gore & Grewe) were elected Vice-president, Treasurer and Secretary respectively. New Board members are **John W. Phillips** (Heller Ehrman White & McAuliffe), **Ragan L. Powers** (Davis Wright Tremaine), and **John R. Kephart** (The Commerce Bank of Washington). The Foundation was established in 1985 at the direction of the Washington State Supreme Court to support legal services and law-related education. In 2000, the Foundation will distribute $6.2 million in grants to 32 programs that provide civil legal services and education to low-income Washingtonians.

Thumbs Up to...

Lawyers Helping Hungry Children, for recently sending checks totaling $33,000 to three local childhood hunger organizations, increasing its annual giving by 60 percent over last year. Recently elected officers of the group include Chair **Steve Parkinson**, Treasurer **Barbara Brady**, Vice-chair **Kathy Casey**, Secretary **Maureen Mannix** and new Board member **Hong Nguyen**.

Around the State....
In Snohomish County

After an extended hiatus, the "Around the State" feature of this column is making a comeback. **Mark T. Patterson II** brings us this report on the doings in Snohomish County over the past year.

It has not been a quiet year in Everett, my hometown. There were lots of comings and goings.

Judge **Kathryn Trumbull** left the bench to retire, and from all accounts, she will be sorely missed. She cannot be replaced, only succeeded.

The Honorable Kenneth Cowsert of the Snohomish County Superior Court Commissioner's Department was given the nod for Judge Trumbull's chair amid much fanfare and the presence of Governor Locke.

The Honorable Tracy Waggoner, formerly practicing as a guardian ad litem, was appointed to replace Ken Cowsert.

Little noticed here, except by readers of the alumni and religious publications, was the "Distinquished Judicial Service Award Citation" presented by Gonzaga University to our own **Judge Joseph Thibodeau**. He was honored during a Red Mass held at St. Aloysis in Spokane. (The Red Mass is an ancient tradition held for lawyers.) I was not there, but I am sure there was much rejoicing.

Fred Gillings chaired our local bar auction to benefit legal services. Among the dignitaries were **Justice Sanders** and our own Judge **Charles French**. Judge French was given the honor, "Judge of the Year," for his unfailing memory as a trial attorney and for his gentle (if not subtle) hints to us about what lawyers really look like in practice. The event was held at the most popular venue in Everett these days: the Commons at the U.S. Naval Base. We raised over $20,000.

Phyllis Selinker, the tireless Chairperson of Snohomish County Legal Services, retired after many years of service. Modest to a fault, she seemed to be better known at the state Access to Justice meeting held in Wenatchee in June, where she was feted. There was much rejoicing.

We swore in 39 new lawyers this year in two separate ceremonies. Again, there was much rejoicing.

Un-Merger

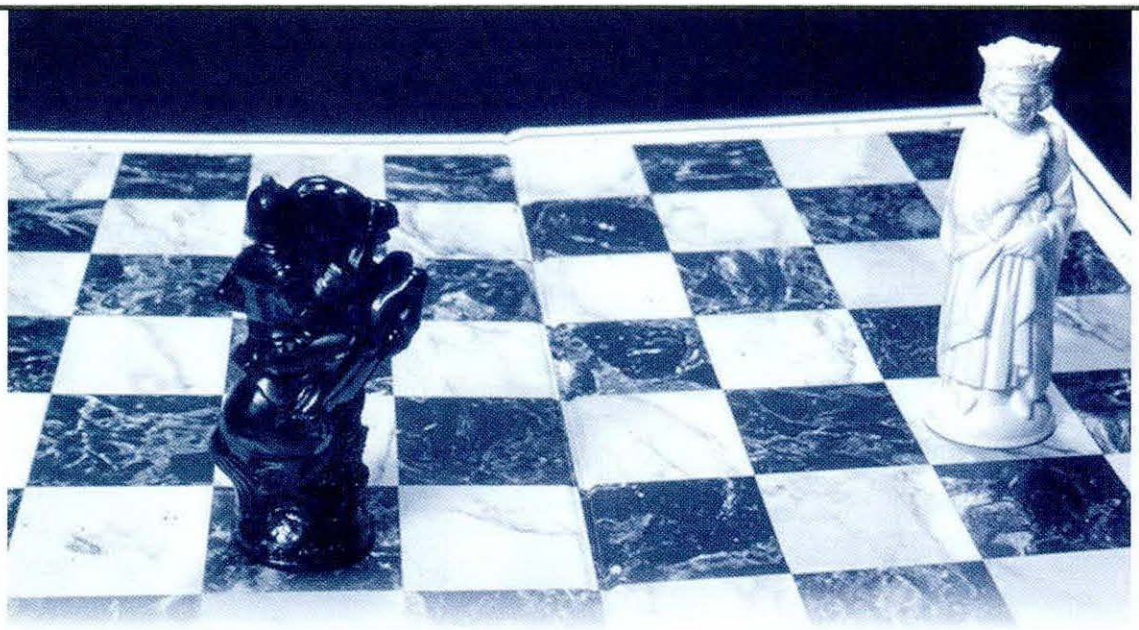
The Seattle firm of Graham & James/ Riddell Williams has begun operating under the name "Riddell Williams P.S." and is no longer affiliated with the California-based firm of Graham & James. Riddell Williams has roots in the Seattle community reaching back to 1906, and operated as Riddell Williams Bullitt & Walkinshaw until its affiliation with Graham & James in 1996. New litigation associates at the firm include **Jim Breitenbucher** and **Aryeh Brown**. Also joining the firm as associates are **Maria Staiger** (in the Bankruptcy and Creditors' Rights and Corporate Finance and Transactions practice groups) and **Kimberly Watson** (in the firm's corporate practice).

Movers and Shakers

Anthony J. W. Gewald has been selected to serve as Managing Principal of Lasher Holzapfel Sperry & Ebberson, PLLC. Gewald practices civil litigation in the areas of commercial law, real estate, employment law, torts and creditors' rights. **Tara K. Manley** has joined the firm as an associate practicing family law and commercial litigation.

Stephen Sepinuck was recently promoted from associate professor to full professor at Gonzaga University.

Seattle University has selected a new law school dean, **Rudolph Hasl**, a prominent figure in legal education and already a two-time law school dean. Hasl will begin his tenure at Seattle University on August 1, 2000.



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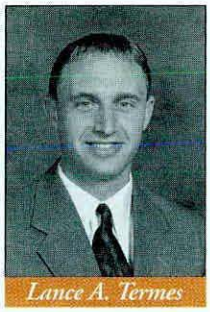
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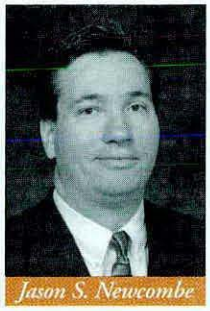
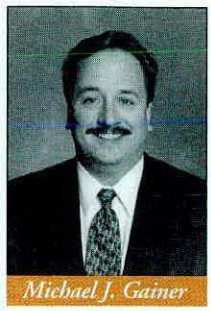

Jason S. Newcombe


Cindy Tramountanas


Michael J. Gainer

Gregory L. Bertram has joined JAMS, where he will handle both mediations and arbitrations. Bertram has practiced law in the Puget Sound area for more than 20 years, focusing on complex commercial litigation.

Jane A. Shapira has joined Ryan, Swanson & Cleveland, PLLC as a staff attorney. Shapira concentrates her practice in the areas of civil litigation, insurance coverage and employment law. New associates include **Duff Bryant** (focusing on real estate law, including acquisitions and sales, leasing, financing and resolution of title issues) and **Paul E. Ambrosio,** whose practice will emphasize taxation, business formation and international transactions.

New associates at Miller Nash, Wiener, Hager & Carlsen LLP include **Christine A. Marty, Shawna M. Sweeney** and **Lance A. Termes**. Marty focuses her practice on general litigation matters. Sweeney practices in the areas of real estate, creditors' rights, and insolvency and reorganization. Termes concentrates his practice in intellectual property.

The Washington State Attorney General's office has announced the appointments of Assistant Attorneys General **Richard Becker, Deborah Blair, Jacqueline Brown Miller, Steven Camilleri, Jarold Cartwright, Bonnie Chen, Stephanie Dolan, Michael Dunning, Catherine Ford, Kathleen Haggard, Anne Hall, Sheila Huber, Lucy Isaki, Colin Jackson, Alex Krostin, Matthew Lund, Sheila Lynch, Amy MacKenzie, Katherine Mason, G. Ward McAuliffe, David Mears, Steven Meeks, Steven Nash, Emily Neighbor, Lawrence Paulsen, Christopher Roy, Marnie Sheeran, Diana Sheythe** and **Pamela Whipple.**

Jason S. Newcombe has joined Groff & Murphy PLLC as an associate. His practice will focus on litigation, construction and employment law.

Lane Powell Spears Lubersky LLP has welcomed **Cindy A. Tramountanas** as a new associate. She concentrates her practice in insurance defense, litigation and maritime law.

Bridget G. Rodden has joined Perkins Coie LLP in Seattle, where she advises clients on establishing, maintaining and terminating retirement plans, health and welfare plans, cafeteria plans, nonqualified plans and various other benefits programs.

Michael J. Gainer recently joined the law firm of Leveque & Kirkpatrick as an associate attorney. His primary focus is in civil litigation, with an emphasis on personal injury, insurance defense, products liability and commercial disputes.

New associates at Foster Pepper & Shefelman PLLC include **James J. Fredman III** (focusing on representing hospitals, physicians and other healthcare providers) and **Roxanne L. Siegel** (concentrating her practice in the commercial litigation area).

The Seattle office of Cozen & O'Connor has added six new attorneys to represent the interests of the firm's London market clients. **Richard F. Allen** concentrates his practice in admiralty, aviation, general insurance and professional liability. **W. L. Rivers Black III** has a practice in general maritime, insurance litigation, international transportation and marine oil spill litigation. **J. C. Ditzler** practices in the areas of marine and aviation insurance coverage, environmental claims litigation, torts and entertainment insurance. **Jodi A. McDougall**'s practice emphasizes general, maritime and environmental insurance law. **Christopher W. Nicoll**'s practice focuses on all aspects of insurance law with an emphasis on admiralty. **William A. Pelandini** concentrates his practice on general trial law, insurance law and litigation, and legislative and regulatory issues.

In Memoriam

Thomas B. Foster, senior named partner at Foster, Pepper & Shefelman PLLC in Seattle, passed away December 25, 1999 at the age of 84. Foster had a hand in the deals that brought the Space Needle and Monorail to Seattle, and was honored by his firm with the development of the Thomas B. Foster House for homeless families.

Former Waitsburg city attorney and state legislator **Vaughn Hubbard** passed away December 3, 1999 at the age of 77. His many accomplishments include a Snake River bridge named in his honor.

Bruce Hurst, a partner for over 30 years at Betts Patterson & Mines in Seattle, passed away December 8, 1999 at the age of 55. A real estate attorney, Hurst prodded the U.S. Department of Housing and Urban Development to support the rehabilitation of more than 60 homes in Seattle's Mount Baker neighborhood.

Preston Leon Niemi, a legendary Seattle litigator, passed away December 9, 1999 at the age of 71. One of Niemi's most significant legal victories came in 1972, when he alleged the University of Washington was engaging in age and sex discrimination by not admitting a 30-year-old mother to medical school. Niemi, described by local librarians as having perhaps checked out and read more books than any other patron in the Seattle Public Library's history, requested that the following 1889 quote from Tennyson be included with this announcement of his death:

> "Sunset and evening star, And one clear call for me! And may there be no moaning at the bar, When I put out to sea."

Investing in Your Client's Business

by Barrie Althoff • *WSBA Disciplinary Counsel*

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

This article looks at some ethical issues under Washington's Rules of Professional Conduct where a lawyer acquires an equity interest in the client's business, either separately as an investment, or wholly or partially in payment of legal fees.

In the past, lawyers often charged a modest fee to set up a client's new business, hoping it would grow and generate substantial paid legal services. Occasionally a lawyer separately invested in the client's business, the client perhaps agreeing to pay the lawyer's legal fees out of the investment. This was often rewarded with a long-term lawyer-client relationship and a mutual lawyer-client loyalty as the client's business and the lawyer's practice grew.

Things are not the same today. Increasingly, clients urge lawyers, or lawyers themselves ask to invest in clients' start-up or emerging businesses, either in place of, or as part of, or as a condition for, their traditional legal fees. While some lawyers feel compelled by their clients to invest, others willingly do so, hoping to earn more from those investments than from traditional legal fees. The lawyer has three options: (1) do not invest, and hope the client will continue to use the lawyer for paid legal services; (2) invest, but discontinue providing legal services; or (3) invest and continue providing legal services. The third choice is the most ethically perilous, but perhaps most financially rewarding.

Lawyers investing in clients usually do so in their own name, or in the name of their law firm, or through an investment partnership or holding company distinct from their law firm. Before doing so, they should determine how such interests are to be held and owned, especially on a lawyer's departure from, and on dissolution of, the law practice. Regardless of how held, this article assumes the interest is obtained directly from the client or its affiliates, and does not address equity acquisitions from third parties or through open-market transactions.

A lawyer's investment in a client can be attractive to both client and lawyer. Both want the client's business to prosper. The client may receive needed but perhaps otherwise unaffordable legal services, and apply saved cash to other urgent business needs. The client may prefer knowing its legal services will cost a predetermined fixed amount of its equity rather than an uncertain amount based on unpredictable hourly-based legal fees. A fixed equity payment in lieu of legal fees likely reduces inefficiency and any incentive under hourly billing to overwork legal issues, and may avoid disputes over the reasonableness of fees. However, unless fixed fees or the equity investment in lieu of fees are intended to be entirely contingent on closing of the transaction in question, the fee agreement should specify how fees are to be calculated if the transaction is abandoned or does not close — a determination which may in effect require the lawyer to maintain hourly billing records to justify fees as reasonable. While private practitioners are always at financial risk as to their own legal practices, by taking equity in the client in lieu of legal fees, they also assume the added risk that their clients' businesses will fail, perhaps endangering their law practices. Lawyers may accept added risks, hoping clients' businesses will succeed and reward them with high-valued securities.

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The Ethics Rules

The two principal ethical concerns under the Rules of Professional Conduct of a lawyer considering investing in a client, either in lieu of, or in addition to, payment for the lawyer's fee, are the lawyer's duty to assure that: (1) the lawyer's fee is reasonable, and (2) the lawyer's duties as a fiduciary and of loyalty to the client are not undermined by the lawyer's self-interest in receiving legal fees or an investment return.

Legal Fees Must be Reasonable (RPC 1.5)

If a lawyer's equity interest in a client is in partial or full payment of the lawyer's legal fees, the lawyer must assure that the lawyer's fee is reasonable as required by RPC 1.5. That rule sets out eight nonexclusive factors for determining the reasonableness of a fee:

(1) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly and the terms of the fee agreement between the lawyer and client;
(2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
(3) The fee customarily charged in the locality for similar legal services;
(4) The amount involved in the matter on which legal services are rendered and the results obtained;
(5) The time limitations imposed by the

client or by the circumstances;
(6) The nature and length of the professional relationship with the client;
(7) The experience, reputation, and ability of the lawyer or lawyers performing the services; and
(8) Whether the fee agreement or confirming writing demonstrates that the client had received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices.

A lawyer's fee agreement should specify the factors on which the fee is to be based. RPC 1.5(c)(1) provides that where the fees are contingent on the outcome of the matter for which the service is rendered, the agreement must be in writing. For example, an agreement under which legal fees are contingent on the successful completion of a public offering, a refinancing or an asset sale, must be in writing.

Determining what is reasonable is not easy given the rule's non-exhaustive factors and variations in lawyer expertise, client sophistication, resources, type and urgency of transactions and legal problems, and so on. For example, where a lawyer and client have agreed to a value-based fee rather than hourly-based fee, and the lawyer's efforts enable the client to dispose of a corporate asset for much more, or acquire a new corporate asset for much less than the client reasonably expected, should the lawyer not be able to handsomely profit from those efforts, even when the amount of time expended by the lawyer may have been very modest? A client may be willing, even eager, to pay more for a prestigious law firm to handle a securities offering than for a lesser-known but equally competent firm to handle it, simply because the prestigious firm's name gives the offering credibility without which underwriters might be unwilling to handle the transaction. What is a reasonable fee for a value-oriented client may be very different than for a cost-oriented client.

RPC 1.5 does not require that legal fees be paid in cash, nor prohibit a lawyer from receiving payment in other property. Determining what is a reasonable fee becomes more complex, however, where the fee is paid other than in cash, such as where it is paid wholly or partially by an equity interest in the client's business. The lawyer must then justify as reasonable both the underlying legal fee and the value of the equity interest. That valuation may well be questioned later by the client (or the client's management or other shareholders), especially if the investment has increased substantially in value or if there has been a parting of ways between the lawyer and the client.

In determining the reasonableness of a fee paid wholly or partially in the form of an equity interest in a client, it is appropriate to consider factors beyond those specifically enumerated in RPC 1.5. For example, these may include: (1) the likelihood that the transaction in question will or will not be closed, and whether there are any contingent plans for payment of legal fees; (2) the estimated current and future value of the equity interest, considering all the normal risks of a start-up business and any specific risks to the business or its assets; (3) the liquidity of the interest, including whether it is now or may in the future be publicly traded; (4) any restrictions on transfer of the interest, whether by agreement with the client (e.g., client options to repurchase, prohibitions from selling to a client's competitor) or by law (e.g., holding provisions under securities laws); (5) the percentage amount of the interest, and what, if any, degree of control it provides the lawyer over the business; and (6) what restrictions, if any, are placed on the money used to pay for the equity interest — for example, that it must be used to pay future legal bills. See *Opinion No. 98-13* of the Utah Ethics Advisory Opinion Committee (December 4, 1998).

A lawyer taking an equity interest wholly or partially in place of fees undertakes a greater risk of ultimate nonpayment of those fees than does a lawyer paid entirely in cash. That is because the lawyer undertakes both the risk that the transaction might not close successfully and that the lawyer might not be paid for legal services, and the added risk that, even if the transaction is successful, the investment may still turn out to be worth less than the otherwise cash value of those fees. This higher risk justifies the lawyer's receipt of a higher present value of compensation in the form of an equity interest than would the receipt of mere cash fees, even though the reward for the risk, if the business fully succeeds, may be a substantially higher amount of compensation. The present value of any restricted or non-public equity interests should be further reduced to reflect their reduced liquidity. The lawyer receiving such equity interests would be wise to seek an independent evaluation, perhaps by an investment banker, of the present value of such interests. For an interesting comparison of lawyer and investment banker fees, see Geoffrey Furlonger, *Time for Business — Lawyers to Stop Billing Time?*, 27 *Law Office Economics & Management* (1986), reprinted in *Beyond the Billable Hour — An Anthology of Alternative Billing Methods*, edited by Richard C. Reed, ABA Section of Economics of Law Practice (1989).

Conflicts of Interest: RPC 1.7(b) and RPC 1.8(a)

A lawyer with a financial interest in a client's business, however acquired, has a personal interest which may interfere with the lawyer's duties to the client. If there is any possibility that it will materially interfere, the lawyer may not undertake or continue the representation without compliance with RPC 1.7(b). Even if there is no possibility of a material interference, if a lawyer acquires an equity investment in the client's business directly from the client (or enters any other business transaction with the client), the lawyer must comply with the RPC 1.8(a).

Since business transactions with clients are presumed fraudulent by the lawyer, the lawyer has the burden of proving otherwise. Strict compliance with the provisions of RPC 1.7(b) and RPC 1.8(a) permits the lawyer to satisfy that burden.

RPC 1.7 Representation Limited by Lawyer's Own Interests

RPC 1.7(b) prohibits a lawyer from representing a client if the representation of that client "may" be materially limited by the lawyer's own interests, unless two conditions are satisfied: (1) the lawyer reasonably believes the representation will not be adversely affected; and (2) the client consents in writing after consultation and

a full disclosure of the material facts. The rule is intended to assure the lawyer's loyalty to the client and that the lawyer's own interests do not adversely effect the representation. Comment 6 to Rule 1.7(b) of the ABA Model Rules of Professional Conduct.

(a) **Reasonable Belief of No Possibility of Material Limitation.** In applying RPC 1.7(b), the lawyer's required belief is measured both subjectively and objectively. The RPCs define "reasonably believes" as denoting "that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable." As to lawyers, the RPCs define "reasonably" as denoting "the conduct of a reasonably prudent and competent lawyer." RPC 1.1 defines "competence" as requiring "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."

Cumulating these definitions, the lawyer must thus subjectively believe there is no possibility of material interference, and objectively, in the eyes of other reasonably prudent and competent lawyers, that belief must be reasonable. This is not an easy standard to meet. Lawyers will have differing subjective beliefs based, for example, on the size of the investment (in proportion to their other investments or the percentage of the client owned by the lawyer), their personal comfort with differing levels of risk, whether their investment is active or passive, and the scrupulousness of their conscience. To some extent, a lawyer's subjective belief is measured by the lawyer's "gut-reaction," whereby the lawyer either feels comfortable or not in being able to give independent advice without regard to the lawyer's personal financial interest. The objective test, however, is more stringent. If other reasonably prudent and competent lawyers would reasonably believe that there is *any* possibility of a material interference, even if remote, the transaction is subject to the rule. As a practical matter, lawyers should assume RPC 1.7(b) will apply to any investment in a client since the burden will be on them to prove the contrary.

Lawyers wanting to become active participants in their client's business, for example, by holding a general partner interest in their real estate development joint venture, are significantly more at risk under the conflicts rules. Their ability to properly represent a client is far more likely to be materially limited and adversely affected than where the lawyer passively invests as a minority common stockholder. As an active investor, the lawyer's roles as independent counsel and partner easily become confused. It may be unclear whether the lawyer is acting as a lawyer or a partner, and whether the lawyer is giving legal advice or business advice. It may also be unclear whether or not communications with the lawyer are protected by attorney-client privilege and the ethics rules. When such an active investment fails, the lawyer's client and other investors are far more likely to claim in hindsight that the lawyer unethically violated the conflicts provisions and should thus be liable to them for malpractice and be subject to disciplinary sanction.

As an active investor, the lawyer's roles as independent counsel and partner easily become confused. It may be unclear whether the lawyer is acting as a lawyer or a partner, and whether the lawyer is giving legal advice or business advice.

(b) **Written Client Consent.** To satisfy RPC 1.7(b), the client must "consent in writing" to the representation or continued representation. The RPCs define "consent in writing" as either "(a) a written consent executed by a client, or (b) oral consent given by a client which the lawyer confirms in writing in a manner that can be easily understood by the client and which is promptly transmitted to the client." As a practical matter, the lawyer should not rely merely on a client's oral consent but should always secure actual written consent. If the lawyer confirms in writing the client's oral consent and transmits it to the client, the lawyer should also require the client to return a signed copy of the confirmation acknowledging receipt and confirming the consent.

(c) **Client Consultation and Disclosure.** The rule requires that the client's consent only be given after "consultation and full disclosure of the material facts." The RPCs define "consultation" as "communication of information sufficient to permit the client to appreciate the significance of the matter in question." Although RPC 1.7(b) does not require the communication of information or the disclosure be in writing, RPC 1.8(a)(1), discussed below, does require that it be in writing. The cautious lawyer will always provide written disclosure to the client, both to better serve the client and to document that the disclosure was in fact made.

Since the rule requires full disclosure, do not skimp on disclosure. Provide at least the same disclosure a wholly independent lawyer would require, for example, for the client of a third party proposing an equity investment in the client. Then, to be safe, provide even more complete disclosure. Fully disclose, for example, why and how the representation may be materially limited by the lawyer's own interests. Explain possible lawyer/client conflicts in interest. Where the lawyer owns or is planning an equity investment in the client, explain fully the terms of the proposed investment, including the risks, advantages and disadvantages to the client and the lawyer. Explain the possibility that the lawyer acting as shareholder may become adverse in interest to the client or its management, and explain the consequences. If the lawyer is becoming an investor, explain that information communicated by the client to the lawyer as an investor is not protected by the attorney-client privilege or by ethical rules on confidentiality. Provide full disclosure to the client in advance of the transaction in a document separate and apart from the documentation appropriate for the investment itself, since the lawyer must show full disclosure and that the client had adequate time to consider the disclosure and transaction.

RPC 1.8: Business Transactions with Clients

Some equity investments in a client may not materially interfere with the lawyer's

representation of a client, and thus RPC 1.7(b) may not limit them. Substantially all direct equity investments in a client's business, however, are subject to RPC 1.8(a). That rule prohibits a lawyer who is representing a client from entering into a business transaction with a client unless: (1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the client; (2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and (3) the client consents thereto.

(a) Commercial Transactions Exempted. RPC 1.8(a) does not apply to standard commercial transactions between the lawyer and the client for products or services that the client generally markets to others, for example, banking or brokerage services, medical services, products manufactured or distributed by the client, and utilities services. Comment 1 to Rule 1.8 of the ABA Model Rules of Professional Conduct. The comment notes that in such transactions, the lawyer has no advantage in dealing with the client, and the restrictions of RPC 1.8(a) are unnecessary and impracticable. Thus a lawyer's purchase of an equity interest in a publicly held client through a stock purchase or reinvestment plan, or through a broker-dealer unaffiliated with the client, will generally not be subject to RPC 1.8. Similarly, an in-house lawyer for a client with an employee stock-option plan may participate in that plan, and purchase equity interests in the client, without regard to RPC 1.8. The lawyers are still subject, of course, to RPC 1.7(b) and to laws relating to insider trading, confidentiality rules, and so on.

(b) Client Relationship Must Exist. RPC 1.8(a) only applies where a lawyer-client relationship exists. It is not always clear, however, where that relationship begins and ends. As a practical matter, lawyers should assume it exists with all current clients and former clients except where there is an unequivocal disengagement letter or a very long interval since legal services were last rendered or owed to the "former" client. RPC 1.8(a) does not prohibit a lawyer from asking a client's permission to directly invest in the client's business, something formerly prohibited by Ethical Consideration 5-3 under the predecessor Rules of Professional Responsibility.

(c) Opportunity to Consult with Independent Counsel. RPC 1.8(a) requires a client to have the "opportunity" to consult independent counsel. The cautious lawyer will not be satisfied with the client merely having that opportunity, but will instead require the client to consult independent counsel. Although clients may be reluctant to incur the cost, without such independent consultation, the lawyer will have a far heavier burden of proving thereafter the lawyer did not exercise undue influence. When in doubt, overdisclose, overexplain, overconsult, overdocument, and give the client an excessive amount of time to ponder the investment and consult independent counsel. A lawyer was disciplined for not allowing a client adequate opportunity to consult independent counsel when a business loan was consummated in a single day. *In re Discipline of Hartke*, 529 N.W.2d 678 (MN. 1995).

(d) Limitations on Investment. The RPCs prohibit several indirect forms of investment in a client by continuing the common-law prohibitions on maintenance (providing client living expenses) and champerty (investing in a client's lawsuit), now embodied in RPC 1.8(e) and (j). RPC 1.8(j) prohibits a lawyer from acquiring a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, but does permit the lawyer to acquire a lien granted by law to secure the lawyer's fee or expense, and to contract with the client for a reasonable contingent fee in a civil case.

Great ethical dangers lie in wait for the lawyer when a client, usually unable to pay continuing legal bills, offers the lawyer (often at the insistence of the lawyer) an interest in the client's business or a lien on its property, often shortly before trial or other material event. Acquiring such an interest or lien is subject to the provisions of RPC 1.8(a), and the lawyer must take great care to assure that all those provisions are fully satisfied. Failure to do so, especially if the client is dissatisfied with the result of the litigation or other transaction, will almost certainly guarantee the client claiming the lawyer coerced the client into granting the interest or lien, and assure a malpractice suit and disciplinary grievance if the lawyer seeks to enforce the interest or lien.

If a corporate client's survival depends on the outcome of a particular lawsuit, a significant direct equity investment in the client's business by the lawyer handling the lawsuit might also be viewed as a prohibited investment either by providing the client "living expenses" or as being in effect an investment in the underlying lawsuit. The concerns underlying these prohibitions are that the lawyer's financial assistance would subsidize or encourage a client to continue a lawsuit that might otherwise be forsaken, and that a lawyer's objectivity may be sacrificed if he or she has a direct financial interest in the lawsuit.

Living with RPC 1.7 and RPC 1.8

A lawyer considering an equity investment in a client, whether as part of a fee payment or otherwise, has the burden of proving that the investment is not fraudulent to the client. In most cases the lawyer can do this only by strictly complying with, and fully documenting the compliance, with each requirement of RPCs 1.7(b) and 1.8(a). A combined checklist of requirements follows:

(1) The lawyer must reasonably believe the lawyer's representation of the client will not be adversely affected [RPC 1.7(b)(1)];
(2) The equity investment and terms on which the lawyer acquires it must be fair and reasonable to the client [RPC 1.8(a)(1)];
(3) The lawyer must fully disclose and transmit to the client in writing the terms, risks and benefits of the equity investment in a manner the client can reasonably understand [RPC 1.7(b)(2) and RPC 1.8(a)(2)];
(4) After the lawyer fully discloses the

transaction and its terms, the lawyer must consult with the client [RPC 1.7(b)(2)];
(5) The client must be given a reasonable opportunity to seek the advice of independent counsel about the equity investment [RPC 1.8(a)(2)]; and
(6) The client must consent in writing after consultation and a full disclosure of the material facts [RPC 1.7(b)(2) and RPC 1.8(a)(3)].

To assure compliance, a lawyer considering investing in a client should have another lawyer in the office review the lawyer's compliance before the investment is made. Since RPC 5.1(a) requires partners in law firms to make reasonable efforts to ensure that the firm has, in effect, measures giving reasonable assurance that all lawyers in the firm conform to the RPCs, and RPC 5.1(b) requires supervisory lawyers to make reasonable efforts to ensure that other lawyers conform to the RPCs, every law office should have a strictly enforced written policy that no lawyer in the firm may invest in a client, whether directly, or wholly or partially in lieu of payment of legal fees, without first proving to the managing partner complete satisfaction and documentation of each and every requirement.

When in doubt as to the fairness or reasonableness of the equity investment, either take less or agree in writing with the client to secure and abide by an independent written appraisal or valuation of the proposed equity interest. Do not charge the client for costs associated with investing in the client. If the client can secure the equity investment on better terms from a third party, the lawyer's proposed terms are likely not fair and reasonable to the client, and the lawyer should advise the client to deal with the third party. When investing in a client, the "fair and reasonable" test is satisfied only where the lawyer, a fiduciary, puts the client's interest above the lawyer's interest.

What appears fair and reasonable at the start of the investment may appear overreaching when the lawyer-client relationship falters or the client's business so prospers as to result in an arguable windfall to the lawyer. If the client's business or securities offering fails, dissatisfied shareholders may look to both client and lawyer. An investor lawyer may find himself or herself with a conflict of interest and be unable to exercise shareholder rights he or she might otherwise have against the client, particularly where the lawyer holds confidential client information.

Washington Courts on Lawyer-Client Business Transactions

The Washington Supreme Court's approach to lawyer-client business transactions is direct, consistent and blunt: lawyer-client business transactions are presumed fraudulent on the part of the lawyer and the lawyer has the burden to prove they are not. In effect, a lawyer who fails to comply with his or her ethical obligations in a business transaction with a client becomes a guarantor or insurer of the success of that transaction.

When in doubt as to the fairness or reasonableness of the equity investment, either take less or agree in writing with the client to secure and abide by an independent written appraisal or valuation of the proposed equity interest.

In a series of cases, all involving loans from clients to lawyers, the Court made it clear that lawyers are expected to be fair and reasonable with, and not take advantage of, their clients, to fully disclose all material facts to them, consult with them, obtain their written consent, and document that disclosure and consent. These principles apply equally where the lawyer directly invests in a client's business. The underlying rebuttable presumption is that the lawyer has an unfair advantage over the client in the lawyer-client relationship which is incompatible with the lawyer's role as a fiduciary, since the lawyer is both knowledgeable about the legal aspects and has confidential information about the clients resulting from the representation. For a more general discussion of business transactions with clients, see Barrie Althoff, *Gifts and Loans to or from Clients*, *Washington State Bar News*, (December 1998), p.42, some of which is incorporated below.

In re McGlotlen, 99 Wn.2d 515, 524-525, 663 P.2d 1330 (1983), outlines the Court's approach:

> The disclosure which accompanies an attorney-client transaction must be complete. Moreover, the burden upon the attorney defending his or her actions is a great one.
>
> So strict is the rule on this subject that dealings between an attorney and his client are held, as against the attorney, to be prima facie fraudulent, and to sustain a transaction of advantage to himself with his client the attorney has the burden of showing not only that he used no undue influence, but that he gave his client all the information and advice which it would have been his duty to give if he himself had not been interested, and that the transaction was as beneficial to the client as it would have been had the client dealt with a stranger. [citations omitted] . . . .
>
> Thus, an attorney attempting to justify a transaction with a client has the burden of showing (1) there was no undue influence; (2) he or she gave the client exactly the same information or advice as would have been given by a disinterested attorney; and (3) the client would have received no greater benefit had he or she dealt with a stranger.

In the same case, the Court declared its intent to hold lawyers to a high standard in meeting the RPC requirements wherever the lawyer's status as a lawyer gives him or her disproportionate influence over the persons with whom he or she is dealing. 99 Wn.2d 515, 517. The Court found in that case that although the lawyer's "conduct as measured against ordinary standards was entirely proper, it did not meet the stringent requirements imposed upon an attorney dealing with his or her client." [99 Wn.2d 515, 525]. In a subsequent case, the Court, quoting the extended quotation above, also stated that, "Although *McGlothen* was decided under the former Code of Professional Responsibility, this rule applies equally under the RPC." *In re McMullen*, 127

Wn.2d 150, 164, 896 P.2d 1281 (1995). The Supreme Court subsequently observed that while RPC 1.8 does not explicitly require the lawyer's advice to seek independent counsel be in writing, or that the client's consent to the transaction be in writing, "the prudent attorney will advise the client in writing . . . . A prudent attorney will normally obtain the consent of the client in writing as well." *In re Gillingham*, 126 Wn.2d 454, 462 note 5, 896 P.2d 56 (1995).

The Court disbarred a lawyer for numerous conflicts of interest, including loaning without client consent one client's trust funds to another; advising another client to loan money to a corporation partially owned by the lawyer without disclosing the lawyer's interest or advising the client to seek independent counsel; and representing that same corporation when it was sued by another client who had also invested in the corporation at the lawyer's invitation. *In re Stock*, 104 Wn.2d 273, 704 P. 2d 611 (1985).

The Court suspended another lawyer from practice for twice borrowing money from clients without providing clients with full written disclosure of his precarious finances. *In re Johnson*, 118 Wn.2d 693, 826 P.2d 186 (1992). It suspended another lawyer for, among other things, borrowing client money without meeting the RPC requirements, even though the client originally offered the money to the lawyer as a gift, but at the lawyer's request, instead loaned it. *In re Gillingham*, 126 Wn.2d 454, 896 P.2d 656 (1995).

The Court suspended another lawyer for borrowing from a financially unsophisticated client on terms unfair and unreasonable to the client, and for not fully disclosing material facts to the client, including that the lawyer was not credit worthy. *In re McMullen*, 127 Wn.2d 150, 164, 896 P.2d 1281 (1995). The interest rate, at a rate then current for secured loans, was viewed as unfair because the loan in question was unsecured, thus suggesting the client was entitled to a higher rate of interest. The investment was also inappropriate for the client in terms of the client's age and need for current income.

Conclusion

An investment in a client's business, if wholly or partially in payment of fees, must be "reasonable" in amount under RPC 1.5 in relationship to the value of the legal services rendered. Any direct equity investment in a client is presumed fraudulent to the client unless the lawyer can prove, among other things, that it is fair and reasonable to the client, that the lawyer fully disclosed in writing to the client all material facts, that the lawyer consulted with the client, that the client had a reasonable opportunity to consult independent counsel, and that the client consented in writing to the transaction. The lawyer will have a harder time proving this where the lawyer is an active rather than a passive investor, and where the lawyer secures the interest from a continuing client immediately before litigation or other material event. If a lawyer carefully complies with the RPCs, however, and satisfies his or her fiduciary duties to the client, the lawyer may invest in a client's business to the profit of both client and lawyer.

These notices of imposition of disciplinary sanctions and actions are published pursuant to Rule 11.2(c)(4) of the Supreme Court's Rules for Lawyer Discipline, and pursuant to the February 18, 1995 policy statement of the WSBA Board of Governors.

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

Disbarred

Will Knedlik (WSBA No. 2382, admitted 1974), of Kirkland, has been disbarred following a hearing, by order of the Supreme Court, effective January 21, 2000. The discipline is based upon his bringing several frivolous claims, contacting represented parties directly, using litigation to embarrass, delay or burden third parties, and failing to diligently represent a client. For a more complete description of this matter, please read the Hearing Officer's Findings of Fact and Conclusions of Law.

Matter 1: On August 26, 1993 and August 30, 1993, Mr. Knedlik sent letters directly to two officers of the Together Development Corporation (TDC). These letters threatened to shut down TDC's Canadian and UK operations if Mr. Knedlik did not receive payment for his client's alleged copyright infringement. Mr. Knedlik knew TDC was represented by counsel, because he had been previously involved in litigation with TDC and had talked to counsel about copyright issues. In September 1993,TDC obtained an injunction prohibiting Mr. Knedlik from contacting any TDC officers or franchisees except through counsel. Mr. Knedlik disregarded the injunction. His conduct in contacting the officers of TDC Corporation directly, when he knew they were represented by counsel, violated RPC 4.2.

TDC was a corporation selling franchised dating services. During 1993, Mr. Knedlik filed two lawsuits against TDC on behalf of two franchisees. Mr. Knedlik filed both of these suits after one franchisee told Mr. Knedlik that he felt responsible for the other franchisee's problems, because he had talked to her before she signed the contract. Any discussion with the franchisees about potential conflicts

of interest occurred only after Mr. Knedlik was disqualified by the Court.

Mr. Knedlik also represented a client operating a dating service business competing with TDC. The competitor claimed TDC had stolen its system for screening applicants. Because the TDC franchisees were the ones using the screening system, the competitor's claims were also against the TDC franchisees. Mr. Knedlik formed four Washington nonprofit corporations and used these to file the competitor's and one franchisee's claims against TDC. Mr. Knedlik did not discuss the conflicts between the competitor and the franchisees with his clients. Mr. Knedlik also started his own lawsuit against TDC, alleging that they had tortiously interfered with his ability to represent his clients. By the end of 1993, Mr. Knedlik was involved in four Federal District Court cases against TDC.

In 1994, TDC requested, and the Court granted, a motion disqualifying Mr. Knedlik from continuing to be involved in any of these cases except his own, based on the conflicts of interest. Mr. Knedlik moved for reconsideration of this order, claiming that the for-profit corporations had purchased all of the claims against TDC. The Court stated: "the agreement demonstrates how Knedlik's own interests in (1) being able to represent [the corporation], and (2) bolstering his potential contingency fee by the assignment of [the two franchisees] claims to [the corporation], clearly are in conflict with those of [the two franchisees], who as a result of the assignment no longer have any legal claims against TDC." Eventually, the cases against TDC were dismissed, with judgments entered against one of the franchisees and the for-profit corporations. Mr. Knedlik drafted pro se appeals of the dismissals, but the Ninth Circuit Court of Appeals dismissed them. Mr. Knedlik's conduct in representing many parties involving multiple conflicts of interest without obtaining the clients' written consent violated RPC 1.7.

After TDC moved for Mr. Knedlik's disqualification, but before the court entered the order, Mr. Knedlik signed at least 14 additional complaints against TDC and filed two complicated motions in the ongoing litigation. TDC filed a motion to stay the proceedings pending determination of the disqualification motion. During the hearing on the motion to disqualify, Mr. Knedlik told the judge that he had approximately 40 additional complaints to file. By this time, Mr. Knedlik had commenced 22 lawsuits against TDC or related entities in state court in Washington. Many of these suits named individual officers, employees, and lawyers who represented TDC and employees of companies that did business with TDC. One complaint was 300 pages long and was resolved when TDC told the Court that the case had previously been removed to, and dismissed by, the federal court.

In May 1994, the Court prohibited Mr. Knedlik from filing any additional actions against TDC without leave of court. Mr. Knedlik continued to sign lawsuits, naming the officers and other TDC entities, without naming TDC directly. In October 1994, the Court issued a fifth injunction against Mr. Knedlik and recommended that he be found in civil contempt for continuing to have direct contact with TDC franchisees after several injunctions. In April 1995, the federal court imposed FRCP 11 sanctions of $10,297.08 on Mr. Knedlik, based on filing unwarranted and unsupported motions. In this same month, the Court held Mr. Knedlik in contempt for commencing litigation against TDC without using its name, and later imposed a $ 9,245.55 civil contempt award and $69,881.02 in attorney's fees against Mr. Knedlik personally. The contempt award has not been paid.

The Court also entered a permanent injunction against Mr. Knedlik to prevent harassment of TDC. Mr. Knedlik's conduct in continuing to sign lawsuits against TDC and file complicated meritless motions in the ongoing TDC cases while the motion to disqualify him was pending, and his actions resulting in FRCP 11 sanctions and a contempt of court citation, violated RPC 3.1, by bringing proceedings and controverting issues with no basis for doing so; and RPC 4.4, using means that have no substantial purpose other than to embarrass, delay or burden third persons.

Mr. Knedlik's conduct in commencing litigation against TDC officers and related entities, without naming TDC directly while under court order not to commence any new cases without leave of court, violated RPC 3.5(c), prohibiting conduct intended to disrupt a tribunal; and RPC 8.4(d), conduct prejudicial to the administration of justice.

On May 16, 1994, Mr. Knedlik notified TDC by letter that he intended to attend the national TDC franchisee meeting. The Court entered an order enjoining Mr. Knedlik from attending the meeting. Later, Mr. Knedlik did appear, unannounced, at a different TDC franchisee meeting in Virginia. While in Virginia for the meeting, Mr. Knedlik swore out a criminal complaint against an officer of TDC, alleging that the officer assaulted him and broke a front tooth out of his mouth. The TDC officer was arrested and the case set for trial. Mr. Knedlik did not appear for trial. Later, Mr. Knedlik testified that he broke his tooth playing tennis and that someone prevented the TDC officer from hitting him. Mr. Knedlik's conduct in appearing at the national TDC meeting and swearing out a criminal complaint and then not appearing for trial violated RPC 4.4.

Matter 2: Mr. Knedlik represented a ballet teacher, his ballet school and related nonprofit performing dance group. An adult ballet student loaned the teacher money for the business. In September 1995, the teacher assaulted the adult student, who filed a criminal complaint. Mr. Knedlik contacted the adult student at her new employer, explained he was sorry about what happened, and said he wanted to help her get her money back from the teacher. Later, Mr. Knedlik sent a "Memorandum of Understanding" to the adult student at her workplace. The student rejected the memorandum because it contained the same terms as the promissory notes the teacher had previously signed.

The memorandum also stated that the student would not make any adverse comment about the teacher. The student worried that this might interfere with the pending criminal matter. At Mr. Knedlik's request, the student faxed him copies of the promissory notes. Although the teacher was asked not to be involved, the parents and board members of the dance group continued fundraising, and the

group performed as scheduled in Federal Way, using a new name and new choreography. Mr. Knedlik served a lawsuit naming the ballet company and dance group as plaintiff and the adult student, her employer, and other parents as defendants. Mr. Knedlik alleged that the defendants had started a "rival ballet studio," and that together they constituted a "racketeering enterprise." The complaint had no basis in fact. Although Mr. Knedlik threatened, he never filed this lawsuit.

Mr. Knedlik's conduct in bringing claims against the student, her new employer and other ballet parents, alleging that they comprised a "racketeering enterprise," without any basis in fact, violated Rules of Professional Conduct (RPC) 3.1, prohibiting bringing frivolous claims; RPC 8.4(d), prohibiting conduct prejudicial to the administration of justice; and RPC 4.4, prohibiting using means that have no substantial purpose other than to embarrass, delay, or burden a third person. Mr. Knedlik's conduct also violated APR 5, the Oath of Attorney.

Matter 3: Mr. Knedlik incorporated the Waterfront Homeowners Association (WHOA). In June 1990, a retired real estate developer received a letter from WHOA containing Mr. Knedlik's name and address. The letter also contained Mr. Knedlik's legal opinion letter regarding obtaining a tax rebate. The developer sent Mr. Knedlik $600, and Mr. Knedlik sent the developer a memorandum regarding filing a petition to adjust the assessed property value. The developer filed the petition and the Board of Tax Appeals set an April 6, 1994 hearing date. On March 31, 1994, Mr. Knedlik wrote to the Board, enclosing sales documents, stating that he would be in Ohio on the hearing date, but would "telephone the Board room in Seattle at the appointed hour." Mr. Knedlik did not attend the hearing in person or by telephone. Although the original agreement with the developer stated that Mr. Knedlik's attendance at hearings was a discretionary act, the developer reasonably believed that Mr. Knedlik would attend, based on his letter to the Board. After this hearing date, Mr. Knedlik failed to answer the developer's calls and letters.

Mr. Knedlik's conduct in failing to appear before the tax appeals board, after specifically stating that he would appear by phone, and failure to communicate with his client, violated RPC 1.3, requiring lawyers to diligently represent their clients; and RPC 1.4, requiring lawyers to keep their clients reasonably informed of the status of their matters.

Mr. Knedlik's conduct, as described in the above summary, constituted conduct demonstrating unfitness to practice law as stated in RLD 1.1(p).

Linda Eide and Leslie Allen represented the Bar Association. Mr. Knedlik represented himself. The hearing officer was Mary Wechsler.

Suspended

Paul L. Henderson (WSBA No.8729, admitted 1978), of Vancouver, has been suspended for two years pursuant to a stipulation approved by the Disciplinary Board on November 29, 1999 and by the Supreme Court on January 21, 2000. The discipline is based on his criminal conviction of two counts of Attempted Assault in the Second Degree.

In 1995, Mr. Henderson became romantically involved with a court reporter whom he had worked with for several years, and represented once in the past. On December 12, 1995, while Mr. Henderson was a guest in the court reporter's home, he smashed a vase to the floor on his way out. The Clark County Sheriff's Office responded and filed a police report. This matter was resolved without formal criminal charges when Mr. Henderson paid for property damage to the vase and the floor.

On January 3, 1997, Mr. Henderson entered the court reporter's home without permission, and threatened her and another person present with a .45-caliber semi-automatic pistol. On August 20, 1997, Mr. Henderson pleaded guilty to two counts of Attempted Assault in the Second Degree.

Mr. Henderson's conduct violated RLD 1.1(a), subjecting lawyers to disciplinary sanctions for unjustified acts of assault or other acts demonstrating disregard for the rule of law. The stipulated sanction in this matter involved mitigating factors including personal and emotional problems and interim rehabilitation.

Linda Eide represented the Bar Association. Kurt Bulmer represented Mr. Henderson. The hearing officer was Frederick D. Gentry.

Reprimand

Oscar E. Desper, III (WSBA No. 18012, admitted 1988), of Seattle, has been ordered to receive a reprimand and a censure following a hearing. The discipline is based upon his depositing client funds into his general account and disclosing client secrets and confidences.

Mr. Desper represented a client in a personal injury claim on a contingent fee basis. The case settled for $1,500. Mr. Desper deposited the whole amount into his general account. Following the settlement, the client retained new counsel and made additional claims. In a letter to an adjuster, Mr. Desper wrote: " [client] is now claiming entirely new injuries.... None of these injuries did he have when he came to me. I believe that [client] is not in reality. I believe that his claim is not valid."

Mr. Desper's conduct violated RPC 1.14, requiring lawyers to deposit client funds and funds belonging in part to the lawyer and in part to the client into an interest-bearing trust account. Mr. Desper's conduct also violated RPC 1.6, prohibiting a lawyer from revealing a client's confidences or secrets relating to the representation, unless the client consents after consultation.

Linda Eide represented the Bar Association. Kurt Bulmer represented Mr. Desper. The hearing officer was Thomas J. Greenan.

Opportunities for Service

WSBA Presidential Search

The Board of Governors of the Washington State Bar Association (WSBA) is seeking applicants to serve as President for 2001-2002. Pursuant to Article IV(A)(2) of the WSBA Bylaws, the President's primary place of business is the area west of the Cascade mountain range generally known as Western Washington, but outside of King County.

Applications will be accepted through May 15, 2000, and should be limited to a current résumé, a concise application letter stating interest and qualifications, and no less than five or more than 10 selected references. Endorsement letters received by May 31, 2000 will be considered by the Search Committee and the Board of Governors. Applications and endorsement letters should be sent to the WSBA Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

Confidential interviews with the Presidential Search Committee will be conducted between May 16-31, 2000 at the WSBA office. In addition to these interviews before the Search Committee, candidates will be invited to the June Board of Governors meeting for an interview before the full Board of Governors in open session. Direct contact with the Governors is encouraged.

The person selected to be the WSBA President will have an opportunity to provide a significant contribution to the legal profession. While prior experience on the WSBA's Board of Governors may be helpful, there is no requirement to have been a Governor or to have had previous experience in Bar activities. The candidate must be willing to devote a substantial number of hours to WSBA affairs and be capable of being a positive representative for the legal profession. The position is unpaid. Some expenses, such as WSBA-related travel, are reimbursed.

The commitment begins in June 2000. The term as President-elect will begin at the Annual Business meeting in September 2000. In September 2001, at the WSBA's Annual Business meeting, the President-elect will assume the position as President of the Association. The President-elect will be expected to attend two-day Board meetings every six weeks, as well as attend numerous subcommittee, section, regional, national and local meetings. During his or her service, the candidate will also be required to meet with members of the Bar, the courts, the media, and public and legal interest groups, as well as be involved in the Bar's legislative activities. Appropriate time must be devoted to communication by letter, e-mail, and telephone in connection with these responsibilities.

Presidential Search Committee:
J. Richard Manning, Chair
Daryl L. Graves
Stephen J. Henderson

2000 Notice of Board of Governors Election

Three positions on the WSBA Board of Governors will be up for election this year. Available positions are for Governors representing the 1st, 5th and 7th-West* Congressional Districts. They are currently held by Walter Krueger (1st District), John Powers (5th District) and J. Richard Manning (7th-West, formerly known as one of two King County at Large).

The WSBA Bylaws provide that any member in good standing, except a member previously elected to the Board of Governors, may be nominated for the office of Governor from the Congressional District in which such member is entitled to vote by filing a petition signed by at least 20 active members of the WSBA currently entitled to vote in that district. All out-of-state active WSBA members are now eligible to vote in the district of the address of their agent within the state of Washington for the purpose of receiving service of process as required by APR 5(e), or, if specifically designated by the Executive Director, within the district of their primary Washington practice.

Nominating petitions are available from the Office of the Executive Director, 2101 Fourth Ave. – Fourth Fl., Seattle, WA 98121-2330; 206-727-8244; e-mail: oed@wsba.org. The Executive Director of the WSBA must receive petitions by 5:00 p.m. on March 1, 2000. The Board of Governors determines the official dates of the election. Ballots are usually mailed around the first of June and counted approximately the first of July.

Note: The May issue of *Bar News* will include biographical statements of 100 words or less from all the nominated candidates. Those statements should accompany the nominating petitions.

*As per a bylaw change, the 7th Congressional District has been subdivided into three sub-districts East, Central and West. These sub-districts are distinguished by ZIP codes and will each have one elected governor. For the coming year, the West sub-district (ZIP codes 98013, 98070, 98106, 98107, 98116, 98117, 98119, 98121, 98126, 98133, 98136, 98146, 98199) will elect a new governor.

Preference Forms Available for 2000-2001 WSBA Committee, Board and Volunteer Panel Appointments

The WSBA Committee, Board and Volunteer Panel preference forms have been mailed to all active members. Replies are due by March 15, 2000. The Board of Governors makes its appointments based on these forms. Since appointments are reviewed and renewed annually, current members of committees, boards and panels who are interested in reappointment must submit a new preference form each year. If you didn't receive the preference form, please contact the Office of the Executive Director at 206-733-5905 or e-mail: oed@wsba.org.

Opportunities for Service

Positions Available on ABA House of Delegates

Two positions are available on the American Bar Association House of Delegates. The control and administration of the ABA is vested in the House of Delegates, the policymaking body of the ABA. The House, which has approximately 500 delegates, elects the ABA Officers and Board, and meets out-of-state twice a year. Delegate attendance is required. The WSBA's allowance is $500 per year per delegate. Members appointed to the House of Delegates serve two-year terms which begin at the close of the Annual Meeting (July 2000). Incumbents may be eligible for reappointment and must reapply.

Members interested in this appointment should submit a letter of interest and resume to: Executive Director, Washington State Bar Association, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330 or e-mail: oed@wsba.org.

Applications for Appointment to the Legislative Committee

The WSBA Legislative Committee is seeking new members. The Committee meets once in October and again in November, usually for a full day. Depending on work load, the Committee may also meet in December and January. The Committee deals with proposals for legislation that relate to the improvement of justice. It also reviews proposed legislation of interest to the Bar and the judiciary, and makes recommendations to the Board of Governors on positions to be taken by the Bar Association. Additionally, the Committee maintains liaisons with sections and other committees in order to coordinate the legislative activities of the WSBA.

Anyone interested in being considered for an appointment to the Legislative Committee should submit a letter of interest and résumé to: Executive Director, Washington State Bar Association, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330. Materials must be submitted by March 31, 2000.

Applicants should include the following information in their submissions:

- Name
- Office address
- Nature of practice (including years in practice, size of firm and areas of expertise)
- Experience in legislative process
- Experience in state and local bar sections and committees
- Reason for interest in Legislative Committee

For more information, contact John Fattorini or Gail Stone at 360-943-9977; e-mail: legis@wsba.org.

10th Annual Americans with Disabilities Act Briefing

The National Employment Law Institute (NELI) will present the 10th Annual Americans with Disabilities Act Briefing in San Francisco, Chicago and Washington, D.C. The conference will be held April 6-7, April 13-14, and April 27-28 respectively. This year's Briefing will address the latest court decisions and agency guidelines interpreting the ADA. Current EEOC enforcement strategies will also be covered. For more information, contact NELI at 303-861-5600 or e-mail neli@neli.org.

Microsoft Donates Software to Washington's Civil Equal Justice Community

Washington's civil equal justice community recently received $46,597 worth of donated software from the Microsoft Corporation. In the last year, Microsoft has donated over $200,000 worth of software to pro bono and specialty legal services programs, which provide civil legal services to the state's low-income and moderate-income residents.

"Thanks to Microsoft's generous donation of NT Server, SQL Server and NT Terminal Server, we will be able to implement statewide case management software based on Microsoft's SQL engine. We are now better equipped to meet the needs of our clients — time previously required for manual record-keeping can now be spent in ways that more directly benefit clients," remarked Robin Lester, chair of the Access to Justice Board's Communications and Technology Committee.

ABA Techshow™ 2000 — Special Discount for WSBA Members

The American Bar Association's Techshow 2000, to be held March 30 through April 1 in Chicago, bills itself as the world's leading legal technology conference, and the only exposition developed by and for lawyers and legal professionals. Techshow 2000 features "Courtroom 21," showcasing the latest in high-tech trial equipment, numerous exhibitors showing the latest high-tech products, a variety of educational sessions and exciting speakers.

Because the WSBA is a Program Partner for this event, the ABA is offering WSBA members a $100 discount off the registration fee. To obtain the discount, be sure to indicate that you read about Techshow 2000 in Bar News. For more information, see their website at http://www.techshow.com.

And the Winner Is . . .

The CLE Department entered every completed seminar evaluation into a prize drawing for free lodging at two Northwest resorts: the Salish Lodge at Snoqualmie Falls and the Elkhorn Resort in Sun Valley, Idaho. The annual drawing was held on December 31, and the winners were Kenneth Evans of Mt. Vernon (Salish Lodge), Cindy Gideon of Spokane (Elkhorn Resort), George Fair of Bellevue (Elkhorn Resort), Thaddeus Paul of Seattle (Elkhorn Resort), Jason Woehler of Federal Way (Elkhorn Resort), Leslie Cloaninger of Colfax (Elkhorn Resort), and Nancy Sorensen of Seattle (Elkhorn Resort). Congratulations to the winners!

Lawyers' Assistance Program/Lawyer Services Department Third Annual Statewide Conference

The Third Annual LAP/LaSD Statewide Conference will be held at The Inn at Semi-Ah-Moo in Blaine, Washington, April 7-9, 2000. This year's conference features nationally and internationally acclaimed faculty including: Danford Grant, J.D. (Seattle); James Webber, J.D. (Seattle); Adrian Hill LLB, LSM, Barrister and Solicitor (Toronto, Canada); Dr. Heather Fiske (Toronto, Canada); Christopher Sutton, J.D., WSBA Professional Responsibility Counsel; Robert Welden, J.D., WSBA General Counsel and Director of Licensing; Larry Rice, J.D. (Memphis, Tennessee); Marty Potter, WSBA LOMAP Advisor; Barbara Harper, MA, CMHC, CMFT, WSBA Director of Lawyer Services; and Rebecca Nerison, Ph.D., WSBA LAP Psychologist.

Lawyers in attendance will earn 12 credits (2 ethics) for the conference on topics including: **Employment Law, Suicide Prevention, Beyond Hourly Billing: Ethical Conduct Toward Clients, Issues in Law Office Management: Enhancing Your Practice, Professional Responsibility**, and **Ways to Enhance Your Personal and Professional Life: Tips from the LAP Staff**. All interested lawyers and judges are encouraged to attend. The registration fee is $175 for the weekend or $150 for Saturday only. It includes meals but not accommodations.

The Lawyer Services Department includes the Lawyers' Assistance Program, the Law Office Management Assistance Program, the Alternative Dispute Resolution Program and the Professional Responsibility Program. To receive a registration form, or for more information on this conference and other Lawyer Services Department programs, please call 206-727-8268.

Law Week 2000: A Lawyer and Judge in Every School

You can make a difference in your community by participating in Law Week 2000, an exciting program which will educate and inspire students about the law and our legal system. During the week of May 8-12, hundreds of lawyers and judges throughout our state will spend all or part of a day in their local schools, reaching tens of thousands of elementary, middle-school, and high-school students.

To learn more about Law Week 2000, check out the WSBA website (www.wsba.org/lawweek/default.htm) – you'll be amazed at the resources you'll find there! From the website, you can sign up to volunteer in a classroom or be a local organizer. You will discover excellent lesson plans for all ages, classroom presentation tips, and information about Washington's many public legal education programs. You can also learn more about Law Week 2000 or sign up to volunteer by calling 206-727-8270 or 800-945-WSBA, ext. 8270, or by e-mailing Lawweek@wsba.org.

WTO Panel Discussion: Government Action/Civil Rights

The WSBA's Civil Rights Committee is sponsoring a public information and educational panel discussion for attorneys and the general public on the issues of constitutional law arising from the recent WTO protests in Seattle.

Panelists will include Mark Aoki-Fordham, Dmitri Iglitzin and Katya Komisaruk. Other panelists will be from the City of Seattle, academia, protest groups, and attorneys involved in WTO matters. Constitutional law professor David Skover of Seattle University will moderate.

The date is Wednesday, March 15, 2000 from 6:30 p.m. to 9:00 p.m. in Pigott Auditorium at Seattle University.

For further details, watch the WSBA website at www.wsba.org, contact Peter Roberts at peter@wsba.org., or RSVP Carey White at careyw@wsba.org or 206-727-8293.

2000 WSBA Award Nominations Sought

Each year, members of the Washington State Bar Association are asked to identify those members and the public who deserve the legal profession's recognition and thanks. Nominations are sought for the following awards:

Award of Merit

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

President's Award

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

Board of Governors' Award for Professionalism

This honor is awarded to a member of the WSBA who exemplifies the spirit of professionalism in the practice of law. For this purpose, "professionalism" is defined as the pursuit of a learned profession in the spirit of service to the public and in the sharing of values with other members of the profession.

Angelo Petruss Award for Lawyers in Public Service

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

Outstanding Judge Award

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

WSBA Pro Bono Award

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

WSBA Courageous Award

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

Affirmative Action Award

This award is made to a lawyer or law firm making a significant contribution to affirmative action in the employment

of ethnic minorities, women and the disabled in the legal profession within the state of Washington.

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

Excellence in Legal Journalism Award
This award recognizes that describing the context, facts and players involved in our system with fairness and sensitivity requires intelligence, knowledge, dedication and high skill levels. This award is given to the journalist and their organization who set the standard for relevance, clarity, accuracy and understanding in their reporting.

It is important to note that presentation of these awards is made only when there are truly deserving recipients. Some years, no award is given in some categories. If you know of someone who fits the criteria set forth above, please send a letter of nomination and relevant information by May 1, 2000. Awards will be presented at the WSBA Annual Business Meeting.

Send nominations to: WSBA Executive Director, Attn: Awards, Washington State Bar Association, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330; fax: 206-727-8320; e-mail: oed@wsba.org.

WSTLA Law Day Dinner

The Washington State Trial Lawyers Association (WSTLA) Law Day celebration will be Monday, May 1, 2000 at the Crowne Plaza Hotel in Seattle. At the dinner, WSTLA will present the Judge of the Year awards to one District/Municipal Court Judge, one Superior Court Judge and one Appellate Court Judge. Dr. Mary Frances Berry will be the keynote speaker for the event. She is chair of the U.S. Civil Rights Commission, and teaches history and law at the University of Pennsylvania. For more information about WSTLA Law Day, contact Rebekah Nairn at 206-464-1011 or e-mail: trialnews@wstla.org.

Changes to Writs of Habeas Corpus

As of February 1, 2000, all applications for Writs of Habeas Corpus involving children for King County Superior Court cases will be heard only by Judge Dale Ramerman. In his absence, Judge George Mattson will hear such cases. Applications may be faxed to either judge at 206-205-2645. This change was made primarily because of the availability of the childcare facility at the Regional Justice Center (RJC), and the fact that the Child Find Unit is located at the RJC. For more information about this change, call Paul L. Sherfey at 206-296-7844.

Law Office Management Institute and Legal EXPO

The WSBA and the Association of Legal Administrators (Puget Sound Chapter) will present the 2000 Law Office Management Institute at the Washington State Convention & Trade Center on March 16.

The Institute includes an executive forum for administrators and managing partners, diversity training, and over 40 exhibitors featuring legal products and services. David Horsey, the *Seattle Post-Intelligencer*'s Pulitzer Prize-winning editorial cartoonist and columnist, will be the keynote speaker.

For more information or to request a program brochure, please call 800-945-WSBA or 206-443-WSBA. Information is also available on the WSBA website at www.wsba.org/cle/200000626/default.htm.

USURY RATE:
The average coupon equivalent yield from the first auction of 26-week treasury bills in February 2000 is 6.042 percent. The maximum allowable interest rate for March 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/.

Use *Resources* To Your Advantage

Would you like your name and/or firm listed under your area of practice in the Yellow Pages of the upcoming (May 2000) WSBA *Resources* annual directory? List yourself or your firm under Appeals, Workers' Compensation, Contract Attorneys, Environmental Law or any heading you choose.

Resources is used by thousands of your fellow attorneys, and the Yellow Pages is a one-stop shopping resource for all your legal-service needs. Find consultants, paralegals, contract attorneys, business appraisers and more.

The cost for a listing is $25. Listings may include the firm name, individual's name, address, phone, fax, e-mail and website. (More than one phone number, such as an 800 number, may be listed.)

To reserve your Yellow Pages listing in the May 2000-2001 *Resources* directory, complete this form and return by March 15 with your check for $25 (payable to WSBA) to:

Washington State Bar Association
Resources Yellow Pages
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330

(If you wish to be listed under more than one category, the cost is $25 for *each* listing.)

Questions? Call 800-945-WSBA or 206-443-WSBA.

Firm/Individual's Name _____

_____

Address _____

City _____ State ____ Zip _____

Phone _____ Fax _____

E-mail _____

Website _____

Category _____

COZEN and O'CONNOR

Attorneys at Law

is pleased to announce that the following attorneys from Lane Powell Spears Lubersky LLP have joined our Seattle office.

Richard F. Allen
W.L. Rivers Black
J.C. Ditzler
Dan J. Donlan
Jodi A. McDougall
Christopher W. Nicoll
William A. Pelandini
Members

Cindy A. Tramountanas
Associate

Attorneys Allen, Black, Ditzler, McDougall, Nicoll, Pelandini and Tramountanas will continue their litigation practice in the areas of admiralty; complex litigation; insurance coverage and defense of marine, energy, non-marine, aviation, liability (general, products, and professional), pollution, and excess insurance markets worldwide. Mr. Donlan will continue his commercial litigation practice.

Kirsten A. Schultz
formerly of Hagens & Berman,
has become an associate in the insurance subrogation department.

Washington Mutual Tower
1201 Third Avenue, Suite 5200
Seattle, Washington 98101
206-340-1000
800-423-1950
Fax 206-621-8783

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W. Conshohocken, PA • Wilmington, DE • London, UK
*Affiliated with the Law Office of Colbern C. Stuart, III

FRISTOE, TAYLOR & SCHULTZ, LTD., P.S.

is pleased to announce that

Christian M. McCabe
has joined the law firm as an associate.

E. Robert Fristoe
Don W. Taylor
Theodore D. Schultz
Frank W. Groundwater
Christian M. McCabe

Mr. McCabe recently graduated Cum Laude from Michigan State University Law School.

We continue to maintain our offices at:
Suite 1 Professional Arts Building
206 11th Avenue SE
Olympia, WA 98501

Phone: 360-357-5566
Fax: 360-357-5569

e-mail: law@fristoetaylorschultz.com

Gordon & Polscer, L.L.P.

is pleased to announce that

Lawrence Gottlieb

has become a Partner of the firm.

Mr. Gottlieb's practice will continue to be concentrated in the areas of commercial and complex civil litigation, including insurance coverage and extra-contractual litigation.

1000 Second Avenue • Suite 1500
Seattle, Washington 98104
Telephone: 206-223-4226

THE LAW FIRM OF

JOHNSON CHRISTIE ANDREWS & SKINNER

extends best wishes to former partner
Richard L. Martens,
who is moving to a more limited practice
emphasizing mediation and consultation in the
insurance, construction, complex litigation and
professional malpractice areas.

The firm warmly welcomes back former
partner **Robert L. Frewing** from his position as
Senior Vice President of Affinity Insurance
Services of Washington (AON), and announces
the addition of a new associate,
Andrea L. Philhower, RN, JD, a 1998
Magna Cum Laude Graduate of
Seattle University School of Law.

7400 Bank of America Tower
701 Fifth Avenue
Seattle, Washington 98104
206-223-9248

KATZ, LOOK & MOISON

PROFESSIONAL CORPORATION

is pleased to announce that

Brian E. Onorato

has become a Shareholder in the Firm.

Mr. Onorato will continue to
emphasize his practice in Estate Planning,
Business Law and Taxation.

KATZ, LOOK & MOISON
Professional Corporation
1120 Lincoln Street
Suite 1100
Denver, Colorado 80203
Telephone: 303-832-1900
Facsimile: 303-863-0412

MAC ARCHIBALD

formerly of Bogle and Gates

is pleased to announce that he is in
private practice

Law Offices of
Edward M. Archibald

Mac, who is a trial lawyer, will continue
to handle cases in the areas of admiralty, product
liability, personal injury, insurance coverage
litigation and disability law.
He will also continue to devote part of his time
as a mediator and arbitrator.

LAW OFFICES OF EDWARD M. ARCHIBALD
1426 Alaskan Way, Suite 301
Seattle, WA 98101
Telephone: 206-903-8355
Facsimile: 206-903-8358
E-mail: Emacarch@aol.com

MITCHELL, LANG & SMITH

is pleased to announce that

Catherine E. Doudnikoff

has become a partner of the firm,
practicing in our Seattle office,

and that

Edwin A. Skoch, II

is an associate with the firm,
practicing in our Portland office.

101 S.W. Main Street
Suite 2000
Portland, OR 97204-3230
503-221-1011

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One Union Square
600 University Street, Suite 2505
Seattle, WA 98101-3134
206-292-1212

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.

AGRICULTURAL LAW

Agricultural Law
April 19 – Spokane. 7 CLE credits pending. By WSBA-CLE and RPPT section; 800-943-WSBA or 206-443-WSBA.

BUSINESS LAW

Business Law Institute: Representing Start-Up and Emerging Growth Companies
March 2 – Seattle. 6.75 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Law Institute: Drafting Considerations and Strategies for Business Lawyers
March 2 – Vancouver. 6.75 CLE credits (incl. 1 ethics) pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Law Institute: Litigation Issues Arising When the Employment Relationship with a Key Employee Goes Sour
March 3 – Seattle. 6.5 CLE credits (incl. .75 ethics) pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Business Law Institute: When the Honeymoon is Over — How to Handle Business Dispute Issues
March 3 – Vancouver. 5.5 CLE credits (incl. .75 ethics) pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Advising the Small Business
April 5 – Seattle; April 12 – Vancouver. 6 CLE credits pending. By WSBA-CLE and YLD; 800-943-WSBA or 206-443-WSBA.

CREDITOR/DEBTOR

Collection Law in Washington
March 9 – Seattle. 7 CLE credits. By Lorman; 715-833-3940.

13th Annual Northwest Bankruptcy Institute
April 7-8 – Portland. 9.5 CLE credits (incl. 1 ethics) pending. By Oregon State Bar; 503-684-7413.

ELDER LAW

Guardianship and Elder Law
March 24 – Seattle. 6 CLE credits pending. By King County Bar Association; 206-340-2578.

EMPLOYMENT LAW

Employment Law: Nuts and Bolts for the In-house Counsel and General Practitioner
March 1 – Seattle. 7 CLE credits pending. By King County Bar Association; 206-340-2578.

7th Annual WSBA Employment Law Institute
March 16 – Seattle. 6.75 (incl. .75 ethics). By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Estate and Income Tax Planning for Qualified Retirement Plans and IRAs
March 16 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning and Retirement Issues with Natalie Choate
March 31 – Portland. 7 CLE credits pending. By Oregon State Bar; 503-684-7413.

Advanced Will Drafting
April 6 – Seattle; April 7 – Spokane. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS AND PROFESSIONALISM

Avoiding Malpractice: Common Ethical and Liability Issues in a General Practice of Law
March 3 – Seattle. 4 CLE credits (incl. 2 ethics) pending. By King County Bar Association; 206-340-2578.

Fees, Billing & Ethics: A New Rx for an Ailing Profession?
March 10 – Bellevue. 6.5 CLE credits (incl. 1 ethics). By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Washington Adoption Practice, Procedure and Pitfalls
March 10 – Seattle. 6.25 CLE credits. By Lorman; 715-833-3940.

Troxel and Beyond: Third-Party Access to Children in Domestic Relations Cases
March 10 – Seattle. 3 CLE credits. By UW-CLE; 206-543-0059.

Family Law Skills Institute
April 28-29 – Seattle. 7.25 CLE credits pending. By WSBA-CLE and Family Law section; 800-943-WSBA or 206-443-WSBA.

GENERAL

Applying Recent Civil Rights Cases to Your Practice
March 10 – Portland. 6.75 CLE credits pending. By Oregon State Bar; 503-684-7413.

7th Annual "Sunbreak Seminar"
March 16-19 – Scottsdale, AZ. 6.5 CLE credits. By Washington Defense Trial Lawyers; 206-521-6659.

Spokane Spring Smorgasbord: A Full Plate of Critical Issues
March 16 – Spokane. CLE credits TBA. By WSTLA; 206-464-1011.

Drafting a Commercial Lease
March 17 – Portland. CLE credits TBA. By Oregon State Bar; 503-684-7413.

Subrogation and Liens: Who Else Gets Paid When the Case Resolves
March 24 – Seattle. 5.75 CLE credits pending. By WSTLA; 206-464-1011.

EEOC Technical Assistance Program
March 28 - Seattle. CLE credits TBA. By EEOC; 800-569-7118.

Innocence Found: Wenatchee and Beyond
April 14 – Seattle. 7 CLE credits pending. By UW-CLE; 206-543-0059.

9th Annual Northwest ADR Conference
April 28-29 – Seattle. CLE credits TBA. By UW-CLE; 206-543-0059.

GUARDIAN AD LITEM

4th Annual Inter-County Guardian Ad Litem Workshop
March 10 – Seattle. 7 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

INDIAN LAW

Indian Law
April 14 – Seattle. 6 CLE credits pending. By WSBA-CLE and Indian Law section; 800-943-WSBA or 206-443-WSBA.

INTELLECTUAL PROPERTY

5th Annual Intellectual Property Institute
March 24 – Seattle. 7.25 CLE credits (incl. .75 ethics) pending. By WSBA-CLE and Intellectual Property section; 800-943-WSBA or 206-443-WSBA.

LAW PRACTICE MANAGEMENT

Law Office Management Institute & Legal EXPO, including Diversity Training
March 16 – Seattle. 6 CLE credits (incl. up to 4.5 ethics). By WSBA-CLE and Law Practice Management section; 800-943-WSBA or 206-443-WSBA.

Time Management
April 28 – Seattle. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Annual Civil Litigation Institute
April 6 – Seattle. 7.25 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

YOUNG LAWYERS

CLE for Young Lawyers
March 16 – Seattle. CLE credits TBA. By WSTLA; 206-464-1011.

Professionals

INSURANCE

Richard Gemson,
former adjunct professor of law at UPS and former in-house counsel for North Pacific Insurance Co., is available for consultation, association or referral in matters involving all types of insurance coverage.

1800 Pacific Building
720 Third Avenue
Seattle, WA 98104
206-467-7075
fax 206-623-3649

APPEALS

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

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

PROBATE & GUARDIANSHIP

Mary Anne Vance,
co-author of the chapters on Estate Planning and Probate in Butterworth's *Washington Civil Practice Deskbook*, is available for association, consultation or referral of probate and guardianship cases, both contested and noncontested.

THE LAW OFFICE OF MARY ANNE VANCE, P.S.
1111 Union Bank of California Ctr.
Seattle, Washington 98164
206-682-2333
fax: 206-682-2382
e-mail: maryanne@vancelaw.com
www.vancelaw.com

Joshua Foreman

announces his availability for consultation, association or referrals. Practice emphasizing representation of fathers in child custody fights.

600 First Avenue, Suite 307
Seattle, WA 98104
206-623-6750
fax: 206-623-6751
foreman@lawfirm.com

APPEALS

Douglass A. North and Michael T. Schein
are available for referral, consultation or association on all issues relating to appeals and the appellate process.

MALTMAN, REED, NORTH, AHRENS & MALNATI, P.S.
1415 Norton Building
Seattle, Washington 98104
206-624-6271

ETHICS & LAWYER DISCIPLINE

Leland G. Ripley,
former Chief Disciplinary Counsel (1987-94), is available for consulation or representation regarding all aspects of professional responsibility or discipline defense.

206-781-8737

MEDICAL OR DENTAL MALPRACTICE

John J. Greaney
is available for consultation and referral of plaintiffs' claims of medical or dental malpractice against healthcare providers and hospitals.

425-451-1202 ▪ Bellevue
e-mail: jgreaney@nwlink.com

CONSTRUCTION SITE INJURIES

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

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

LABOR AND EMPLOYMENT LAW

William B. Knowles
is available for consultation, referral and association in cases involving employment discrimination, wrongful termination, wage claims, unemployment compensation and federal employee EEOC or Merit System Protection Board appeals.

206-441-7816

CHILD ABUSE

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

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

Referrals, Associations and Consultations in

IMMIGRATION LAW MATTERS

Robert H. Gibbs
(21 years' experience)

1111 - 3rd Avenue
Suite 1210
Seattle, Washington 98101
206-682-1080

Classifieds

Reply to WSBA *Bar News* Box Numbers at:

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Bar News Classifieds
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Seattle, WA 98121-2330

Positions available are also posted by telephone at:
206-727-8261

and online at www.wsba.org

FOR SALE

Practices available: South King County general practice and Grays County practices need attorneys for defense work and related services. Have interested buyers for Bellevue. Call for current information. Louis M. Millman, CPA, agent for Coldwell Banker Commercial, Landover Corporation. 425-467-4180 or 800-459-5860; fax 425-646-5979.

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

William S. Hein Company: More than 70 years later, still your number-one source for buying/selling law books. 50 percent to 70 percent savings on major sets, International law, rare/antiquarian law. Appraisal services available. Call 800-496-4346; fax 716-883-5595; http://www.wshein.com/used-books.

SPACE AVAILABLE

Several offices available: Prestigious Lynnwood office. (Windows open!) Overlooks lake. Services available. Affordable presentation packages. Referrals possible. Must have E&O. Contact James at 425-774-0233.

Space for attorney and staff: Shared reception, copier and library. Located at 85th and Greenwood — North Seattle location. 206-547-1000. Non-P/I attorney for mutual referrals preferred, but not necessary.

Woodinville downtown: One-attorney office available in credit union building with long established Woodinville law firm. Pleasant, professional atmosphere. Typical amenities plus conference room, library, storage space and free parking. Some referrals possible. Call Peter Goddu at 425-483-5878.

Downtown Seattle office space: Bank of California Building, two offices available: large office with southern view ($1,150), large secretarial office available ($350). Includes conference rooms, library, receptionist, voice-mail, kitchen. Available now. 206-623-5221.

Leen and Moore (historic building/Capitol Hill area): has several large attorney offices for rent. Staff space, indoor parking, telephone, receptionist, use of library and conference room available. Please call William at 206-325-6022 for further information.

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.

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

University area (Laurelhurst): Professional office suite. Share services and receptionist with senior-level professionals — attorney, CPA, insurance and eldercare professionals. Space available for clerical staff. Great location, attractive, pleasant environment. Please contact Carol at 206-523-6470.

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

POSITIONS AVAILABLE

Associate attorney: General practice Vancouver firm looking for associate attorney to practice in a variety of areas of law. Two to three years practical experience preferred and computer experience necessary. Must have passed the Washington state bar exam. Send cover letter and résumé to: Marsh & Higgins, PC; PO Box 54, Vancouver, WA 98666.

Davis Wright Tremaine LLP has a position available in its Seattle office for a lawyer with at least four years' experience handling federal income tax planning and transactional tax matters. Strong background in international tax preferred. Excellent academic credentials required. Please send résumé and academic transcripts to: Debbie Barker, Davis Wright Tremaine LLP, 1501 4th Ave., Ste. 2600, Seattle, WA 98101.

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

Experienced attorneys — Redmond: Practical, prior experience in technology and Internet agreements, corporate counsel role, or integrated estate planning and asset protection for growing Eastside firm. Résumé to: Bob Sailer, Judd & Sailer, PLLC, PO Box 86, Redmond, WA 98073.

Preg O'Donnell and Gillett PLLC, and 11-attorney litigation firm emphasizing insurance defense, title and real estate litigation, seeks associate with at least three years' experience in real estate and/or title work. The successful candidate will be highly motivated and excited about the practice of law. Please direct your confidential reply to: John Hegna, Firm Manager, Preg O'Donnell and Gillett PLLC, 1215 4th Ave., Ste. 920, Seattle, WA 98161-1008.

Training consultant — Portland, OR: LexisNexis, the acknowledged leader in electronic legal publishing, is looking for a training consultant based in Portland, OR. As a training consultant, you will be responsible for tailoring LexisNexis applications to the needs of students, faculty, clerks and judges in the three law schools and the federal courts in the state. This position will also provide opportunities to work with our law firm customer base. You will conduct training classes and individually tailored appointments and manage marketing programs within your territory. Some travel required. The ideal training consultant possesses: excellent written, oral and presentation skills; proven organization and planning skills; creativity and motivation; sales experience or demonstrated persuasive skills; computer, online searching and Internet experience; a minimum of two years' business or legal practice expe-

To Place a Classified Ad:

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). Check payment (to WSBA) must accompany order. We regret that we are unable to bill for classified ads or accept payment by credit card.

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

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

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

rience. J.D. a plus. Lexis-Nexis provides an excellent compensation plan and a flexible benefits program. Lexis-Nexis is an equal opportunity employer. Fax your résumé and cover letter to: Recruiter, Lexis-Nexis, 937-429-4932 or e-mail kamrecruit@aol.com. Please reference job code PortlandTC in your cover letter.

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.

Minzel and Associates 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 basis for law firms, corporations, solo practitioners and government agencies. If you are interested, please call 206-328-5100 for an interview.

Vance, Romero, Montague, PS, a boutique intellectual property and business firm, seeks an associate with a minimum of two years' litigation experience (intellectual property, real estate or construction law desired). Only those who are hard working, fun loving and service oriented need apply. If you want to be a part of this fast-growing, exciting firm, send your résumé and cover letter to: 155 108th Ave. N.E., Ste. 202, Bellevue, WA 98004 or e-mail Troy Romero, Managing Shareholder, at tromero@developmentlaw.com.

Ogden Murphy Wallace, PLLC, Seattle, Washington office has an opening for a tax associate attorney position. The position emphasizes sophisticated business and estate planning and involves transactional work for both closely held and public companies. The position requires an LL.M. in taxation. Additionally, an accounting degree, CPA, and prior work experience are all desirable, but not required. Interested candidates are encouraged to send a résumé, transcript and writing sample to: Ms. Tracy Umphrey, Ogden Murphy Wallace, PLLC; 1601 5th Ave., Ste. 2100, Seattle, WA 98101-1686.

Training consultant — Seattle, WA: Lexis-Nexis, the acknowledged leader in electronic legal publishing, is looking for a training consultant based in Seattle. As a training consultant, you will be responsible for tailoring Lexis-Nexis applications to the needs of students, faculty, clerks and judges in the two law schools and the federal courts in Western Washington. This position will also provide opportunities to work with our law firm customer base. You will conduct training classes and individually tailored appointments and manage marketing programs within your territory. Some travel required. The ideal training consultant possesses: excellent written, oral and presentation skills; proven organization and planning skills; creativity and motivation; sales experience or demonstrated persuasive skills; computer, online searching and Internet experience; a minimum of two years' business or legal practice experience. J.D. a plus. Lexis-Nexis provides an excellent compensation plan and a flexible benefits program. Lexis-Nexis is an equal opportunity employer. Fax your résumé and cover letter to: Recruiter, Lexis-Nexis, 937-429-4932 or e-mail kamrecruit@aol.com. Please reference job code SeattleTC in your cover letter.

Wanted: Self-motivated general practitioner with minimum of five years' experience who seeks opportunity to become partner in established Central Washington law firm. Litigation experience essential. Salary negotiable. Forward résumé with references to: WSBA *Bar News* Box 595, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Real estate/business attorney: Downtown Seattle law firm seeks an attorney with at least five years' experience in sophisticated real estate and general business matters. Position offers opportunity for rapid advancement. Strong academic credentials and superior writing skills essential. Salary negotiable. Excellent benefit package. Résumé should be submitted to: Michael R. Cason, Firm Administrator, 600 University St., Ste. 2700, Seattle, WA 98101-3143.

Do you want to escape the large firm grind? Are you an enthusiastic, detail-oriented, self-starting, problem solver? Do you have a sense of humor? We are a boutique Seattle law firm that focuses on emerging growth companies in the software, communications, information technology and new media industries. We are seeking a mid-level associate with a minimum of two years' experience in corporate, transactional, intellectual property, technology, and preferably securities law matters. Applicants must demonstrate excellent writing and analytical skills, business judgment and willingness to have fun practicing law. Position offers competitive salary and an opportunity for a dynamic, challenging practice in a relaxed working environment. Reply in confidence to: Bradford A. Steiner, Steiner Norris PLLC, 601 Union St., Ste. 3930, Seattle, WA 98101; fax 206-628-3049.

Gordon and Polscer, LLP, has a position available in its Seattle office for a lawyer with at least three years' experience to support the firm's insurance coverage and bad faith litigation practice. Excellent academic credentials required. Please send résumé and academic transcripts to: Rebecca Johnson, Gordon and Polscer, LLP, 1000 2nd Ave., Ste. 1500, Seattle, WA 98104.

Six-person, AV-rated, Olympia law firm seeks new associate with at least one year's experience in estate planning, probate and elder law to manage that portion of the firm's practice. Send résumé, references and writing sample to: Richard Ditlevson; Ditlevson, Rodgers, Hanbey & Dixon, P.S.; 204 Pear St. N.E., Olympia, WA 98506; e-mail: DRHD@Thurston.com.

Staff attorney, Tribal Legal Office: Seeking attorney to provide civil legal services for low-income members of the Colville Confederated Tribes. Qualifications: WSBA member or ability to become member reciprocally. Attorney salary scale DOE. Indian preference will be applied. Obtain application from Personnel, Colville confederated Tribes, PO Box 150, Nespelem, WA 99155. For further information, call 509-634-2843.

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

Business, debtor/creditor and estate planning associate: Small Olympia firm seeks transaction and litigation associate; background in land use, construction also helpful. Full-time or part-time. Excellent academic, writing and people skills a big plus. Great opportunity. Contact: Jay Goldstein, 1800 Cooper Point Rd, S.W., Ste. 8, Olympia, WA 98502.

Simburg, Ketter, Sheppard & Purdy, LLP, an AV-rated firm in downtown Seattle, seeks an associate attorney. You will do both business transactions and litigation. Litigation experience and ability/willingness to handle litigation matters independently are important. Intellectual property/technology law background is very helpful. Send résumé and cover letter to: Simburg, Ketter, Sheppard & Purdy, LLP; 999 3rd Ave., Ste. 2525, Seattle, WA 98104; fax 206-223-3929; e-mail dsheridan@sksp.com. All inquires confidential.

Huppin Ewing Anderson & Paul, PS, has a position available in its Spokane office for a lawyer with at least four years' experience in civil litigation. Existing client base a plus. Please send résumé to: Patrick F. Delfino, Huppin Ewing Anderson & Paul, PS; 221 N. Wall St., Ste. 500, Spokane, WA 99201-0826. No phone calls please.

Bellingham insurance defense firm with very active trial practice, seeks an associate attorney with at least two years' personal injury litigation experience. Excellent writing and discovery skills required. Must be admitted to the WSBA. Send résumé, cover letter and writing sample to: Roy & Simmons, PS, Attn: Jeff Brown, 114 W. Magnolia, Ste. 201, Bellingham, WA 98225.

The law firm of Davis Wright Tremaine LLP seeks a trust and estate planning attorney with at least two years' experience to join its Seattle office. Qualified candidates will possess excellent writing and client skills, familiarity and experience in the area of estate and tax planning, outstanding academic credentials, and must provide references. Davis Wright Tremaine LLP is a 300-attorney firm, with 11 offices located throughout the United States and in China. The Seattle/Bellevue trust and estate planning department is currently comprised of six attorneys supported by seven full-time paralegals. The department enjoys one of the most sophisticated trusts and estates practices in the Pacific Northwest, and its senior member, Malcolm Moore, is acknowledged as one of the premier practitioners in the United States.

All replies confidential. To join this challenging and rewarding trust & estate planning department, please send résumé, law school transcript and brief writing sample to: Debbie Barker, Davis Wright Tremaine, 1501 4th Ave., Ste. 2600, Seattle, WA 98101-1688.

Five-attorney firm located in Longview, Washington seeks a family law associate with at least three years' of domestic relations experience. Must be licensed in Washington. Salary commensurate with experience. Benefits include medical insurance and retirement plan. Send résumé and cover letter to: Paul R. Roesch, Pond, Roesch, Rahn & Nelson, P.S., 1315 14th Ave., Longview, WA 98632.

Estate planning lawyer: We are a mid-sized, AV-rated Pacific Northwest law firm seeking a talented estate planner in our Portland, Oregon office to complement a substantial existing estate planning/tax practice. The candidate must have a minimum of three years' experience in sophisticated estate planning, a strong tax background and solid credentials. An LL.M. in taxation or the equivalent is desirable. Please send or fax résumé and cover letter to: David Coyle; Weiss, Jensen, Ellis & Howard; 111 S.W. 5th Ave., Ste. 2300, Portland, OR 97204; fax 503-241-8014.

Attorney: Primus is looking for an experienced attorney to assume primary responsibility for managing the contracts and licensing function for the company. This position will create technology licenses and contracts for the various departments and affiliate offices, negotiate deals in close cooperation with the sales and marketing team, assist the corporate counsel with duties, and interface with the senior management team. The ideal candidate will possess a J.D. degree, be a current member of the WSBA, and have a minimum of three years' experience in contract drafting (domestic and international) and general corporate experience, and a minimum three years' experience with technology licensing. Experience with Internet law a plus. Qualified candidates must also possess excellent writing and negotiation skills, the ability to work in a fast-paced sales environment, and the ability to work well with others. Please send résumé to: Ayesha Tidwell, Director of Human Resources, fax 206-292-1825; tidwell@primus.com. See our website at http://www.primus.com.

Corr Cronin LLP, seeks associate for sophisticated litigation practice. Applicants should have at least three years' litigation experience, outstanding academic credentials, and excellent oral and written communication skills. We offer competitive compensation and benefits and a unique opportunity for professional development. We are an EEO employer. Applicants should submit cover letter, résumé, transcript and writing sample to: Johnathan E. Mansfield, Corr Cronin LLP, 1001 4th Ave., Ste. 3700, Seattle, WA 98154; jmansfield@corrcronin.com.

Small, well-established Bellevue firm seeks a Washington licensed attorney with at least five years' commercial real estate transaction experience (including financing and leasing), to join its real estate/business transaction group. Land use and condominium law a plus. Some experience with formation and organization of business entities helpful. Please send résumé, writing sample and references to: Hiring Coordinator, O'Shea Barnard Martin, PS, 10900 N.E. 4th St., Ste. 1500, Bellevue, WA 98004, or email these items to: stasney@obmlaw.com.

Business transactions attorney: Established Portland law firm has an immediate opening for a business transactions attorney with at least two years' experience in corporate transaction, corporate finance and securities. Practice will include significant emerging growth and technology client work. Applicants should have experience in mid to large firms and excellent academic credentials. Applicants should have the ability to work with and develop clients. Membership in Oregon State Bar required; WSBA membership a plus. Send cover letter, résumé and writing sample to: Ms. Jackie Pierce, Personnel Administrator, Black Helterline LLP, 707 S.W. Washington St., Ste. 1200, Portland, OR 97205.

Mundt MacGregor LLP, a small, dynamic Seattle law firm with blue chip clients in diverse industries and stages of growth, seeks a junior associate with at least one year's experience to join its business group. We want it all — a well-rounded individual with great interpersonal skills, outstanding academic credentials, and a strong work ethic. In return, we offer immediate responsibility, regular client contact, compensation at the high end of Seattle's market, and a congenial work environment with exceptional lawyers and staff. Please send résumé and cover letter to: Mundt MacGregor LLP, 999 3rd Ave., Ste. 4200, Seattle, WA 98104-4082, Attn: Hiring Partner.

Wilson Smith Cochran Dickerson, a medium-sized Seattle litigation firm, seeks two associate attorneys with at least two years' civil litigation experience. Experience in personal injury, medical malpractice, or pharmaceutical litigation a plus. Applicants must have high academic achievement and excellent writing skills and references. Please send your résumé and two writing samples to: Whitney Smith, Wilson Smith Cochran Dickerson, 1215 4th Ave., Ste. 1700, Seattle, WA 98161.

Attorneys for the Hoopa Valley Tribe located in Hoopa, California. At least five years' experience in American Indian law, environmental law, economic development and employment law is preferred. California Bar membership preferred. Attorneys will serve in the Office of Tribal Attorney under the supervision of the Hoop Valley Tribal Council and advise and assist the Tribe, including overseeing use of special counsel, broad range of legal services, advice, negotiation, drafting, research, lobbying, representation in administrative proceedings. Salary DOE. Two successful candidates will receive all benefits provided by the Tribe to its other employees. Tribal and Indian preference apply. Open until filled. Interested persons should send a letter, résumé and writing sample to: Thomas P. Schlosser; Morisset, Schlosser, Ayer and Jozwiak; 801 2nd Ave., Ste. 1115, Seattle, WA 98104-1509.

Five-attorney Seattle law firm representing school districts and other municipal entities seeks motivated, affable attorney to join our dynamic practice. Ideal candidate is both ambitious and flexible, with interest or experience in one or more of the following areas of law: municipal, schools, labor and employment, land use, litigation and construction. Superior writing skills and a strong record of academic and professional achievement are required. Mail or fax résumé and letter of interest to: Hiring Attorney, Dionne and Rorick, 999 3rd Ave., Ste. 2550, Seattle, WA 98104; fax 206-223-2003.

Four-partner AV-rated firm in Pocatello, ID seeks associate with at least one year's experience for personal injury and insurance defense litigation/misdemeanor criminal prosecution. Salary and partnership potential commensurate with experience and ability. Send résumé to: Thomas J. Holmes, PO Box 967, Pocatello, ID 83204; phone 208-232-5911; fax 208-232-5962.

Costco Wholesale seeks experienced attorney to focus on international real estate and business matters. Minimum ten years' relevant experience required. Reports to VP/General Counsel. Prefer large law firm and/or corporate counsel experience and some international experience. Competitive salary, excellent benefits, travel opportunities. Send cover letter and résumé to: Costco Wholesale, Attn: International Corporate Counsel Position, 999 Lake Dr., Issaquah, WA 98027.

Danielson, Harrigan & Tollefson, AV-rated 13-lawyer firm specializing in complex commercial and maritime litigation seeks associate with a minimum of two years' experience. Superior academic credentials, research and writing skills required. Large firm experience or judicial clerkship preferred. Please send résumé to: Michelle Buhler; Danielson, Harrigan & Tollefson; 999 3rd Ave., Ste. 4400, Seattle, WA 98104.

Mt. Vernon firm seeks associate attorney to fill new position. At least two years' experience preferred. General practice. Salary DOE plus benefits. Send résumé to: Tario & Associates, 413 South 1st St., Mt. Vernon, WA 98273.

Associate attorneys: Growing, high-quality East King County 10-attorney firm has two openings for associates with a minimum of four years' experience, superior academic qualifications and communication skills. One position is commercial litigation focus, while the second position would entail both litigation- and business transactional-related work. Our firm emphasizes a balanced professional career and personal lifestyle, as well as excellent benefits and competitive salaries. Please send cover letter and résumé in confidence to: Kurt R. Lundquist, Firm Administrator; Livengood, Carter, Tjossem, Fitzgerald and Alskog LLP; 620 Kirkland Way, Ste. 200, PO Box 908, Kirkland, WA 98083.

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Appellate research and writing. Former judicial clerk at Division I; member WSBA. Anne Melley, 206-248-1118 or e-mail amelley@mindspring.com.

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

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

Ready to venture out on your own? Practice Management Consultant will locate space, set up office, hire and train staff, all to your particular practice specifications. Glynis Whaley 206-352-5705.

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

Contract attorney at your service! I perform legal research and writing for Washington lawyers. Located near UW law library. Will draft trial briefs and motions, help with trial preparation. Many satisfied clients. Elizabeth Dash Bottman 206-526-5777.

Legal Research Solutions. 800-627-8047. Research, court-ready trial and appellate briefs, summations of law, drafting of pleadings, motions, discovery. All areas of law and all jurisdictions available. Partner-level attorneys working in conjunction with our large network of experienced attorneys. Areas of specialty are also available, including tax, environmental, insurance, among others. Seven days per week. Rush/long-term projects welcome. Fast turnaround. MasterCard/Visa accepted. We are now accepting applications for attorneys who wish to be part of our expanding network.

Complex litigation? We can co-counsel or pay contingent referral for complex litigation, including constitutional law, civil rights, employment law, commercial litigation, personal injury and workers' compensation. We have successfully litigated in the U.S. Supreme Court, and in federal and state trial and appellate courts in several western states. AV-rated law firm practicing in Oregon and Washington. Call Willner Wren Hill & U'Ren, LLP, 800-333-0328 or 503-228-4000.

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

California referrals: experienced California trial attorney. Referral fees paid. Business, commercial, collections; personal injury; all civil and criminal matters. Contingency or hourly. 800-950-9688; ritholz@pacbell.net.

Free referrals: Legal Club of America seeks attorneys to receive new clients. Must be licensed and maintain professional liability insurance. There is no cost to participate, however, attorneys must follow a discounted fee schedule. All law areas needed. Not an insurance program. Call 888-299-5262; e-mail carmen@legalclub.com or visit http://www.legalclub.com for more information.

China legal representation — the L&A law firm: China lawyers, notaries, agents for patents, trademarks and copyrights. China's largest, full-service, private law firm with offices throughout China. Attorney Brinton Scott. Phone 8610-6532-3891; fax 8610-6532-3877; e-mail lalaw@chinalaw.cc; website http://www.chinalaw.cc.

Research and writing: Eight years' experience with largest firm in Eastern Washington. Quick turnaround, fixed fee or reasonable rates. References available. Simon Collins: 888-711-9366; e-mail simoncollins@mail.com.

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WILL SEARCH

Seeking information regarding will of Roselyn Ruth Weaver Willis of Tacoma, Washington. Contact Ronald L. Hendry, 902 S. 10th St., Tacoma, WA 98405; 253-272-2206.

MISCELLANEOUS

Employment attorney wanted: This is an employment issue involving state employee's on state property. I was confronted by an angry co-worker who verbally assaulted me while at work. This state employee thought I had reported his illegal sales of alcohol occurring on state premises in the workplace. Management failed to correct the abuse issue, has conspired to conceal the crime of dispensing alcohol/sales on state property, retaliated against me, relocated my work station closer to this individual. My vehicle was egged and I have suffered in a job environment that is deteriorating. This situation involves a no-tolerance alcohol policy, ethics and liquor law violations. Seeking an experienced attorney on contingency. Reply to: WSBA *Bar News* Box 596, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Cash now vs. payments over time. We purchase all types of debt instruments including real estate notes, business notes, structured settlements, lottery winnings and inheritances in probate. Please contact us regarding the current cash value of your receivable. Wes-Com Funding 800-929-1108, Sam Barker, Esq., President; http://www. webuynotes. com.

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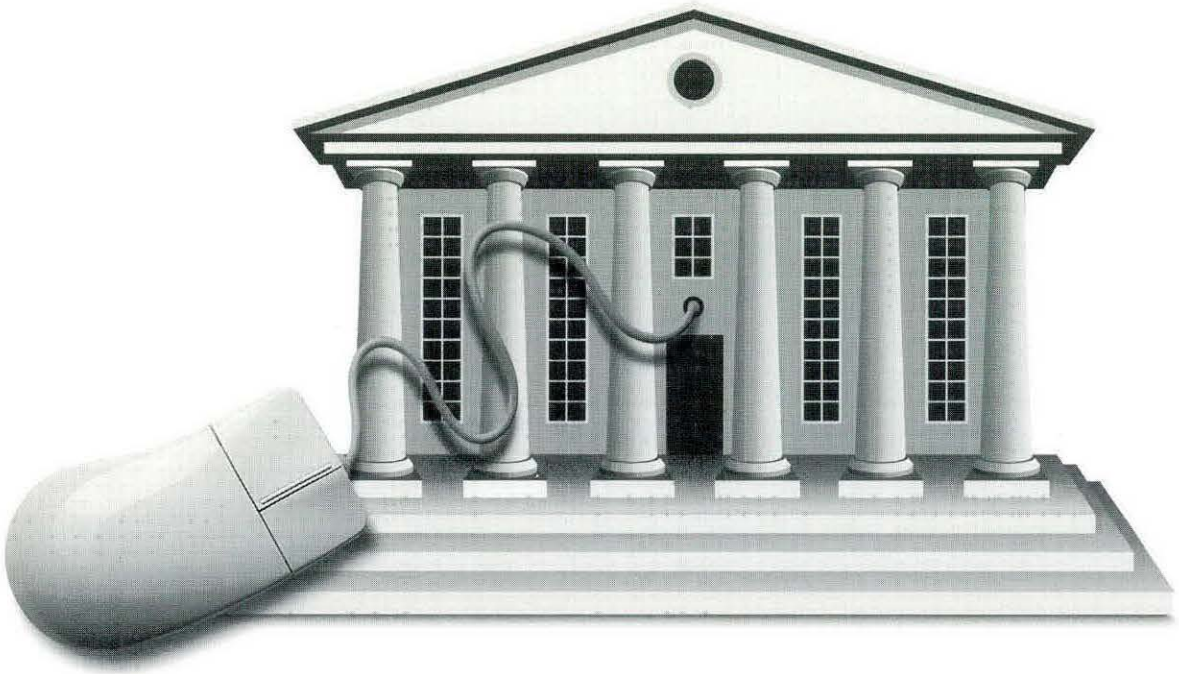
France/Italy: Tuscany — views of San Gimignano's medieval towers from two 18th c. houses on same wine and olive estate. House 1) six bedroom, three bath, weekly $1,800-2,700. House 2) four spacious apartments, weekly $900-1,100. 18th c. house in Chianti Classico, three bedroom, three bath, with adjacent two-bedroom, two-bath apartment. Beautiful swimming pool and grounds, weekly $1,400-2,000. Representing owners of authentic, historic vacation rental properties in France and Italy. Law Office of Ken Lawson; website http://www.lawofficeofkenlawson.com, e-mail: kelaw@lawofficeofken lawson.com; 206 632-1085, fax 206 632-1086.

Attorney for class-action suit wanted: For class-action lawsuit against the state of Washington Department of Labor & Industries for wage disparity, back pay and retirement benefits for the revenue officer job series. The Department has had employees working out of their job class over 10 years and unfairly denied other revenue officer job upgrades. Experienced attorneys only — request contingency. Reply to: WSBA *Bar News* Box 597, 2101 4th Ave., 4th Fl., Seattle, WA 98103.



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