

Washington State
BAR NEWS

The Official Publication of the Washington State Bar - APRIL 2000

**Aviation Law and
Flight 261:**

A Few Thoughts on
What's to Come



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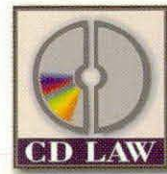


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APRIL 2000

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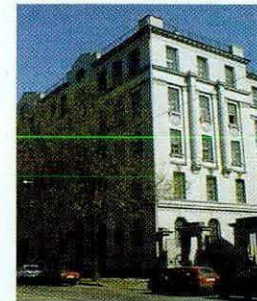
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Letters

Governor Expansion Feedback

Editor:

The adage is an old one, and I apologize to those who are familiar with its precise wording, but it roughly holds that no right, liberty or property is safe when Parliament is in session. Our current WSBA president has proven the accuracy of that warning. In a brazen proposal to undermine our democratically elected Board of Governors, President Eymann has advocated the non-democratic installment of additional governors to our Board.

To his credit, Mr. Eymann makes no effort to conceal his distaste for democracy. In fact, he shamelessly states that the existing one-person, one-vote system of bar elections "reflects shortcomings of our current selection process for the Board of Governors." In other words, we, the people, aren't enlightened enough to correctly choose those who would govern us. Therefore, to deal with those who haven't voted in accordance with his wishes, Mr. Eymann plans to rectify this situation by allowing special-interest groups to perform a more informed job on our behalf.

Initially, he advocates the installment of a "minority" Governor. Of course, he ignores the fact that we've had forceful minority Governors in the past. Moreover, he sidesteps the issue of what exactly would constitute a "minority" Governor. Allow me to suggest a few options for Mr. Eymann's consideration. How about a Christian Governor? Believe me, they're in the minority in our Association. Or a Jewish Governor? Or a Muslim? Not interested in religious minorities? How about blondes? Redheads? Those below a certain height? Perhaps the "folliclely-challenged"? How about Swedes? Germans? Iranians?

Of course, Mr. Eymann has no such minorities in mind. But perhaps this underscores my point, which is: How many "minority" bars is the WSBA willing to charter? Everyone is a minority if he or she is isolated and divided into sufficiently disparate parts. How viciously will pre-existing groups fight to retain their share of the pie and to exclude others? Which groups can top others in terms of entitlement? But more importantly, why would we want to invite such chaos? Currently, we are free from this balkanized nightmare, due to the tried-and-true, "one-person,

one-vote" process. Under this system, if a given minority votes en masse for one candidate, fine. They have that right. But this democratic option isn't sufficient for Mr. Eymann; he prefers to "stack the deck," and allow a Governor to be chosen by a small handful of pre-selected, politically acceptable groups. Shame on him. This only invites continual maneuvering and requests for recognition among other "minority" groups, thus defeating the entire purpose of this ill-conceived act. The Association deserves far better from its President. Perhaps we should propose an alter-

native amendment, wherein members can elect the President directly, instead of leaving such a duty to the Board of Governors. But I digress. There are further initiatives by the ever-active Mr. Eymann.

Perhaps his most amazing proposal is not the installation of a "minority" Governor (whatever that is), but the added installation of a "young lawyer" to the Board. In no other occupation is youth so elevated. Are there "young bricklayer" associations? Young carpenters? Young salesclerks? Yet Mr. Eymann, rushing in where angels fear to tread, advocates awarding a



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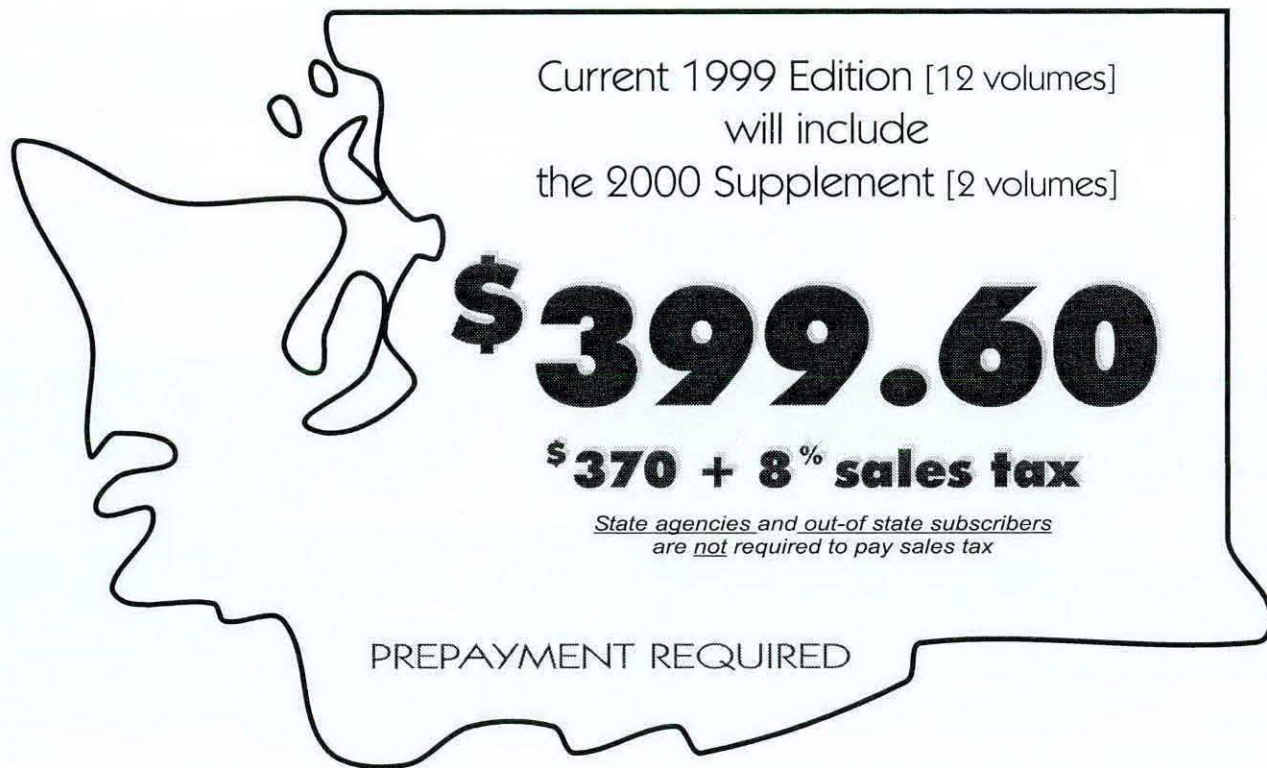
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Governor's spot based purely and solely on occupational inexperience. Once again, if the "young lawyers" of our association want to band together and elect one of their own — and assuming they speak with one voice, an assumption inferred by Eymann yet almost certainly not true — then fine. Do so with the blessings of Jefferson, Hamilton and all the founding figures that instigated our democratic form of government. But no one should expect such a privilege to be handed out on a platter. Neither the experience-challenged nor any other group deserves it, despite the youthful exuberance that so enchants Mr. Eymann. Indeed, if they comprise one-third of the bar — yet still refuse to elect a "young" representative — surely that suggests the absence of a monolithic viewpoint, and thus mitigates against the need for a special seat.

As if all this weren't enough, in a final blaze of discredit, Mr. Eymann refuses to submit this proposal to the membership for a direct vote. His reluctance is understandable, because a majority would certainly insist upon democracy, warts and all. Instead, he proposes to slip this insidious proposal past the more pliable Board of Governors, hoping the Board will ignore the implied insult that it isn't representing its members adequately. Again, shame on him. A change of this magnitude should not be withheld from the direct vote of every member of the Association, because every member will surely be affected by this change.

*Hal White
La Crosse, WI*

Editor:

In your column in the February issue of *Bar News* (President's Corner), you asked for feedback on the proposal that the Board of Governors designate one seat each for a young lawyer and a representative of a minority bar association. I like the way you approach your President's columns. You take a stand on a principle you believe in, and generate discussion. I think that's healthy for our Bar Association, and I think this discussion is a good one. However, you acknowledge in your column that some may feel your proposal is tokenism. You're right, I do.

The chief impediment to young law-

yer and minority representation on the Board of Governors is neither ageism nor racism. Often, these (usually unopposed) candidates have come forward only at the last minute after significant arm twisting. There is no objective evidence that young lawyers, lawyers of color, or any other group is being impeded in its efforts to gain seats on the Board. Rather, it is the daunting prospect of spending at least 500 hours a year serving in the position that gives them pause, as it should. Unless this is changed, the only representatives on the Board of Governors will be people, like me,

who should have their heads examined.

Setting aside a special position for a young lawyer or a minority lawyer sends the wrong message. It conveys the idea that the rest of the Board members are not responsible for representing these interests. We already fall short on this. With a "special" representative for these interests sitting on the Board, it will be even easier for the already over-burdened Board members to delegate these concerns to those representatives, and for the Bar Association to feel complacent without a programmatic commitment to serving young

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lawyers or the minority bar community.

Your proposal is also unworkable. To expect an African American attorney to speak for Asian/Pacific Islander, Hispanic, Native American, Gay/Lesbian, or physically disabled attorneys is unfair and unrealistic.

I salute the spirit of your initiative in putting this out for discussion. I am also grateful for your spirited leadership of this Bar Association. I know you'll continue to keep us on the right track.

Mary Alice Theiler
Seattle

Editor:

To any members of the Board of Governors who have known me over the years, it will come as no surprise that I strongly support your proposal to add two additional seats to the Board of Governors, one for a young lawyer and one for a designee of the minority bar associations. It is an idea that has been a long time in coming.

I know from personal experience that the Governors work hard and diligently try to represent the views of whomever they conceive to be their constituency. The problem, as you note, is that from all ap-

pearances, the constituency of young lawyers and attorneys of color have been underserved.

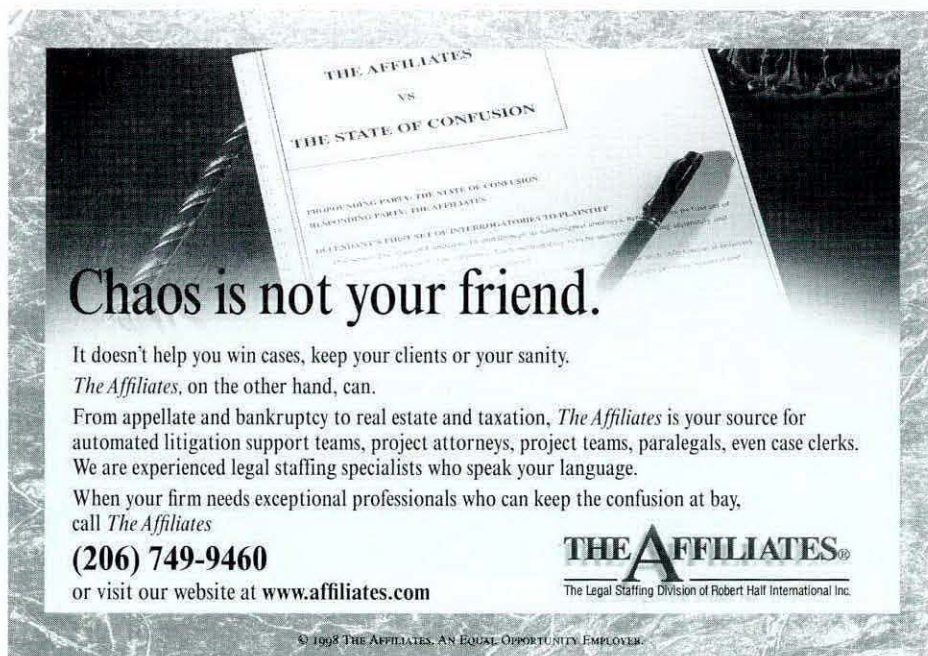
You did not discuss the details of your proposal in the February issue of *Bar News*. In that regard, I would like to make one suggestion. Throughout the years, it has been my observation that the Board of Governors works hard to develop and maintain a sense of cohesiveness and to create strong relationships among the Governors. This is one of its greatest assets. It could also be a tremendous liability if the young lawyer and minority designees were elected to only one-year stints. They would never have the time to develop the kind of relationships that are so important to the actual functioning of the Board. Therefore, I recommend that individuals so appointed serve a full three-year term.

I keep in the credenza of my office a notebook that I started in 1989. The label reads "WSBA BOG Seat." In it I have countless letters from Bar leaders across the country touting the benefits of having a young lawyer designee. I have statistics (now outdated, of course) about where such positions exist. I have letters and testimonials about the benefits that such a position would provide to our state. Periodically, I have considered throwing that book away, but have hesitated because I actually never fully gave up on the idea. I bequeath it (figuratively) to you.

I urge you and the other Governors to proceed with this approach. Although I aged out of the Young Lawyers Division years ago, I continue to believe that young lawyers have different needs, issues and perspectives that would benefit the Board. And, just as I constantly learn from my colleagues of color, I trust the Board of Governors would do so, as well.

Rosemary Daszkiewicz
Seattle, WA

Readers are invited to submit letters of reasonable length to the editor. They may be sent via e-mail to comm@wsba.org or provide on disk in any conventional format with accompanying hard copy. Due date is the 10th of the month for the second issue following. The editor reserves the right to select excerpts for publication or edit them as appropriate.



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

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

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

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Teaching Law in Russia

by **Frederick M. Lorenz**

Guest Editor

As I walked through the lovely University of Washington campus this fall, I was in a state of culture shock. Well-manicured grounds, friendly staff, state-of-the-art research facilities, and everyone speaking my language! Why is this so? During the previous academic year I lived and lectured in Russia, arriving at the beginning of the financial crisis in August 1998. I left in June 1999 after teaching six courses at three institutions.

In the summer of 1998, I completed a career as a judge advocate in the U.S. Marines. My wife and I were ready to take on a new and unique overseas civilian assignment. After a number of solo assignments with austere conditions in Somalia and Bosnia, I was delighted to be chosen as a Fulbright Senior Scholar in the historic city of St. Petersburg. Established in 1946, the Fulbright program provides travel and living expenses, and an opportunity to lecture as part of a university faculty in the host country. I lectured with both the Faculty of International Relations and the Law Faculty of St. Petersburg State University. Our 26-year-old daughter Marie spent the year with us, working part time at the United States Consulate while developing some local art projects.

We lived in a spacious and bright fifth-floor apartment in a quiet neighborhood just a 10-minute walk from my school. We relied on public transportation, which was convenient and reliable, although often crowded. Most of our shopping was done at the local markets where the produce was fresh and in good supply. We found some of our favorite American products in the few stores that catered to Western tastes and budgets. During the early stages of the financial crisis, we worried as we watched supplies in the stores diminish. Things began to stabilize after a month or so, but the situation was difficult for the average Russian as inflation drove up the price of food. Since I was paid in dollars, there was only a minor impact when the ruble exchange rate

went from eight rubles to the dollar, to more than 20 rubles to the dollar. Our main inconvenience was finding a working cash machine, since few establishments take credit cards.

My "home" teaching faculty was the Faculty of International Relations, Department of North American Studies.

I was warned that the Russian educational system was traditionally based on lectures alone, with little opportunity for discussion or expressing different points of view.

This was a good placement for me, since all the students and faculty spoke English, and my Russian language skills were very limited. The school is housed in a beautiful old building that was once a monastery. Like most of the public buildings in Russia, the school suffered from maintenance problems. St. Petersburg State is the major regional university, and I had the same privileges as Russian members

of the faculty. For the most part, faculty members are not at school when not actually teaching, and there are few private offices. There is no lounge or common place to meet. Most of the faculty hold other jobs, as the teaching profession pays very poorly, the equivalent of \$200 or \$300 per month.

In addition to my host school, I volunteered to teach at the main law faculty of the state university. During the fall term I presented a course in international humanitarian law, and in the spring semester I taught a course in international law and the use of force. The law faculty is one of the oldest departments of the university, with many famous graduates, including V.I. Lenin. The library holds the surviving remnants of the Czar's law library, and now has the only computerized legal research facility in Russia. Russian legal education is based on a five-year undergraduate program. There are 900 full-time students and more than 3,000 part-time students attending the law school. Graduates generally go on to positions in government or the commercial sector. The law school is better equipped and organized than the other schools, and there is a modern research facility.

Teaching in Russia required some major adjustments. The university schedules are slow to be determined and difficult to follow, and changes often occur at the last minute. For students, class attendance is optional; they tend to "collabo-

ABOVE: Rick and Joan Lorenz in St. Petersburg, Christmas Eve 1998.

rate" on everything, and even help each other on the written exams in class if allowed. At the end of the semester students can approach the teacher and ask for an exam (which is usually oral), and if they can show proficiency, they are entitled to a grade. This is true even if they have not attended the classes. But since I announced in the beginning that class participation would be part of my requirement, I was not very flexible with the handful of students who showed up at the end of the semester. Overall, I was delighted with the enthusiasm and quality of my students. I marveled at their command of English as I struggled to learn Russian. They were bright, capable, and open to new ideas. None of them wanted to turn back the clock and follow those who call for a return to Communism.

Before I left the United States, I was warned that the Russian educational system was traditionally based on lectures alone, with little opportunity for discussion or expressing different points of view. The expected role of the professor is to provide "the answers." Students take notes and return the material verbatim on exams. But in my classes I was pleasantly surprised. I told the students at the outset



The Law Faculty building at St. Petersburg State University.

that I would use "the American method" and require class participation. I had some great discussions as part of my classes, and most students were willing to speak their minds. Only a few at the Faculty of International Relations seemed willing to criticize U.S. foreign policy in my class, but I seemed to get more independent thinkers in the law school. This may be in part explained by their level of English language skills and their legal training.

At the law school and at the Faculty of International Relations, we discussed the ongoing impeachment proceedings in the United States. There was much publicity in the Russian media. Most students argued that the affair should be a personal matter and the impeachment should be dropped. There were jokes and offhand remarks. Most of them seemed to miss the point of an integrity issue, and that American laws may have been broken. These discussions led me to think about a more important question: How do I approach the question of moral standards and ethics in class? In a country where many leaders have lined their own

pockets and criminal "Mafia" elements run wild, many Russians take the view that "I would do the same thing if I were in their position." The years of Communism have resulted in a strong distrust for the government, and may explain the unwillingness of the people to pay taxes. Parents lived one life for the Party and another life for the family, and truth was very situation dependent. Today's students are growing up in a country that is often described as morally adrift. In my classes I began to talk about ethics and the long-term impact on society and government. This is a new subject in Russia, but one that must be addressed. If you look to the time before the Bolsheviks, there was a Russian tradition of honor, loyalty and integrity. Russia led the way in the early development of humanitarian law, convening conferences in St. Petersburg and The Hague. There may be something in Russian history to draw upon in developing a sense of moral values.

One of the best things about living in St. Petersburg was the selection of cultural opportunities. During Soviet times, Russia was the land of subsidized performing arts, built on a great Russian national tradition. The consistency and quality of the performances today are remarkable. We regularly at-



Rick Lorenz stands with Russian law students in front of the University Lenin Flag left from Soviet days.

If change comes in Russia, and the rule of law is established, it will have to come from within. The next generation of Russian leaders is in the university system, and I am optimistic.

tended world-class opera and symphony productions, and the tickets cost about a dollar each. My wife and I qualified for the "resident" rate with my faculty ID card. The artists are underpaid and work under difficult conditions, like most workers in Russia, but they keep on performing. There has also been a revival of religious choral music, and we often dropped into Russian Orthodox churches just to listen to the choirs. The unique polyphonic sound may be even sweeter because it was suppressed for so long. During the holidays we went to a Christmas concert of the St. Petersburg Children's Choir at the Smolney Cathedral. It is next door to the Smolney Institute, the seat of the 1917 Bolshevik Revolution. What would Lenin think if he had returned from the grave to hear the performance? A hundred smiling Russian children sang "Hark, the Herald Angels Sing" in English, underneath a huge replica of the Imperial Russian Eagle. Quoting Bob Dylan, "The times they are a changin'."

Based on reports of crime in Russia, many friends asked us about our personal security. An old friend in the United States suggested that we could simply have gone to the Bronx and saved the air fare! Perhaps we were naive, but we felt very safe in Russia. We lived in a Russian neighborhood and did not attract much attention. Crime in the city seemed to be mostly minor property theft and pickpockets targeting foreigners. Crimes of violence were directed mainly at political or "Mafia" figures, and that has unfortunately been fairly common and publicized. I saw single well-dressed Russian women walking alone any time of day or night, and unaccompanied women regularly hail "casual cabs" for a 20-ruble ride. We rarely heard of crimes of violence against foreigners, and we listened very carefully to what the expatriate community and the United States Consulate staff were telling us. I am convinced that we would have been at greater risk in a major American city. In a sense, life is more predictable (though tougher) in Russia. In

all their written reports, Fulbright Scholars claimed their biggest threat in Russia over the past two years was falling on the icy streets and breaking bones.

World news reported the St. Petersburg murder of Parliament (Duma) member Galina Starovoitova in November. There is speculation that she was killed because

she was collecting information on corruption. She was an outspoken voice for reform in Russia, spoke excellent English, and had lectured at Brown University in the United States. Her picture with her 10-year-old grandson would appear regularly in the local press. I went to Pushkin Square during the funeral, where long lines of somber Russians paid their respects, all in a somber mood. It was a sad day for democracy in Russia. I noticed there were very few young people at her funeral. I asked some of my students about this, and they said that most young people were too busy with their own lives to attend.

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In early March we presented a special American mock trial in the English language, for an audience of about 75 Russians. I obtained the materials from the ABA over the Internet. The script was used in a United States high school civic education project. I was the judge, we used American volunteers to act as witnesses, and some talented Russian law students played the attorneys. My daughter Marie played the "victim" in a case of sexual harassment in the workplace. In the case, a male employee of the City used some crude remarks and suggestive photos to make life difficult for a female co-worker in a professional office situation. The City finally transferred her to another job. We wanted to give the audience a look at the United States jury trial system, and to explore Russian attitudes about sexual harassment.

We divided the Russian audience into three groups. They each had the chance to act as the jury and decide the case. All three juries found against the plaintiff in favor of the City. Essentially, they found that no sexual harassment took place, and that the City was not responsible for damages. Later, when we asked the juries about their rationale, nearly all of them said they couldn't see that the man had done anything wrong. There appeared to be some serious cultural differences: Russians seemed to accept certain types of activity that would be considered offensive in the United States, and there were very few in the audience who could understand why the City would be responsible for the conduct of an employee. The concept of this type of civil liability was quite foreign to them. Despite the lopsided verdict, all the observers and participants said it was a valuable exercise, and they learned much about the American system of justice. Russia has only begun to experiment with the jury system, and the adoption of this type of trial will be a slow process.

In late March we were surprised at the depth of the reaction in Russia to the NATO bombing in Yugoslavia. There were demonstrations at the U.S. Consulate, so we avoided certain areas of the city. We heard some anti-American sentiment, although we did not feel personally threat-



An American mock trial in Saint Petersburg, March 1999.

ened. But we noticed a change, with some general negative reaction on the street when someone was heard speaking English. When I got into a cab one day, the driver must have recognized the American accent and began a 10-minute diatribe in Russian about Kosovo. I did not understand all he said, but he was not pleased. The following day another driver asked me if I was American. My answer was "Irlandski" (Irishman). He said, "Belfast;" and I said without hesitation, "Dublin." My closest Russian friend gave me a lecture that surprised me with the depth of feeling against the bombing. The "NATO threat" seemed to be a rallying point for the Communists and the radicals in the Duma. Some wanted to send Russian volunteers to fight NATO. One journalist said the bombing could mean the death of democracy in Russia. Several of my students agreed. I am not sure I concur with that statement, but the bombing set back the democratic process in Russia in a significant way.

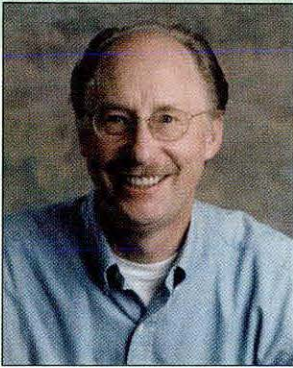
Living and teaching in Russia was a great experience. It was a perfect transition year between the Marine Corps and the civilian academic world in the United States. We have many special memories: cross-country skiing, the great ballets and operas, walking in the park in the snow, the "White Nights" in June. There were also some frustrations and inconveniences such as ice on the streets, crowded buses, inoperable cash machines, and dealing with difficult clerks and salespeople. But those were minor compared to the ben-

efits. We made great friends, and learned so much about Russia and its people. We have some regrets that we did not progress further with the language, but will always have an interest in the unique culture and history. I have maintained e-mail contact with several faculty members and students, and I hope to return next year for a short-term project. Perhaps I can figure a way for the plaintiff to prevail in that American mock trial project.

There was an article a few months ago in the *New York Times* entitled, "Who Lost Russia?" Based on my experience, Russia is not lost, but is merely adrift in turbulent seas. In America we have the benefit of 200 years of democracy, and the blessings of long-term peace and stability. If change comes in Russia, and the rule of law is established, it will have to come from within. The next generation of Russian leaders is in the university system, and I am optimistic. ♣

Frederick M. Lorenz is affiliated with the Jackson School of International Studies at the University of Washington in Seattle, Washington.

Prior articles by Frederick M. Lorenz in *Bar News* include: *A Report on Law and Lawyers in Somalia: Will the Rule of Law Replace the Law of the Gun?*, February 1994, p. 15; *Democratic Reform and the Rule of Law in Cambodia*, February 1995, p. 26; *Nation Building in the Balkans: U.S. Efforts to Promote the Rule of Law in Bosnia and Herzegovina*, October 1996, p. 28.



Expansion of the WSBA Board of Governors

by **Richard C. Eymann**

WSBA President

My proposal to change the Washington State Bar Association Bylaws to add two members to our Board of Governors has created a substantial and healthy dialogue among Bar leaders and members. As you know from my January column, I strongly advocated this change.

Since then, numerous inquiries have been made regarding how new Governors should be added. The implementation plan is only a suggestion that can be massaged or totally revamped. I believe the Young Lawyers Division should simply select, from within its ranks, a young lawyer to serve a three-year term. These three years of service should precede that individual's "graduation" from the Young Lawyers Division. Whether this person is selected by a vote of all of its members, by YLD annual meeting attendees, or by a vote of the Young Lawyers Division Board should be up to the YLD to decide.

For the minority bar member, it is my recommendation that each of the four major lawyer minority groups (African American, Native American, Hispanic and Asian/Pacific Rim) be allocated rotating three-year terms. Thus, each minority group would have three years of Board representation out of each 12-year cycle. Alternatively, minority bar chairs could meet every three years and select a new Governor from within their ranks.

Concerns have been voiced that potentially a member of both the Young Lawyers Division and a minority bar could cast three votes for representative Governors (one from their district, one from the Young Lawyers Division, and one from their minority bar). This is true, and it is a departure from traditional "one person, one vote" representation. Given all considerations, that is an appropriate outcome.

However, I want to switch the focus of this article to some questions and comments received in response to this proposal, reprinted with the permission of the authors. They are but a few of the 200-plus e-mails and letters received on this proposal to date:

Dear Mr. Eymann:

I feel compelled to respond to your proposal to create a dedicated position for a minority member on the Washington State Bar Association Board of Governors.

I was first admitted to the Washington Bar in 1985. I recall that for the first few years I dutifully filled out forms and wrote letters volunteering to serve on numerous committees of the Bar because I was interested in Bar governance and policy issues. I was never contacted about serving the Bar until the Opportunities for Minorities in the Legal Profession Committee was created in 1990. I served on that Committee from 1990 through 1993 and as its co-chair

from 1992 to 1993. I recall feeling like the Bar only asked me to serve because it needed "people of color" on the Committee. I believe that was true then and is true today.

While I believe your proposal is well-intentioned and likely to add different voices to the Board of Governors, I hope you will also reflect on why it is that the Bar has been so unable to encourage the participation of minority members these many years. Leadership in any professional organization comes from knowing others in the organization, from being mentored by others who hold positions of leadership, and from being in a place in one's career where taking on leadership is possible. Are minority members of the Bar being encouraged to seek leadership? Are current and former members of the Board of Governors helping to identify leadership among minorities? Why are minority members of the Bar not merely running for office like everyone else?

Another aspect of the proposal that I hope you will consider is what you expect from a minority member appointed to the Board of Governors. This person will, by definition, have gained their place at the table through a different and possibly more political mechanism than district election. Is the Asian American Board member presumed to have more affinity with the Hispanic bar than a white member of the Board does? Why? Does the proposal assume that the various minority bar associations have more in common with each other than they do with the general Washington State

For the minority bar member, it is my recommendation that each of the four major lawyer minority groups (African American, Native American, Hispanic and Asian/Pacific Rim) be allocated rotating three-year terms.

Bar merely because a majority of their members are not white? The minority Board member in fact is only the minority Board member because it is assumed that the majority of Board members are white. Do white people have less responsibility to consider minority issues than someone who looks like they have responsibility for minority issues does?

Finally, it is a burden to be placed in the position of constantly educating others because they want to be educated. We all have those anecdotal moments as lawyers where some well-intentioned stranger asks us how is it that lawyers can defend criminals. We know that these questions are ill-informed, intrusive and uninvited, even though sometimes we rise to the occasion and educate the person because we feel some professional obligation to do so. We are also thankful that it does not happen too often. For minority people this type of encounter has almost become institutionalized by our presence as the minority representative. I hope that the Board of Governors educates itself about minority issues because they are interested in serving all members of the Washington Bar. But I hope that this education does not come at the expense of an individual who is made to politely suffer ill-informed, intrusive and uninvited questions.

Again, I know your proposal is well-intentioned. I am also confident there are minority members of the Washington Bar who deserve to have a place at the table with the Board of Governors and will do us all a tremendous and positive service. I remain saddened, however, by the fact that we still deal with racial issues by finding someone who is chosen because of the color of their skin and using them to "color" the group that makes decisions.

*Georgia Yuan, University Counsel
University of Idaho*

Dear BOG Colleagues:

I firmly believe that the success of this Association (and so many others) absolutely depends on diversity. Recently, I chaired the Nominations Committee of the newly formed Washington Chapter of the American Judicature Society. In doing so, I met with a Supreme Court Justice and the former national president of an ethnic bar association. They suggested I write a personal letter to every

minority (and specialty) bar leader in the state, encouraging each to find members who would be willing to serve on the AJS Board. I wrote over 40 personal letters, each bearing the endorsement of these two prominent Court and Association leaders as well as the invitation of Judge William Baker, Chief Judge of the Court of Appeals. The only two responses I got were to get more information about AJS.

Five years ago, as President of the King County Bar Association (5,500 dues-paying members then), we floated the proposal by its Board to create a minority seat. The most visceral objection to this came from an African American Board member — now a judge. He felt it was a slap in the face that an association would have to create a special seat in order for members of minorities to achieve a board position. I should mention, however, that the KCBA Board over the last 10 years has done fairly well with diversity issues, although there's always room for improvement.

We already have a committee working on the involvement of minorities. They need to be heard. Most of all, we need to hear from minority members themselves. What do they think? What would make them feel welcome and comfortable?

*Dick Manning
WSBA Board of Governors
7th District*

Dear BOG Colleagues:

If you're like me, you've been getting e-mail pro and con on the President's idea for expanding the Board. I am not of one mind yet about the proposal. The last time the YLD was up to bat with a plan, they wanted to let their trustees and a few others — an electorate of about 40 — choose the holder of the YLD BOG seat. They wanted the holder to be able to serve a year and then run for a full term if he or she so chose.

I don't know how we would define "minority" in such a way as to make the allocation of the proposed seat not seem a well-intentioned, middle-aged white guy board exercise in tokenism. Will there be some kind of rotation to make sure every group gets a turn, or will we just let people run and see who gets it? Will members who qualify as minorities get to vote twice, once for minority/YLD members and then for regular BOG candidates? Are we

going to develop some standard for expanding the Board should there be future requests? (For example, Oregon has a public seat or two, and one for women lawyers.) What does expanding the Board do as far as the statutory designation of the BOG in the State Bar Act is concerned? I am also concerned that, unless carefully handled, this will be seen as a flashy quick fix for the larger problem of member participation.

We've read about how young lawyers have been shut out "for 100 years," which sounds nice. But until 15 or 20 years ago they were not a defined class of lawyers in Washington, so the claim really doesn't get you very far except to invite people to nurse a new sense of grievance.

I am also concerned that if we let it, this high-profile effort will undermine the work of the BOG committee President Eymann created this year to deal with the larger issue of minority communication and participation. If we create a couple of seats without more detailed thought about what we want to accomplish, it will be too easy to simply declare victory and go home. This proposal has to be part of a larger program for addressing these issues in a long-term, top-to-bottom way.

None of these comments should be taken as the sort of obstructionism the President anticipates and preemptively critiques in his column.

*James Deno
WSBA Board of Governors
2nd District*

...

As you can see, these letters do raise very good questions. Other input to date indicates that issues of adding a minority or young lawyer to the Board have different dynamics and should be separated and considered independently.

The issue of Board expansion will be on the Board of Governors' agenda for discussion at our May 12-13 meeting. We want to hear from you either by e-mail (questions@wsba.org) or by letter.

I highly value your input on this or any other issue. Our strength often is founded in open discussion, inclusive of non-facilitated points of view and life experience. Thank you in advance for your very valuable input. ☞



WSBA Health Check

by Jan Michels

WSBA Executive Director

Anniversaries are a good time to assess and recommit. As I pass my second year with the WSBA, I want to share my assessment of where we are and how we are doing with our stated future goals. For this assessment, I'm using a three-point scale: strong and healthy, work in progress, problematic.

Financial Stability

Strong and Healthy

The modestly and gradually increasing license fees give the WSBA a known, stable planning horizon, and should support the future directions that the Board and members have chartered.

Strategic Directions

Strong and Healthy

The 1999 long-range plan is clear and specific. By May of 2000, we will have short- and long-term specific strategies for each of our 11 strategic goals. The plan is a true achievement and maps where the WSBA's efforts are intended to lead. The plan will be evaluated annually.

Member Services

Work in Progress

In our information-gathering exercises last year, we heard that members want specific support and services. Some of the things mentioned were group purchase options, a wider variety of insurance, help with technology, and advice about setting up and running a law practice. The WSBA needs a clearer picture of who wants which services, where local and specialty bars fit in, whether members support a mandatory bar that accepts premiums, and how the finances of these requests would work. WE NEED MORE INPUT before we can proceed.

Public Legal Education (PLE)

Strong and Healthy

The PLE Council has been formed and is prioritizing and implementing the many programs and ideas the PLE Workgroup developed. Though temporarily housed at the WSBA, the Council pictures a semi-independent board somewhat like Access to Justice, with support from educators, media and concerned citizens.

Regulatory Services

Work in Progress

Discipline will not be fully current until late 2000. The new MCLE rules and simplified tracking of reporting CLE credits will not be fully implemented until January 1, 2001. This was the first year we had a revised license renewal process and credit card use. In 2000, we will complete the steps necessary to get the WSBA's regulatory functions into the "strong and healthy" category.

Technology

Strong and Healthy

All of the WSBA's major internal processes are now supported on a single, modular relational database. Our website is among the most thorough and complete of all state bar associations, and our growth and improvement inventory is exemplary and doable. This is one of the WSBA's strong suits.

Access to Justice

Strong and Healthy

There is strong energy and commitment to the principles of equal access on the Board of Governors. The ATJ Board has a plethora of successes and new initiatives. Critical will be a legislative strategy to secure additional civil legal services funding in a time of severe financial constraints.

Assessing Future Trends That Will Affect the Practice of Law

Work in Progress

The ground rules for the practice of law are shifting. We see emerging trends like multidisciplinary practice; defining the practice of law; and possible non-lawyer licensing, unbundling legal services, and Internet practice. While strong on the definition of the practice of law, the WSBA is not yet a voice or natural leader on the other trends. We need to assess what members want from their state Bar Association in information, analysis and leadership on these issues.

WSBA Administration and Morale

Strong and Healthy

Your staff is a strong professional team. Morale is good and turnover is declining. I have confidence that we are prepared to support you, the members, and the Board of Governors.

If anything we do does not match these statements, I need to hear about it!

Celebration 2000

Strong and Healthy

We expect a well-attended and exciting event. Don't forget to register and reserve your room as soon as possible. Early indications of attendance will allow us to make any necessary program adjustments.

Professionalism and Civility

Problematic

This is a stubborn goal! We all want it and we all assume that we are civil and

professional — it's the others who aren't. President-elect Jan Eric Peterson has named improving the image of the profession as the highest goal of his presidency. A good image rests on civil, professional and courteous practices with clients, other lawyers and the public.

Helping New Lawyers

Work in Progress

We have developed a good assessment of the pains and struggles of new lawyers, pinpointed some strategies to ease the transition from law school into practice, and developed plans to reach law students


earlier and offer them more WSBA services. But these steps are new and in their infancy. We need to keep up this momentum.

Diversity in the Profession

Problematic

Increasing diversity in the leadership of the WSBA is a process that will take time and energy both from the Board of Governors and from minority and specialty bar leaders and members.

If there is a life view or perspective present in the population that is not represented in the justice system, there is the appearance of bias. This is an extremely serious problem; solutions are elusive. The WSBA is watching and listening to other bar associations, members, minorities and justice leaders for any suggestions and programs that are working effectively in other jurisdictions.

Overall, it's not a bad report. For more detail about the long-range plan and the developing strategies for each goal, check out the WSBA website at www.wsba.org. Clearly we have work to do on some new and some perennial problems for the profession. However, I can enthusiastically commit to the goals we have set and recommit to my work with the WSBA. Thanks for the opportunity. 

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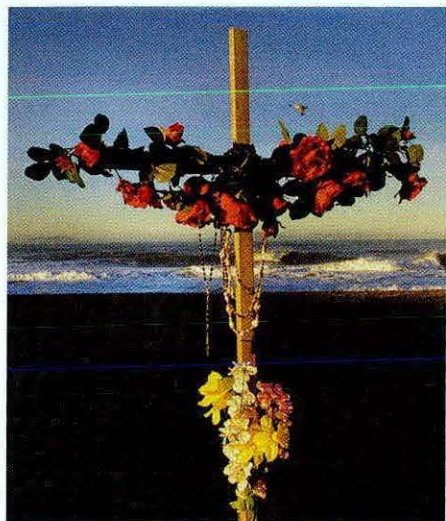
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The following is provided as a clarification to the "Professional Responsibility Counsel – Ethics Line" section of the February 2000 Executive's Report.

WSBA members can call the Ethics Line (206-727-8284 or 800-945-WSBA, ext. 8284) for confidential discussion of ethical issues. The primary contact at the Ethics Line is a lawyer with 30 years' experience who was a former disciplinary counsel. His input is based on ethical rules, ethics opinions and Supreme Court rulings. The Ethics Line handles approximately 70-80 calls per week. Additionally, members can request written informal opinions from the Rules of Professional Conduct Committee; call the Ethics Line to request an informal opinion.

Aviation Law and Flight 261: *A Few Thoughts on What's to Come*

by **ROBERT F. HEDRICK**



Behind every major air disaster there are a million stories about life, death, tragedy, heroes, human nature and human failure. But among the most fascinating stories is the causal mystery: Why did it happen? Perhaps the reason for this fascination is that it helps us address the ultimate mystery: What good can come from such suffering? Among the most fascinating stories is how our legal system will determine the rights of the families of the victims to compensation from the air carrier, the aircraft manufacturer and other potential defendants.

ABOVE: The first of many memorials to the 88 victims of Alaska Airlines Flight 261 was placed on the beach in Oxnard, California, the day after the crash.

This reality recently hit home in Washington with the January 31, 2000 crash of Alaska Airlines Flight 261. A majority of the 88 people who died were from Washington.¹ This article is an introduction to some of the legal aspects surrounding liability and compensation that may arise in the aftermath of the Flight 261 crash. It is intended to give a thumbnail sketch of relevant procedural and substantive law. The article addresses:

- compliance with ethical rules by attorneys engaging in early and aggressive solicitation or release efforts;
- jurisdictional issues, including multi-district litigation;
- liability issues, including the significance of the Warsaw Convention, which will apply because Flight 261 originated in Mexico;
- damages, including the application of the Death on the High Seas Act, conflicts of law, damage limitations under international law, and the potential effect of pending federal legislation.

Attorney Solicitation

Air disasters are known to bring out the best and the worst in the legal profession. The worst is seen when hungry attorneys intrude upon the privacy of the families of passengers to solicit representation. Whether or not such efforts technically violate the disciplinary rules, exerting pressure on or taking advantage of vulnerable grieving family members seriously detracts from the professional image of attorneys.

If Flight 261 is like many other air disasters, family members will receive a

plethora of solicitation from attorneys throughout the country. Most solicitation will be by mail, but there will be telephone calls and in-person contact. Other accidents, such as the ValuJet crash in Florida in 1996, found attorneys or their representatives (runners) near the accident site and at funeral services, trying to talk with family members of the victims. (To be fair, it is not only plaintiffs' lawyers who skirt the professional restraints. Representatives of potential defendants and their insurance companies have also been known to try to negotiate early settlement with non-represented family members.)

No less than three days after the crash of Flight 261, hungry New York plaintiffs' lawyers were speaking to the Seattle press about legal issues surrounding damage claims. Though this is a far cry from in-person solicitation, the timing of this marketing through the press is disturbing — services for the victims had not even been held.²

Then, no less than two weeks and a day after the accident, an attorney in Chicago filed the first lawsuit, accompanied by press statements blaming the pilots for not landing sooner.³ Such action does not further the interests of the clients, and only seeks publicity through the press in an effort to garner more cases. Furthermore, comments about pilot error are not warranted before the investigation is complete, and are brutally disgraceful for the families of the pilots involved.

Under the recently enacted Family Assistance Act covering airline disasters, "... no unsolicited communication concerning a potential action for personal injury or wrongful death may be made by an attorney or any potential party to the liti-

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gation to an individual injured in the accident, or to a relative of an individual involved in the accident, before the 30th day following the date of the accident."⁴ This prohibition on unsolicited communication covers all parties, not just plaintiff attorneys. Legislation is currently pending that would extend the no-contact time period to 45 days.

The Washington Rules of Professional Conduct are even more restrictive. Rule 7.3 prohibits any direct contact "in person or by telephone" if the lawyer does not have any family or prior relationship with the person, "when a significant motive for the lawyer's doing so is the lawyer's pecuniary gain." There is no time limitation. However, this rule is so broad (it would preclude asking a potential business client to lunch) and restrictive that it raises First Amendment concerns. As a result, solicitation efforts do not seem to be deterred by the risk of enforcement.

Jurisdiction and Multi-District Litigation

Since Flight 261 was an international flight, the Warsaw Convention⁵ applies to passenger claims against the airline. Originally signed during the infancy of aviation in 1929 and ratified by the U.S. in 1934, the Convention has survived more than 70 years of attack and partial amendment through supplementing instruments (conferences and protocols), and is currently in the process of complete overhaul. The U.S. Supreme Court recently held that the Warsaw Convention is the exclusive remedy for U.S. passenger claims arising from international flights.⁶

The Convention contains provisions on jurisdiction, air carrier liability, limitation of damages, and statutes of limitation, to name a few. Article 28 of the Convention sets out four venues where national jurisdiction may occur. They include the air carrier's principal place of business and the destination of the flight, both in the U.S. for Flight 261.

Both California and Washington will likely have jurisdiction for the claims of Washington residents. The accident occurred in U.S. territorial waters off the coast of California, and Washington is the principal place of business for the air carrier.

In 1968, in an effort to reduce the bur-

den on federal trial courts handling complex multi-party litigation pending in different district courts, Congress passed a special venue statute for multi-district litigation.⁷ This allows transfer of cases from the district court to the transferee court on a temporary basis for consolidated pre-trial proceedings. What typically happens with air disasters is that most cases will be filed in federal courts, usually in two or more different states, and then consolidated under FRCP Rule 42.

An appointed judicial panel may then order transfer of the cases to one court to handle all pre-trial proceedings. In many aviation cases the panel has selected the district where the accident occurred as the transferee court. The panel may also consider the district where most cases are pending, which could be in Washington for Flight 261. A plaintiffs' steering committee, consisting of a handful of lawyers, will be selected to represent the claimants as a whole. Upon completion of the pre-trial proceedings, the cases are transferred back to their respective original venues for trial.

Liability Considerations

Under Article 17 of the Warsaw Convention, air carriers are liable for "damage sustained in the event of the death . . . of a passenger." This provision provides near absolute liability on the part of the carrier, with the protection of limitation on recoverable damages, which has recently been severely eroded. Article 20(1) allows the carrier to escape liability if it can prove it took "all necessary measures to avoid the damage or that it was impossible for it to take such measures."⁸ As discussed below, the Warsaw system has recently undergone serious erosion, and the effect on air carrier liability is significant.

State law will govern the liability of the manufacturer and other defendants. A conflict of law analysis, either under California law (applying the government interest approach, with forum law as default) or under Washington law (applying the most significant relationship test) will likely result in the application of California law, as that is where the Flight 261 accident occurred and where the MD-83 airplane was assembled (Long Beach). However, with the use of depeage (applying the law of different states to different issues in the case), a court could ap-

ply a mixture of both Washington and California law.

It is too early in the investigation to determine if the air carrier, manufacturer, or other potential defendants violated any federal aviation regulations.⁹ If so, under California law such violations may constitute negligence per se,¹⁰ whereas under Washington law they would merely be evidence of negligence.¹¹

Damages

Many of the world's major air carriers have recently signed special contracts of carriage which waive the Warsaw Convention limits of liability and incorporate certain provisions which alter the effect of the Convention. For example, most U.S. carriers have waived the limitation of damages and the Article 20(1) defense for the portion of claims not exceeding 100,000 SDRs (Special Drawing Rights), or roughly \$150,000. It is anticipated that Alaska Airlines will focus its legal efforts on damage issues because the Article 20(1) defense is a difficult burden for carriers to sustain.

Since the location of most aircraft accidents is fortuitous, the underlying terrain should not make a difference as to either the recoverable value of human life, or who may recover. But there is no consistency in the law. On a single flight, the amount of money that survivors may recover varies as to where the accident may occur.

Flight 261 crashed in the Pacific Ocean approximately 7.8 miles off the shore of Southern California, and perhaps closer to the shore of Anacapa Island off the coast. Had it crashed on land, California or Washington damage law would most likely apply to the damage claims arising from the death of Washington passengers, depending on the result of a conflict of law analysis.

Death on the High Seas Act

In 1920 Congress passed the Death on the High Seas Act (DOHSA) which applies to deaths "occurring on the high seas beyond a marine league [three nautical miles] from the shore of any state . . ."¹² DOHSA provides limited recovery for "pecuniary loss sustained by the person"¹³ and only in favor of "the decedent's wife, husband, parent, child or dependent relative...."¹⁴ Not recoverable under

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DOHSA are non-pecuniary damages, such as loss of society and consortium; survivor's grief; and any pre-death pain and suffering of a decedent.

How significant are these limits on damages? In one study (performed by this author) of 16 jury verdicts arising from the 1983 KAL 007 tragedy, 39.5 percent of the total damages awarded were pecuniary, and 60.5 percent were non-pecuniary. Whether or not DOHSA applies is significant.

Since Flight 261 crashed approximately eight miles from the California coast, it appears that DOHSA should

apply.¹⁵ However, by Presidential Proclamation in 1988, President Reagan extended the U.S. territorial sea from three nautical miles to 12 nautical miles.¹⁶ Therefore, by definition the high seas begin beyond 12 nautical miles. In contrast, DOHSA applies "on the high seas beyond a marine league from the shore...."¹⁷ The issue that will likely arise is whether DOHSA applies to an aircraft accident that occurs more than three miles but less than 12 miles from shore.

There is one decision that is directly on point, but is currently on appeal before the Second Circuit. In 1996, TWA

Flight 800 crashed eight miles off the coast of Long Island, New York. The distance from shore is nearly identical to that of Flight 261.

In the TWA Flight 800 litigation, the defendants brought a motion to dismiss all claims for damages other than those allowed under DOHSA. New York Federal District Court Judge Robert Sweet held that DOHSA did not apply because the territorial waters (extended to 12 miles) were not the "high seas," and therefore deaths occurring eight miles from shore did not fall within the coverage of DOHSA.¹⁸ The defendants appealed this decision to the Second Circuit, where it is currently pending. But no matter how the Second Circuit rules, that decision will not be binding on the Ninth Circuit.

Change May Be on the Way

In the 1996 case of *Zicherman v. Korean Air Lines, Inc.*,¹⁹ the U.S. Supreme Court held that DOHSA applies to aircraft accidents occurring on the high seas that are covered by the Warsaw Convention. There, the Court recognized that "Congress may choose to enact special provisions applicable to Warsaw Convention cases, as some countries have done."²⁰ After substantial pressure from TWA Flight 800 families, a number of legislative bills have been brought and are pending in Congress. If passed, these bills will alter the effect of DOHSA on air carrier accidents.

One bill, HR2005, would amend the general provisions of the Federal Aviation Act,²¹ which precludes application of shipping laws to aircraft, to include DOHSA as a shipping law. It also applies retroactively "to civil actions commenced after the date of the enactment of this Act and to civil actions that are not adjudicated by a court of original jurisdiction or settled on or before such date of enactment."²² The Senate version, S943, retains DOHSA but allows supplemental recovery as allowed under common law or state law. There has also been some discussion at the Committee level to retain DOHSA application, but supplement recovery by allowing non-economic damages, albeit with a damage cap.

The end result is that if DOHSA applies to Flight 261, the pending legislation could have a significant effect on the value of passenger claims.

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Absent DOHSA, What Law Will Apply?

Absent DOHSA, what law governs damages for an accident causing death that occurs in U.S. territorial waters? The answer is not clear. The alternatives are either state law, or federal common law (which in aviation cases has been general maritime law). One recent decision out of the Second Circuit, dealing with damage issues arising from the Pan Am Flight 103 accident in Lockerbie, Scotland, held that under normal federal disposition, federal courts are to incorporate state law.²³ The majority of cases addressing the issue have applied state law. Furthermore, in light of the type of accident at issue, there is a negligible relationship to traditional maritime law. At least one case from the U.S. Supreme Court raises questions as to whether maritime law would even apply.²⁴

Should state law govern, the Washington passenger damage claims would be governed by Washington or California law, depending on where the action is venued and the judicial determination following conflicts of law application.

Conclusion

The reason why Flight 261 fell out of the sky is slowly being unraveled through the NTSB investigation. The causal mystery, if not the philosophical mystery, will be solved someday to the best of our human abilities. But for the families of victims and for potential defendants, the mystery of liability and compensation is just beginning. We can only hope that human failure does not play a role in solving that mystery. ✍

Robert F. Hedrick is an attorney with The Hedrick Law Firm in Seattle. His practice focuses on aircraft accident litigation and product liability. He is the Chairman of the Aviation Section of the King County Bar Association, and is an adjunct professor at Seattle University School of Law, where he teaches aviation accident law. Mr. Hedrick has an LL.M. in International Aviation Law, and is licensed to practice law in both Washington and California. He is also a pilot and certified aircraft mechanic. His e-mail address is: hedrick@air-law.com.

NOTES

1 Ironically, last fall the Aviation Section of the King County Bar Association hosted a three-day seminar focusing on legal and insurance issues likely to arise should a major air disaster occur in the Pacific Northwest. Topics included: air carrier emergency response; NTSB accident investigation; the new Family Assistance Act; and a variety of legal issues surrounding passenger claims.

2 *See Old Law Could Limit Crash Victims Insurance*, Seattle Post-Intelligencer, February 3, 2000, at A7.

3 *Why Didn't the Crew Land the Plane*, Seattle Post-Intelligencer, February 15, 2000.

4 49 U.S.C. §1136(g)(2) (1997).

5 12 October 1929, 137 L.N.T.S. 11, 49 Stat. 3000, TS No. 876, ICAO Doc. 7838.

6 *El Al Israel Airlines, Ltd. v. Tseng*, 119 S.Ct. 662 (1999).

7 28 U.S.C. §1407

8 *Supra* note 3, Article 20(1).

9 Chapter 14, Code of Federal Regulations.

10 *See Fagerquist v. Western Sun Aviation*, 191 Cal. App. 3d 709 (Ca. Ct. App. 4th Dist. 1987).

11 RCW §5.40.050.

12 46 U.S.C. §761.

13 *Id.* at §762.

14 *Id.*

15 But it appears the aircraft crashed somewhat closer to Anacapa Island, which is off the California coast. If it crashed within three nautical miles of Anacapa Island, DOHSA should not apply.

16 Presidential Proclamation 5928, 54 Fed. Reg. 777 (Dec. 27, 1988).

17 46 U.S.C. §761.

18 *In re Air Crash Off Long Island, New York on July 17, 1996*, 1998 U.S. Dist. LEXIS 8044.

19 116 S.Ct. 629 (1996).

20 *Id.* at 626.

21 As set forth in 49 U.S.C. §40120(a).

22 HR 2005 §1(a) (1997).

23 *Pescatore v. Pan Am*, 97 F.3d 1 (2nd Cir. 1996), *cert. denied sub nom*, 112 S.Ct. 331.

24 *See Executive Jet Aviation v. Cleveland*, 409 U.S. 249 (1972), where the Court stated: [W]e conclude that the mere fact that the alleged wrong "occurs" or "is located" on or over navigable waters . . . is not of itself sufficient to turn an airplane negligence case into a "maritime tort." It is far more consistent with the history and purpose of admiralty to require also that the wrong bear a significant relationship to traditional maritime activity. *Id.* at 268.

Executive Jet suggests that flying across an ocean (as opposed to taking a ship) "might be thought to bear a significant relationship to traditional maritime activity because it would be performing a function traditionally performed by waterborne vessels." *Id.* at 271 (footnotes omitted). A persuasive argument can be made that the planned route of Flight 261, following the West Coast, but not crossing a body of water, does not perform a function traditionally done by water vessels.

In addition, the pilots' decision to remain over the ocean (as opposed to flying over populated areas) while trouble-shooting the horizontal stabilizer problem has nothing to do with traditional maritime activity. It is absurd to think that the safety decision to remain over the sea should effect the amount of recoverable damages to the survivors.

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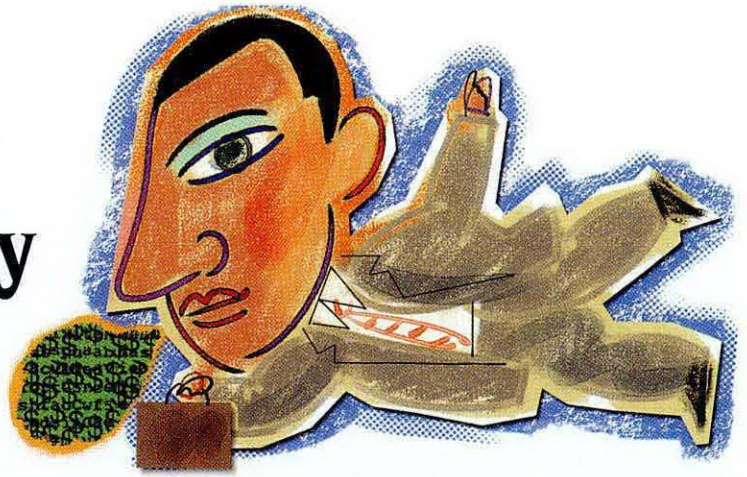
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Washington Law of Lawyer Liability

by Mark Johnson



In the early 1890s, Walla Walla County attorney A. E. Isham sued his client Mr. H. Parker for unpaid fees. Mr. Parker (the ingrate) counterclaimed for malpractice against counselor Isham. Thus, lawyer Isham became the first Washington state attorney to have his name in a reported decision addressing the issue of attorney malpractice. See *Isham v. Parker*, 3 Wash. 755 (1892).

In the opinion, the Isham Court approved the following jury instruction:

An attorney at law, when he enters into the employ of another person as such, undertakes that he possess a reasonable amount of skill and knowledge as an attorney, and that he will exercise a reasonable amount of skill in the course of his employment, but he is not guarantor of results and is not liable for the loss of such case or cases, unless such loss occurred by reason of his failure to possess a reasonable amount of skill or knowledge, or by reason of his negligence or failure to exercise a reasonable amount of skill and knowledge as an attorney at law. *Id.* at 778-779.

Today, there are more “Parkers” than ever. Clients have greater expectations of their attorneys and are much more likely to seek redress in a malpractice action if those expectations are not met.

Therefore, no matter what our area of practice, the law of lawyer liability is a body of law of which we need to have a basic understanding. What follows is a summary of the law.

Statute of Limitations

The statute of limitations for malpractice actions against attorneys in Washington is three years from the date the client discovers, or in the exercise of reasonable diligence should have discovered, the facts which give rise to a cause of action. *Peters*

v. Simmons, 87 Wn.2d 400, 403-406 (1976). While the determination of whether a plaintiff has exercised the requisite diligence is generally a question of fact for the jury, a court may decide the issue where there are no genuine issues of material fact. *Pepper v. J. J. Welcome*, 73 Wn. App. 523, 539 (1994). If a legal malpractice claim is based on errors or omissions during the course of litigation, a client is charged with knowledge as a matter of law that malpractice may have been committed by virtue of an adverse judgment, and the claim begins to accrue on the date of entry of the judgment. *Richardson v. Denend*, 59 Wn. App. 92, 95-97 (1990).

Elements of a Claim

The elements of a legal malpractice claim are those four associated with all negligence claims: 1) the existence of a duty; 2) failure to perform the duty by conduct deficient relative to the applicable standard of care; 3) proximate cause; and 4) damage. *Hansen v. Wightman*, 14 Wn. App. 78, 88 (1975).

Duty: The Attorney-Client Relationship

The determination of the existence of an attorney-client relationship is a question of fact. *Bohn v. Cody*, 119 Wn.2d 357, 363 (1992). The attorney-client relationship

does not require payment of a formal retainer, but may be implied by the conduct of the parties. The existence of the relationship “turns largely” on the client’s *subjective belief* or *intention* that such a relationship exists and that the attorney is protecting the client’s interests, *if* that belief is “reasonably formed based on the attending circumstances, including the attorney’s words or actions.” *Id.* (emphasis added). Once an attorney-client relationship has been established, an attorney owes a duty of care to his or her client.

The duty owed by an attorney to his client is circumscribed by the scope of the representation. An attorney is obligated to provide only those services he or she was hired to perform. However, an attorney also has a duty to discuss the possible consequences of the limitations on the scope of representation. *Oklahoma Bar Association v. Green*, 936 P.2d 947 (1997). Washington courts apply the same test to determine scope of representation as is used in determining the existence of the attorney-client relationship (subjective belief of the client if confirmed by surrounding acts and circumstances). See *Leipham v. Adams*, 77 Wn. App. 827, 833-834 (1995), citing *Bohn v. Cody*, 119 Wn.2d 357, 363 (1992).

Duty to Non-Clients

Washington is among the overwhelming majority of jurisdictions that do not require an attorney-client relationship for the imposition of a duty of care, although plaintiffs in such cases “must show that there is some other basis upon which (the attorney) owed them a duty.” *Strangland v. Brock*, 109 Wn.2d 675, 679-682 (1987).

Under Washington law there can be no duty to a non-client absent a threshold finding that the attorney’s services were

intended to benefit the plaintiff. *Task v. Butler*, 123 Wn.2d 835 (1992). Thereafter, Washington applies a “modified multifactor balancing test” to determine whether a duty is owed. The elements of the test are: 1) the extent to which the transaction was intended to benefit the plaintiff; 2) the foreseeability of harm to the plaintiff; 3) the degree of certainty that the plaintiff suffered injuries; 4) the closeness of the connection between the defendant’s conduct and the injury; 5) the policy of preventing future harm; and 6) the extent to which the profession would be unduly burdened by a finding of liability. *Id.* at 842-843.

Much of the “third-party duty” case law in Washington state (and elsewhere) relates to wills, trusts, estates and real estate escrows. In *Trask*, the Washington Supreme Court held that an attorney hired by the personal representative of an estate did not owe a duty to the estate or the beneficiaries of the estate because: 1) the estate and its beneficiaries are the *incidental*, not intended, beneficiaries of the attorney-client relationship; 2) the estate heirs may bring a direct cause of action against the personal representative for breach of fiduciary duty; and 3) the unresolvable conflict of interest an estate attorney encounters in deciding whether to represent the personal representative, the estate or the estate heirs unduly burdens the legal profession. *Id.* at 845. However, beneficiaries of a will may have a claim for legal negligence against an attorney who has drafted a will that fails to effect the testator’s intent. *Strangland*, 109 Wn.2d at 681.

A duty to a non-client does not require the non-client to be a third-party beneficiary of an established client relationship. *Hetzel v. Parks*, 93 Wn. App. 929, 937 (1999). In *Hetzel*, attorney Brouner deposited settlement funds of a non-client (Hetzel) into his trust account as a favor to attorney Parks, and immediately issued a check payable solely to Parks. Parks did not utilize the funds on behalf of Hetzel, but instead invested them in a banking venture. Because Hetzel could prove a set of facts to satisfy the elements of the *Trask* test, the Court of Appeals concluded that Brouner owed him a duty to protect the funds on deposit in his trust account, the same as if Hetzel had been his own client. *Id.* at 939.

The Standard of Care

The standard of care to which a Washington lawyer is held is that degree of care, skill, diligence and knowledge commonly possessed and exercised by a reasonable, careful and prudent lawyer in the practice of law in the state of Washington. *Walker v. Bangs*, 92 Wn.2d 854, 859 (1979). There is no “locality” rule — a solo practitioner in a small, rural community is held to the same standard as a partner in a large Seattle firm. *Cook, Flanagan and Berst v. Clausing*, 73 Wn.2d 393, 395 (1968). An attorney is expected to know the law or to research and determine the applicable law to avoid falling below the standard of care. *Bush v. O’Connor*, 58 Wn. App. 138, 148 (1990). The standard of care that should have been exercised and the scope of the attorney’s duty to the client are determined as of the time the services are rendered. *Martin v. Northwest Washington Legal Services*, 43 Wn. App. 405, 408 (1986).

The Fiduciary Relationship

Fiduciary duties are a component of the standard of care required of attorneys. As a matter of law, a fiduciary relationship exists between an attorney and a client. The fiduciary relationship is one of special trust

and confidence, and bestows upon an attorney the “highest” duty of fidelity, good faith and undivided loyalty. *In the Matter of the Estate of Larson*, 103 Wn.2d 517, 520 (1985); *Perez v. Pappas*, 98 Wn.2d 835, 839-840 (1983); *Liebergessell v. Evans*, 93 Wn.2d 881, 890 (1980); *Transcontinental v. Faler*, 9 Wn. App. 610, 612 (1973). As stated in *Van Dyke v. White*, 55 Wn.2d 601, 612-613 (1960), “The standards of the legal profession require undeviating fidelity of the lawyer to the client. No exceptions can be tolerated.”

The Duty to Inform

An attorney has a duty to disclose to his or her client all facts material to the representation. A fact is material if its “existence or nonexistence is a matter to which a reasonable man would attach importance in determining his choice of action in the transaction in question or the maker of the representation knows that its recipient is likely to regard the fact as important, although a reasonable man would not so regard it.” *State v. O’Connell*, 83 Wn.2d 797, 815 (1974); *Transcontinental v. Faler*, 9 Wn. App. 610, 612-613 (1973); *Bowers v. Transamerica Title*, 100 Wn.2d 581, 588-590 (1983).

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Compliance with the Standard of Care is Non-Delegable

An attorney may not escape liability for negligence by attempting to delegate responsibilities mandated by the canons of professional ethics or his duty of care. In *In Re Droker and Mulholland*, 59 Wn.2d 707, 370 P.2d 242 (1962), the Washington State Supreme Court upheld the one-year suspension of two attorneys who were majority shareholders in an escrow company and who operated the company out of the law offices of the firm. Among the cited offenses were that the lawyers "allowed their services to be exploited by a lay agency" and, further, "acted below

standards of the profession in delegating to lay personnel the responsibility of interviewing the client and selecting, preparing, and supervising execution of documents, where the lawyers did not meet with the clients. . . ." *Id.* at 716, 718.

Expert Testimony

Expert testimony is necessary in an action for legal negligence, unless the negligence is within the common knowledge of lay persons or the negligence is "obvious." *Walker v. Bangs*, 92 Wn.2d 854, 858 (1979); *Bowers v. Transamerica Title*, 100 Wn.2d 581, 587 (1983). An action for legal malpractice regarding the preparation

and conduct of litigation involves matters of special skill or knowledge, which are proper subjects for expert testimony. *Walker*, 92 Wn.2d at 858. Whether an expert witness is qualified to testify on a particular subject is within the sound discretion of the trial court. *Id.* An attorney who is not licensed to practice law in the state of Washington is not, per se, unqualified to testify as an expert witness in a Washington legal malpractice action. *Id.* at 859.

A trial judge may take judicial notice of what constitutes a reasonable standard of care. As stated in *Hecomovich v. Nielson*, 10 Wn. App. 563, 572 (1974), "[a] lawyer does not expunge his legal training and experience upon ascending the bench."

Finally, it is black letter law that expert testimony is not admissible on issues of law. Note *Expert Legal Testimony*, 97 Harvard L. Rev. 797, 811 (1984). It is the court's function to determine the law and the court is presumed to be an expert in the law.

The Professional Conduct Guidelines and their Evidentiary Value in a Civil Action

The Preliminary Statement to the Rules of Professional Conduct (RPCs) states that the RPCs do not "undertake to define standards of civil liability of lawyers for professional conduct." In *Hizey v. Carpenter*, 119 Wn.2d 251 (1992), the Supreme Court held that the RPCs and/or CPRs may not be explicitly referred to by experts in a legal malpractice case, nor do they necessarily set the standard of practice. The expert may testify generally to ethical requirements, but must avoid specific reference to the CPRs and RPCs. *Id.* at 265. An expert may base his or her opinions on "an attorney's failure to conform to ethical rules." However, the testimony must address the breach of the legal duty of care, not the supposed breach of the ethical rules. Further, jury instructions may not incorporate the CPRs or RPCs. *Id.*

Questions of Fact and Law in Legal Malpractice Cases

Legal malpractice cases often require the finder of fact and/or the judge to decide or rule on issues as they should have been decided in the underlying action. *Chocktoot v. Smith*, 571 P.2d 1255, 1258 (Or. App. 1977). In *Daugert v. Pappas*, 104

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Wn.2d 254, 257 (1985), the Washington Supreme Court followed the weight of authority nationwide and held that an issue which presented a question of law in the underlying action retained its character in the legal malpractice case and was, therefore, for the Court to decide.

Causation

In a legal malpractice action, as in most negligence cases, causation is usually an issue for the trier of fact. *Halverson v. Ferguson*, 46 Wn. App. 708, 712-713 (1986). Where facts are undisputed, however, and inferences therefrom are plain and incapable of reasonable doubt or difference of opinion, causation is a question of law for the Court. *Daugert v. Pappas*, 104 Wn.2d 254, 257 (1985); *Bowers v. Transamerica Title*, 100 Wn.2d. 581, 590 (1983).

In *Martin v. Northwest Washington Legal Services*, 43 Wn. App. 405 (1986), the Court of Appeals affirmed a judgment against a legal services organization finding that the organization had negligently failed to seek a division of a military pension in a dissolution action and that such failure resulted in monetary damages to the client. The defendant alleged that its negligence was not a proximate cause of loss to the client insofar as the client failed to seek relief under the Uniform Services Former Spouse's Protection Act (USFSPA) causing or aggravating her own damages. The *Martin* Court held that the client proved her burden of causation by establishing that she "would have prevailed or achieved a better result" if her attorney had performed competently, that there was substantial evidence in the record to support the finding of proximate cause, and that the client's conduct did not "rise to the level of a superseding cause." *Id.* at 410.

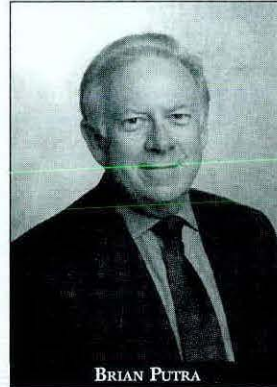
As in other negligence cases, "the law does not require that negligence of the defendant must be the sole cause of the injury complained of in order to entitle the plaintiffs to damages therefor." *Ward v. Arnold*, 52 Wn.2d 581, 584 (1958).

Errors in Litigation

Traditionally, a malpractice action against a lawyer arising out of litigation was thought to require trial of both the underlying action and the malpractice case (the "case within the case"). *Daugert v. Pappas*, 104 Wn.2d 254, 257 (1985). The rule may (and I believe should) be that

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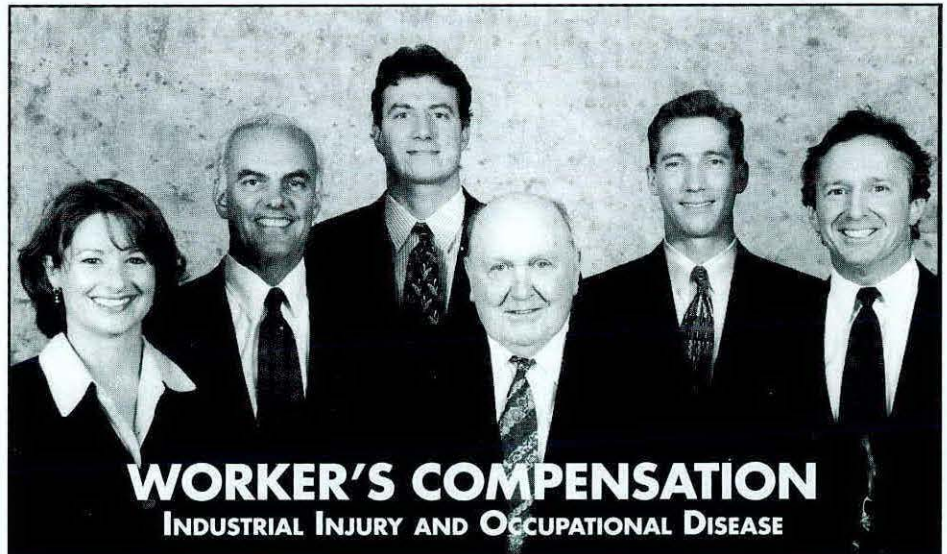
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proof of causation in a legal malpractice case arising out of litigation does not require a complete retrial of the underlying action. Since the vast majority of civil cases settle, requiring a legal malpractice plaintiff to prove two cases is extremely harsh and not reflective of reality. Since causation requires that the client prove that he or she would have achieved a better result if the attorney had performed competently, expert opinion testimony on the reasonable settlement value and/or the probable chance of success of the underlying claim may be admissible. In the case of *Fishman v. Brooks*, 487 N.E.2d 1377 (Mass. 1986), the appellate court permitted expert testimony from an experienced tort lawyer and claims adjuster as to the reasonable settlement value of an underlying claim. A more sensible and equitable rule would be to require the plaintiff to put on a prima facie underlying case and malpractice case, permit testimony by experienced lawyers and/or claims representatives regarding the settlement value of the claim if it had been properly prepared, and allow the jury to decide whether the case would have been settled (and for what amount) or would have been tried to verdict. The transcript of the underlying action is admissible in the legal malpractice case arising out of litigation. *Walker v. Bangs*, 92 Wn.2d 854, 861 (1979).

**Consumer Protection Act Claims
Against Attorneys**

An attorney may be subject to liability under the Consumer Protection Act (CPA). *Short v. Demopolis*, 103 Wn.2d 52, 65 (1984). The CPA makes it unlawful to engage in "unfair or deceptive acts or practices in the conduct of any trade or commerce...." RCW 19.86.020. In *Short*, the Washington Supreme Court held that the entrepreneurial aspects of the practice of law fell within the sphere of "trade or commerce" under RCW 19.86.010(2) and 19.86.020 of the CPA. Claims regarding the competence and strategy employed by attorneys involve allegations of professional negligence and are not actionable under the CPA. *Id.* at 61.

Defenses

A plaintiff's contributory negligence is a defense to a legal malpractice action. *Hansen v. Wightman*, 14 Wn. App. 78,

86 (1975). The contributory negligence may consist of a client failing to exercise reasonable care in providing information to the attorney or in other matters where responsibility is assumed by the client. *Id.* at 86-87. In *Horn v. Moberg*, 68 Wn. App. 551 (1993), the defense of "voluntary exercise of independent judgment" was applied to bar a legal malpractice action as a matter of law. In *Horn*, the attorney withdrew from representing his clients during the pendency of a summary judgment action. *Id.* The attorney's withdrawal left his clients in a precarious position and, in the face of sanctions, the clients agreed to dismiss their action. *Id.* The clients subsequently sued the attorney for malpractice for the loss of their claim. *Id.* The court of appeals reversed a jury verdict for the clients and directed a verdict for the attorney, holding that the clients had made an independent decision to dismiss the underlying action and, therefore, the attorney's negligence could not be a proximate cause of the loss of their claim. *Id.* To the extent that it permitted the independent business judgment rule to be used to extinguish proximate cause and bar the claim, *Horn* was overruled by the Supreme Court in *Seattle v. Blume*, 134 Wn.2d 243 (1997). The defense should now be more correctly characterized as one of contributory negligence or failure to mitigate.

Finally, there is the defense of judgmental immunity. There is uniformity that an attorney is not liable for good faith errors in tactical decision-making (such as which witnesses to call, what evidence to present and how to present it), nor is an attorney liable for failing to pursue an unsettled area of the law. *Halvorsen v. Ferguson*, 26 Wn. App. 708, 717 (1986); *Cook, Flanagan and Berst v. Clausing*, 73 Wn.2d 393 394 (1968). However, there are many other acts for which the defense has been asserted and the defense has been met with "mixed reviews." The result is an expanding, unsettled and amorphous area of the law, a discussion of which is beyond the scope of this article (or at least, in my judgment, it is). ☞

Mark Johnson is the current Chair of the Washington State Trial Lawyers' Professional Negligence Section and is a member of the WSBA's Character and Fitness Committee. He has represented plaintiffs in medical and legal malpractice cases in six states.

Washington State Domestic Violence Civil Justice Project Report — December 1999

by Leslie Owen • Domestic Violence Civil Justice Project Coordinator

In May 1998, a uniquely collaborative grant proposal was submitted to the U.S. Department of Justice to obtain funds to support a coordinated statewide domestic violence civil legal assistance project. The grant was developed by local domestic violence assistance programs, the Washington State Coalition Against Domestic Violence, the Northwest Women's Law Center, volunteer lawyer programs, statewide civil legal services programs which serve poor and vulnerable people in Washington, and many other organizations, including community organizations and law schools.

These organizations worked together to set goals and formulate implementation strategies for the proposed project. While the initial efforts to obtain funding were not successful, information from evaluators of the grant proposal indicated a strong interest in the unique collaborative approach presented by Washington state. The Department of Justice suggested a renewed effort to seek funding as the project takes clearer shape.

By far the most significant gap in legal service identified by survey participants is the lack of legal assistance for domestic violence survivors in areas of contested family law matters.

In May 1999, a newly hired Domestic Violence Civil Justice Project Coordinator conducted a survey of programs providing legal assistance to battered women. The response to the survey was excellent, as 33 domestic violence programs (58 percent), 16 volunteer attorney programs (64 percent), and 11 civil legal services offices (73 percent) returned the surveys. The purpose of the survey was to:

- Identify existing civil legal services currently available to victims of domestic violence in Washington;
- Assess current resources available within the justice system and civil legal services communities that may be used to expand civil justice to victims and survivors of domestic violence; and
- Determine priorities for the future development of civil legal services for victims and survivors of domestic violence.

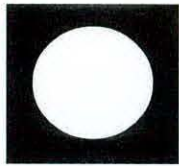
The survey asked participants to identify gaps in services and priorities for increased services from a range of legal issues that included domestic relations (dissolution, separation, visitation, parenting plans), protection orders, criminal domestic violence issues (both men and women as defendants), welfare/TANF (Temporary Assistance for Needy Families), immigration, confidentiality, address protection and child welfare. Participants were also asked to identify other areas of concern.

By far the most significant gap in legal service identified by survey participants is the lack of legal assistance for domestic violence survivors in areas of contested family law matters. Not surprisingly, survey participants identified the need for pro bono, low-cost or no-cost attorneys in these areas as the highest priority for future development of legal services for victims and survivors of domestic violence. Based on the survey results, the Washington State Domestic Violence Civil Justice Project proposes the following recommendations.

Priority Areas for Future Development of Civil Legal Services for Victims of Domestic Violence

Resource Development for Emergency Legal Representation

Every program consistently identified contested parenting plans in domestic violence cases as the top priority for legal assistance. While some new funds from the federal government have recently become available for civil representation of victims of domestic violence, the funding still reaches a limited few. These funding limits demand that those providing services provide it



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as efficiently and effectively as possible. Projects that can leverage funds are more likely to attract additional funding. Some of the best examples of such projects are those recently funded by the Victims of Crime Act (VOCA) to provide emergency legal services. Volunteer attorney and domestic violence assistance programs that hire or contract with attorneys to provide emergency legal representation to victims of domestic violence have observed significant changes in their clients and their clients' cases as a result of this service. First, the programs have found that when resources are provided at the beginning of a case, there is a greater likelihood of securing the full scope of legal relief needed by the victim. Second, programs have been more likely to locate volunteer lawyers to complete the cases once the emergency has passed. Finally, some programs have observed that if a battered woman can secure the civil legal relief she needs, she is less likely to return to the abusive partner. A high priority for the Domestic Violence Civil Justice Project should be development of increased resources for emergency legal representation, thereby increasing private bar involvement in the provision of services. The project can also work with legal service offices to improve their ability to meet the emergency needs of victims in their area.

Increase Training and Legal Support for Domestic Violence Program Legal Advocates

The lack of sufficient civil legal services for domestic violence victims who face disputed family law cases has resulted in greater demands for civil legal assistance from legal advocates who work at local domestic violence programs. Advocates report that they are being asked by their client population to provide increased support on family law issues. Usually not attorneys, they have traditionally provided legal information and advocacy to women in criminal and domestic violence protection order proceedings. When asked to expand these services to the civil arena, advocates run the risk of violating the rules governing the unauthorized practice of law. The Domestic Violence Civil Justice Project should work collaboratively with the Washington State Coalition Against

Domestic Violence to develop a training and legal support system on civil legal issues for domestic violence legal advocates. Legal support can take numerous forms: 1) Legal service and private bar attorneys can consult with advocates on specific cases; 2) They can provide training and resource materials; and 3) They can encourage increased pro bono participation. With the appropriate training, support and necessary resources, advocates can play a significant role in assisting victims without risking violation of unauthorized practice of law rules.

Increase Training for Lawyers, Judges and Guardians Ad Litem on Domestic Violence

Another need identified by all survey participants is increased training for all those responsible for the civil justice system as it affects domestic violence victims. This means more training on domestic violence for lawyers, CLEAR advocates, judges and court commissioners, court clerks, courthouse facilitators, and guardians ad litem. The Domestic Violence Civil Justice Project should help develop such training programs.

Accessibility of Services

Survey participants identified access and communication obstacles, such as cultural and language barriers, as significant reasons why many domestic violence victims are unsuccessful in gaining access to the civil justice system. Some programs have translation services available at their courthouses. The Domestic Violence Civil Justice Project should work with all survey participant organizations to develop strategies for ensuring accessibility to legal advocacy and legal representation for victims who face cultural, language and other barriers to the justice system. Also, as technology increasingly becomes a point of entry into the legal system, care should be exercised to ensure that it does not itself become a barrier for poor and vulnerable people needing access to the justice system.

Existing Services/Recommendations for Improved Services

The survey sought to determine the nature and scope of civil legal services cur-

rently available for victims of domestic violence. In Washington, victims can seek civil legal services through a variety of programs. In some communities, domestic violence programs, legal service organizations and court services are available to provide victims of domestic violence with legal information, advocacy and representation. In many other communities, however, large gaps exist that jeopardize the ability of domestic violence victims to obtain effective and timely legal help.

Following is a summary of the law-related services provided by organizations that help domestic violence victims, and recommendations by programs for improved services. The percentages in each table represent the percentage of programs that responded to each question.

Domestic Violence Programs and Legal Advocates

In Washington, there are approximately 57 community-based domestic violence shelters and advocacy programs. These programs provide domestic violence victims with a range of legal help, including legal information, referrals, and advocacy through trained lay advocates. These programs help thousands of individuals per year. In 1997-98, 42 domestic violence programs provided domestic violence law-related services to 14,521 adults and 14,673 children in Washington.

Domestic violence programs primarily help battered women with legal problems through legal advocacy. Legal advocacy can include outreach, safety planning, options counseling, case investigation/preparation, court accompaniment and systems advocacy. Most programs have staff and volunteer workers who serve as "lay" or "legal" advocates. They help victims of domestic violence to understand the legal system and develop effective strategies for participation in the civil and criminal justice systems. While a small number of programs have more than three paid domestic violence legal advocates on staff, most programs have only one or two. A few urban areas have a larger number of legal advocates, as these communities have more than one domestic violence program. In addition, a number of courts in urban communities have hired court advocates to assist victims with

protection orders. Rural communities are likely to have only one legal advocate serving an entire county. One program has two attorneys on staff, and three programs have grants to contract with attorneys for representation. Legal advocates receive training through local domestic violence programs and through the state domestic violence coalition. There is, however, no annual training for legal advocates. Programs reported that they provide legal advocacy primarily in the following subject areas:

Number of People Served by Legal Advocacy Services Programs in 1997-98

Protection Orders	94%	9,219
Child Custody/Visitation/ Parenting Plans	61%	3,294
Criminal Issues	58%	7,989
Welfare/TANF	58%	1,599
Dissolution/Separation	52%	3,582
Immigration	48%	NA

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Legal Information Topic	Written	In Person
Civil Protection Orders	64%	61%
Custody/Visitation/ Parenting Plans	49%	52%
Dissolution/Separation	43%	52%
Criminal Issues	45%	33%
Welfare/TANF	42%	24%
Immigration	40%	24%

Domestic violence programs also provide legal information to domestic violence victims. Programs use written materials from various sources, such as the Northwest Justice Project (NJP) and its Coordinated Legal Education, Advice & Referral System (CLEAR), NJP's website (www.nwjustice.org), Columbia Legal Services (CLS), the Northwest Women's Law Center, and local courts. Only three programs, however, reported that they provide informational materials from the NJP website to victims. The percentage

of programs that provide legal information (written and verbal) to their clients by topic area are specified on the chart shown at left.

The programs were also asked if they assist domestic violence victims on any of the three issues below. Confidentiality issues proved to be as important as protection orders and family law concerns.

Address Confidentiality Program	97%
Confidential Identity Changes/ Name Changes	76%
Unmarried Parent Issues/Paternity	64%

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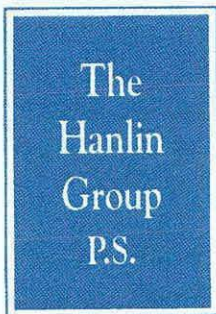
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Recommendations for Improved Service

Domestic violence program staffers reiterated the need for volunteer pro bono, low-cost or no-cost attorneys to represent their clients in contested family law cases. Programs expressed this need with a number of different requests, including:

- More attorneys to undertake extended representation of battered women in dissolution/custody actions at no or low cost;
- A central resource center with lawyers and paralegals who can provide pro se assistance;
- Emergency legal assistance;
- More access to staffed legal services offices such as Columbia Legal Services and the Northwest Justice Project;
- Protection for victims against revictimization in the civil court system when they do not have legal representation;
- Staff attorney inside DV programs who can assist clients with child custody and parenting plans; and
- Legal services that are culturally relevant and sensitive to barriers faced by the victim.

Programs also recommended increased support services for domestic violence victims. The most repeated request was for greater access to CLEAR. Only one-half of the domestic violence programs indicated they refer clients to CLEAR. Programs also requested that CLEAR advocates be trained in the specific and unique problems faced by victims of domestic violence. Other support services requested

include additional courthouse facilitators and divorce clinics. Program staffers also suggested that attorneys should use the domestic violence legal advocates more frequently to help them put a case together more effectively, especially if the attorney is providing an unbundled (limited) service for the victim.

Another need identified by domestic violence programs was increased training. Programs expressed great frustration over the extent to which some attorneys are not sufficiently aware of the basic dynamics of domestic violence. This lack of awareness means the quality and effectiveness of the representation can be seriously undermined. Programs requested training for attorneys who represent domestic violence victims as well as for all participants in the justice system (judges, guardians ad litem, law enforcement personnel, etc.).

Finally, program staffers suggested that another significant way to improve the delivery of legal services to domestic violence victims would be to improve the support available to domestic violence legal advocates. Programs identified a number of ideas for what type of increased legal support would be most effective, including:

- Attorneys who are available to provide information and advice in a timely, accessible way to domestic violence legal advocates;
- Training for domestic violence legal advocates on family law issues, court procedures, system advocacy, and assisting domestic violence victims without violating rules regarding unauthorized practice of law. This is an increasingly important concern in light of the Washington State Bar Association's initiative to further define the practice of law; and
- A 24-hour phone line for domestic violence legal advocates to get fast legal information for clients on an emergency basis.

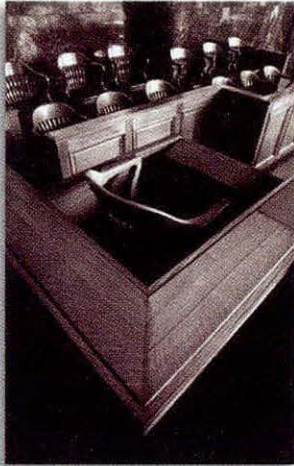
Volunteer Lawyer Programs (VLP)


Washington has 24 local community-based volunteer lawyer programs. These programs provide legal information and advice, and direct representation for quali-


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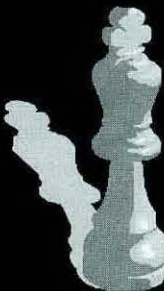
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Legal Issue	by On-site Lawyers	by Nonlawyers	Written Information
Dissolution/Separation	62%	50%	69%
Custody/Visitation	62%	50%	62%
Protection Orders	44%	37%	31%

fyng low-income individuals through meetings with volunteer lawyers and paralegals, dissolution classes and the distribution of written materials. The chart above shows the percentage of programs providing legal information on family law and domestic violence.

Volunteer lawyer programs also provide volunteer lawyers who represent clients in a select number of cases per year. By far the largest request is for domestic relations (dissolution, parenting plans and child support). Programs report that they provide lawyers in the following areas:

Legal Representation

Dissolution	75%
Custody/Visitation/Parenting Plans	69%
Protection Orders	31%


In addition to volunteer representation, six programs have hired staff attorneys or contracted with private attorneys to represent domestic violence victims on emergent family law matters. These attorneys have been funded through federal grants recently available under the Victims of Crime Act (VOCA) and the Violence Against Women Act (VAWA). The organizations receiving these funds report that it is easier to locate volunteer lawyers to take on family law/domestic violence cases once the emergency legal work has been done.

Recommendations for Improved Services

The need to increase volunteer or pro bono lawyer involvement in domestic violence-related cases is frequently raised as a solution to the lack of civil legal services available for low-income family law clients. Most VLPs report that contested family law cases are among the most difficult cases to refer to volunteer attorneys. In addition, the volume of cases far outstrips the interest or willingness of lawyers to provide pro bono representation. VLPs are therefore in support of developing more resources for paid attorney staff time in domestic violence cases that involve disputes over parenting plans. At the same time, VLPs are committed to expanding ways to involve volunteer attorneys in domestic violence cases.


VLPs also recommended increased support for expanded use of non-attorney resources such as hiring courthouse facilitators in every county. One VLP suggested that the domestic violence legal advocate's role be expanded to allow the advocate to speak in court at protection order hearings. Improved access to CLEAR was also recommended as a way to take better advantage of non-traditional sources of civil legal assistance.

Finally, VLPs identified the need for increased bilingual services at all levels (courthouse, legal services, social services)



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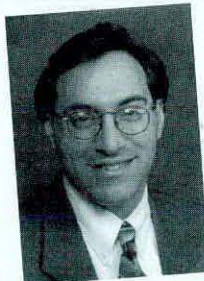
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and legal clinics for pro se clients involved in parentage actions.

Statewide Civil Legal Services

Organizations

The Northwest Justice Project and Columbia Legal Services receive private and public funding to serve an estimated 1.2 million vulnerable and poor people in all of Washington's 39 counties. These organizations receive the majority of their referrals from CLEAR. In 1998, CLEAR received 19,800 calls. Almost half (48 percent) of these calls were family law related. Even though a small percentage of callers identified domestic violence at the outset of the call (2.35 percent), the CLEAR attorneys say many of the family law callers indicate that they have experienced domestic violence.

There are 15 civil legal services offices in the state staffed by 87 attorneys. Of this number, about 15 attorneys are providing some level of family law services. Each office has eligibility criteria for cases involving family law issues. These criteria generally require that the case involve domestic violence or sexual abuse with a high risk to any children in the family. Thus, most of the family law cases taken by CLS and NJP involve domestic violence.

In addition to individual client representation, there are several specialized projects focusing on domestic violence. The Yakima CLS office received a federal grant to do outreach and legal representation for domestic violence victims in the farmworker community. In Seattle, NJP sponsors a cross-cultural clinic for domestic violence victims. This clinic provides volunteer lawyers who advise victims with emergent custody or visitation matters. The program assists clients who are unable to face language, culture and other barriers to the justice system and its resources. The CLS office in Wenatchee received financial assistance from major growers in the North Central Region of the state, Stemilt Growers and Auvil Fruit, and the National Association of Public Interest Lawyers to provide legal representation for abused children and victims of domestic violence in contested custody and visitation cases.

Because of the limited ability of NJP

and CLS to handle a large volume of direct representation cases in contested family law matters, many legal services family law attorneys leverage their resources and the resources of others by providing support for domestic violence programs and volunteer lawyer programs on domestic violence and family law. This support includes training of advocates, lawyers and social services providers; consultation on individual cases; participation in community task forces on domestic violence; and technical assistance.


In addition to CLS and NJP, there are many other important organizational partners that provide legal services to victims of domestic violence. The Northwest Women's Law Center provides an extensive information and referral phone line, community presentations on family law, publications, and representation on select public impact legal cases. The Northwest Immigrant Rights Project represents immigrants who are victims of domestic violence and who are qualified under VAWA to apply for legal permanent residency. The Fremont Public Association provides advocacy and legal services to low-income individuals who seek financial assistance under TANF.

Recommendations for Improved Services

Staff-based civil legal services organizations (CLS and NJP) have identified as a high priority the accessibility of legal services for clients who face unique barriers to the justice system, or who experience disparate treatment based on race, ethnicity, language barriers or disability. Several responses suggested ways of improving current programs. One is to hire more paralegals to assist with family law cases. Another is for legal services to consider the population of domestic violence victims a priority for the delivery of a far broader range of needed services beyond traditional family law, such as housing, public benefits, education and many others. Finally, civil legal services organizations agree that increased training is needed for all involved in the civil justice system, including courthouse facilitators, judges, GALs, court clerks, court administrators, law librarians and attorneys.

Partnerships Among Domestic Violence Programs, Volunteer Lawyer Programs and Civil Legal Services Offices

In general, collaborative relationships exist among domestic violence programs, civil legal services and volunteer lawyer programs across the state. More than half of the domestic violence programs (18) reported that they had either a good or excellent relationship with their local civil legal services provider or volunteer lawyer program. A majority of volunteer lawyer programs (13) reported they had a good to excellent relationship with the local domestic violence program. The domestic violence civil justice project should continue its work to build an infrastructure among these organizations.

This survey was conducted from May to June 1999. The results were tabulated by Leslie Owen, Coordinator of the Domestic Violence Civil Justice Project, which is currently located at Columbia Legal Services. For more information about the survey methodology and results, please contact Leslie at 360-943-6260. 

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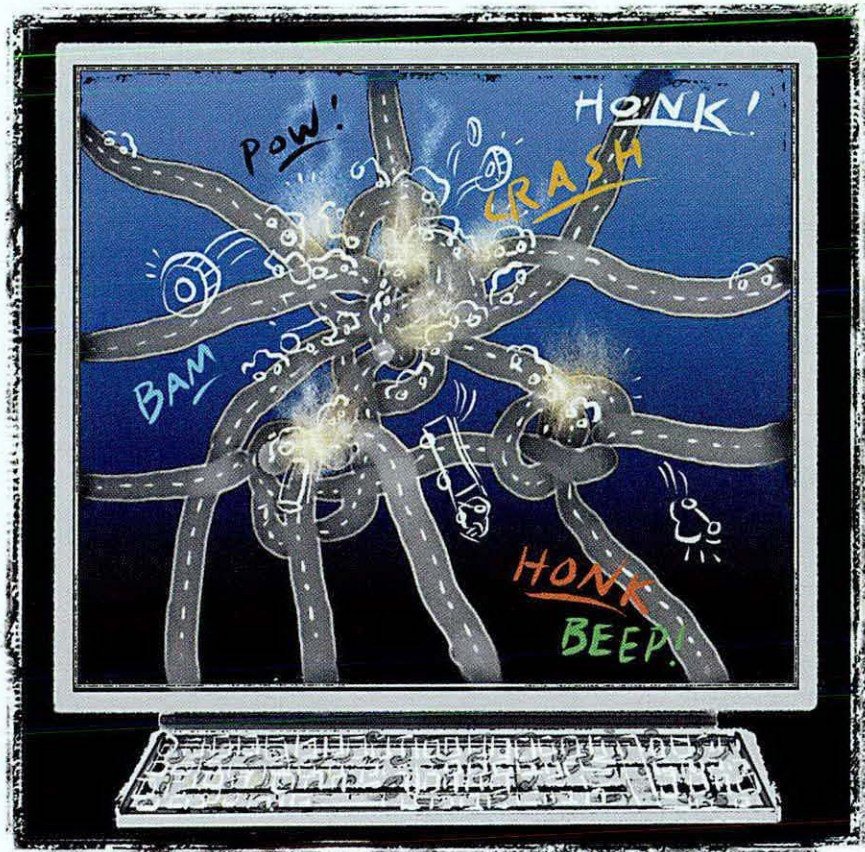
Cybersquatting and the Domain Name Dispute Wars:

If I Can Only Remember My Name ...

by Robert S. Apgood
rob@apgood.com

I am growing weary of hearing three words: millennium, dot and com. There is even a domain called *millennium.com*. And if that isn't enough, someone registered *millenniumdot.com* just to make sure all the bases were covered. Now add to the mix *new-millennium.com* and *newmillennium.com*, along with *millennium.org*, *new-millennium.net*, *millennium.net*, *millennium.edu*, *new-millennium.org*, *newmillennium.net* and *newmillennium.org*, and you quickly realize that domain names are *hot* properties. In fact, you can hardly think of a word in the dictionary, or even common combinations of words, that hasn't already been claimed as a domain name for use on the Internet. And, as the little example above shows, lots of folks are registering names that are similar to names that have been registered by other folks. Understandably, this has led to a few squabbles, particularly when one of the parties has registered a trademark for the word or phrase in contention.

Domain name disputes aren't new. In fact, several of note have been fought in federal courts. Typically they consist of a trademark holder's allegations that a domain name holder has infringed upon the trademark and is diluting that trademark.¹ Historically in such actions, the trademark holder discovered that another party registered a domain that the mark holder felt infringed on the trademark, and sought to have the domain either revoked or turned over to the mark holder in reliance upon Network Solutions, Inc.'s



(NSI) evolutionary Domain Name Dispute Policy (DNDP). The legitimate domain holder then sued to enjoin the action and NSI. NSI then interpleaded the mark holder, and changed its DNDP to disclaim any liability for whatever it was that the domain holder used successfully to get the claim against NSI into court in the first place (hence "evolutionary"). Federal cases being expensive little beasts, many legitimate claims of infringement never saw their way to a complaint pleading. Nevertheless, legitimate claims remained and new ones continued to arise.

Not being particularly enamoured of NSI's policies and conduct, Internet stake-

holders took matters into their own hands and formed what became the Internet Corporation for Assigned Names and Numbers (ICANN), a nonprofit corporation that was formed to assume responsibility for the IP address space allocation, protocol parameter assignment, domain name system management, and root server system management functions performed under U.S. Government contract.² ICANN promptly developed a Uniform Domain Name Dispute Resolution Policy (UDRP), accompanied by a fairly workable set of rules. Understandably tired of having a bull's-eye painted on its back, NSI quickly adopted the model policy and

dodged the increasingly frequent bullets. NSI's former policy permitted mark holders to put domain names that were identical to a federally registered trademark "on hold" pending the outcome of the dispute between the mark holder and the domain name holder. NSI's adoption of the model policy resulted in NSI releasing these domain names from "hold" absent a showing of the claimant's filing for resolution under the UDRP or a filing in a court of competent jurisdiction.

The UDRP sets forth a fairly straightforward arbitration procedure to which registrants of domain names must submit to in the event that their domain name registrations are challenged. The basis for a challenge is enumerated in the UDRP: (1) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (2) the domain name owner has no rights or legitimate interests in respect of the domain name; and (3) the domain name has been registered in bad faith. Although the model policy doesn't provide a clear definition for "bad faith," it does provide a non-comprehensive list of evidence of bad faith that reads something akin to "we'll know it when we see it." The list is, however, fairly clear that bad faith may be evidenced by willful infringement, willful dilution, and activities similar to those proscribed by the new Anti-cybersquatter Consumer Protection Act of 1999.³ Notably, the new policy expands the scope of what constitutes a legitimate claim to a domain name in its provisions for "confusingly similar" names and, it would appear, state and common-law trademarks.

To start a dispute proceeding, the complainant must submit a written complaint to an ICANN-authorized Dispute Resolution Service Provider (Provider). In a form analogous to the old code form pleadings, the complainant gets one good bite at the apple to set forth all factual and legal grounds on which the complainant bases his claim, along with any and all evidence that the complainant wishes the arbitrator to consider in deciding the claim. Once the claim has been reviewed for compliance with the rules, a copy is forwarded to the domain name registrant (respondent), who is then given

20 days in which to file a response containing all its factual and legal arguments and evidence. While one or both parties may be given the opportunity to answer questions and provide additional information that may be requested by the arbitrator, the core information needs to be included in these pleadings.

The policy provides for either a single-member or a three-member panel, at the option of either the claimant or the respondent. In all cases, the cost of a single-member panel shall be borne by the complainant. Depending on which party requests a three-member panel, the fees will be borne entirely by the complainant or shared equally by the complainant and respondent. The sole remedy available to a complainant is either the cancellation of the infringing domain name, or the transfer of the domain name to the complainant. The policy and rules do not provide for the awarding of damages.

The policy specifically excludes from its jurisdiction any and all other disputes and litigation between the parties that are not subject to its mandatory provisions. While the policy departs from the practice of its NSI predecessor by promising not to cancel, transfer, activate, deactivate, or otherwise change the status of a domain name registration, it does contain a fairly broad escape clause in its recognition of "multi-jurisdiction" effects on disputes by acknowledging that no prohibition exists against either or both of the parties from commencing action in a court of competent jurisdiction either before or after action by a panel.⁴ The policy also allows that no action will be taken for 10 days following a decision by the panel, in order to accommodate a court filing by either party. Considering that the policy makes no provision for appeal, such a filing may well be the only recourse for the losing party.

Trademark owners who need immediate injunctive relief will still probably have to proceed with their claims in court. If the mark owner does not need such immediate relief, however, the UDRP provides a very cost-effective and timely forum for resolving these disputes. A claim of infringement for a single domain name can be arbitrated for as little as \$750. Even adding a reasonable amount for attorney's

fees if necessary, the total is nothing compared to the possibility of \$100,000 in defense costs estimated by some in the *Clue* case. Moreover, less-than-well-heeled claimants are provided an affordable forum in which to seek relief. Likewise, respondents who have legitimate claims to their domain names are able to assert their defenses in an affordable manner and not fall prey to reverse domain name hijackers simply because they cannot finance the battle. In the all-too-common situation where a domain name registrant cannot be found (e.g., ambiguous name and/or a commercial mailbox address or overseas registrant), the new policy allows a legitimate claimant to assert its rights and protect its interests.

While the dust has far from settled in the efficacy of the new policy, it appears that Internet stakeholders are embracing the concept. Numerous new claims appear on the ICANN website daily, and we can only anticipate that the number will grow exponentially as parties become aware of the existence of the new policy. ☞

After spending 25 years in software engineering and development, Rob Apgood suffered a mid-life crisis that seriously affected his judgment. As a result, he relinquished his pocket-protector and acquired a law degree. When not out riding on his Harley, he can be found most days in his office muttering to himself and indulging in latent Luddite tendencies.

NOTES

1 Arguably the most notable of these battles is the *Hasbro, Inc. v. Clue Computing, Inc.*, No. 97-10065DPW (D. Mass. Sept. 2, 1999); <http://www.clue.com/legal/hasbro/d2.html>. Hasbro sought to have NSI, then the sole administrator of domain name registrations, revoke Clue Computing's ownership of the domain. Clue told NSI to take a hike, and sued them to retain ownership. Hasbro (astutely noting that NSI had never won such a fight) sued CCI directly, the net effect being that the *CCI v. NSI* suit was stayed pending the outcome. A full description can be found at <http://www.clue.com/legal/index.html>.

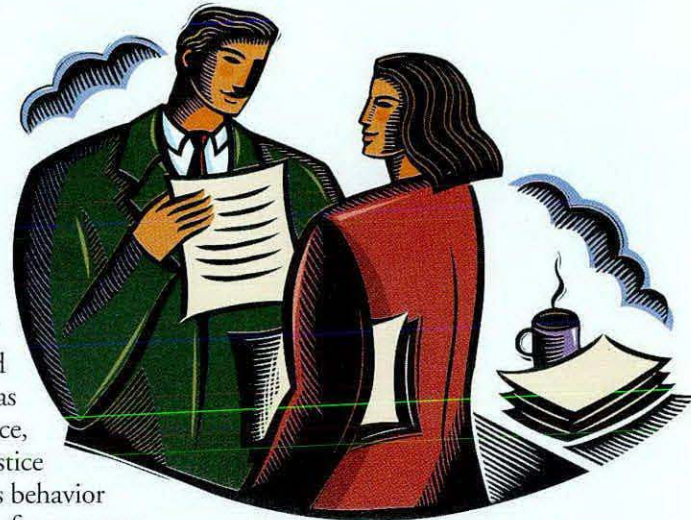
2 They can be found at <http://www.icann.org>.

3 Pub. L. No. 106-113 (codified as amended at 15 U.S.C. 1125(d)).

4 The policy, however, narrowly defines "competent jurisdiction" as either the jurisdiction of the general office of the Registrar or of the address of the respondent as it appears in the "Who is" database of the Registrar.

Civility and the Sane Lawyer

Rebecca M. Nerison, Ph.D., Licensed Psychologist
WSBA Lawyers' Assistance Program



Listen daily to lawyers whose lives are made miserable by the bad behavior of their colleagues. Lawyering can be a hostile business. According to Benjamin Sells, author of *The Soul of the Law*, the word “adversity” (as in adversarial system) comes from roots meaning “opposing, hostile,” while “litigate” means “to carry on strife.” Sells concludes, “...the psychology of litigation suggests that *litigation is dedicated to carrying on strife, not resolving it*” (page 82, italics original). Given that this is the milieu in which many of you labor, it is important to think about what might be going on beneath the surface.

Anger and hostility are going on. The dictionary definition of hostility is “of or pertaining to an enemy.” What do enemies do? Fight. Fighting frequently connotes anger. The problem is, chronic anger is bad for you, and not just because it makes you cranky and difficult to be around. A recent Harvard study indicates that very angry men are twice as likely as less-angry men to suffer a fatal heart attack or stroke. Even more to the point, a Duke study of lawyers’ hostility over a 25-year period showed that nearly 20 percent of the most hostile lawyers were dead by age 50, while only four percent of the

least hostile had died.

What else is going on? Fear of loss. Lawyers are afraid of losing lots of things, such as time, money, advantage, face, prestige, power, position, justice and the case. Fear influences behavior profoundly, pervasively, and often unconsciously. Just think about a parent’s reaction to a child running into the street without checking traffic. The automatic responses: fear for the child’s safety, screaming the child’s name, feeling angry at her carelessness, yelling at the child.

In the case of both anger and fear, the body releases stress hormones, such as adrenaline, which trigger the well-known *fight or flight* mechanism. Behavioral neuroscientists believe that this process occurs in a very primitive part of the brain known as the amygdala. Since challenging opposing counsel to fisticuffs or fleeing the courtroom are not realistic options, the body and mind must work together to assimilate this new physical condition and to choose an appropriate response.

Enter the cerebral cortex. As human beings, we are blessed with an abundance of this brain material, which is home to our higher powers of reasoning and judg-

ment. Unfortunately, in the face of a colleague’s bad behavior it can take a concerted effort to engage these powers. Physiology is not our friend in these matters. We must make a deliberate choice to override our animal instincts and not to lash out in kind.

Let us consider for a moment the cost of allowing physiology to rule the day. I believe we will see an increase in uncivilized behavior among lawyers, and society in general, to the extent that the current pervasive attitude of disrespect continues growing unabated. Disrespect is an unwillingness to show consideration or appreciation. It is a smallness of spirit evidenced by contempt, superiority, self-promotion and self-indulgence. And its cost is high. Disrespect leads to hostile behavior. Hostile behavior relieves stress and therefore feels good. The problem is that hostile behavior begets more hostile behavior. Witness ethnic and religious conflicts, gang warfare, road rage and prolonged litigation.

Meanwhile back at the office, lawyers must deal not only with their heavy workloads but with the task of managing their own rage. In response to an unreasonable demand by opposing counsel, for example, a lawyer must spend precious time thinking about the situation, formulating and generating a response, while dealing with the barrage of chemicals assaulting his or her system. No wonder so many lawyers feel exhausted and demoralized.

There is nothing to be lost by behaving respectfully, and everything to be

The WSBA Lawyer Services Department offers these four programs:

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

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

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

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

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

Changing Venues

The **Third Annual LAP/LaSD Statewide Conference** will be held at The Inn at Semi-Ah-Moo in Blaine, Washington from April 7-9, 2000. This year's conference features nationally and internationally acclaimed faculty teaching topics that include Employment Law, Suicide Prevention, and Beyond Hourly Billing: Ethical Conduct Toward Clients. The registration fee, which includes meals but not accommodations, is \$175 for the weekend or \$150 for Saturday only. For further information or to obtain a registration form, please call 206-727-8268.

gained. Breaking the cycle of incivility will create happier, healthier lawyers and an enhanced reputation for your beleaguered profession. (Unless, of course, you wish to foster the mindset of fans egging on brawling hockey players.) Modeling civil behavior benefits not only our colleagues and work life, but also our children. I remember some of the comments made by teenagers in the aftermath of the Columbine High School shootings. The consensus seemed to be that adults in our culture are modeling aggressive, hostile behavior every day.

So, what's a lawyer to do in the face of a colleague behaving badly? First, begin recognizing your own knee-jerk responses to events. This will decrease the tendency to judge others by reminding you that you share the same physiological processes as your colleague. Recognition serves to increase empathy, as well. If you can pinpoint the roots of your rage (e.g., "I'm really afraid this could cost me the case!"), then you are in a position to wonder if your colleague is experiencing the same feelings (she probably is). Being less judgmental and feeling more empathy help us realize that we're really more similar than different.

Second, breathe.

Third, engage your cortex. Ask yourself, "How do I want to respond to this?" Remember that physiology is not your friend right now. If you feel angry, try to buy yourself some time to allow the chemical rush to subside so that you can apply your full powers of reasoning and judgment to the situation. After thinking about it, you may choose not to respond to the other lawyer's behavior. Sometimes this is best; it depends on the situation.

Fourth, if you do choose to respond to another's behavior, try these ideas. First, assume an attitude of inner calm and se-

curity. Keep your tone neutral or friendly. Express empathy; bring the person back into the fold by saying something like, "Trials are really stressful, aren't they?" Address the emotion that is being expressed underneath the bad behavior. Stand back and look at the person, saying "Wow, that was really a hostile thing to say." This serves to point out what's really going on in the room and to hand it back to the offending party. It also buys you time to propose an alternative way of addressing the issue or dispute, or at least to suggest that there may be another way to approach it.

Is any of this easy? Decidedly not. It reminds me of salmon swimming upstream, against powerful currents of cultural norms. But consider the cost of not bucking the trend: salmon who fail to swim upstream and spawn will die just as surely as those who succeed, but they threaten the species with extinction in the process.

I encourage all of us to develop the courage to behave respectfully and to confront our colleagues who don't. This means, of course, getting our own act together, lest we be people living in glass houses throwing stones. For example, we may choose practicing peaceful conflict resolution with our spouses and children. We may deliberately drive our cars in a non-aggressive manner. We may inform the attorney bellowing on the other end of the line that we're hanging up now and will be happy to resume the conversation when things are calmer.

Idealistic? Maybe. Ask my clients. Who says one person can't change the world? You have the power to make your colleagues' hours a misery or a delight. And the heart attack you stave off in the process will probably be your own. ♪

Lawyers Stick It to Icy Opponents

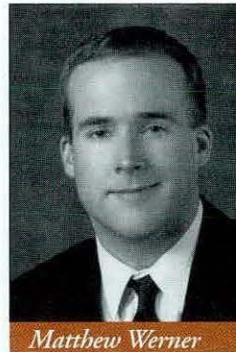
Hockey fans in Spokane are getting a cool kick out of the city's newest rec-league hockey team, Corpus Delict-ice, composed of five prosecutors and three defense attorneys. Team members, who have a chalk-outline figure across their jerseys, include Jack Driscoll, Larry Haskell, Bob Jalovi, Brian O'Brien, Kevin O'Shaughnessy and Patti Walker.

Honors and Awards

Felix G. Luna of Heller Ehrman White & McAuliffe's Seattle office was given the firm's 1999 Richard E. Guggenime Award for his exceptional commitment to pro bono legal work. The firm will donate the award gift of \$5,000 to Seattle's Team Child and the University of Washington's Public Interest Law Association in Mr. Luna's name.

Miller Nash associate **Matthew Werner** was recently appointed editor of the *Oregon Health Law* newsletter (Oregon State Bar Health Law Section) and board member of the Oregon Academy of Health Care Attorneys.

Vernon A. Smith of the Cowan Law Firm recently received board certification from the National College for DUI Defense.



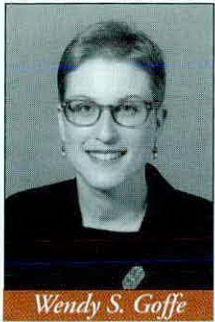
Matthew Werner

Thumbs Up to... 👍

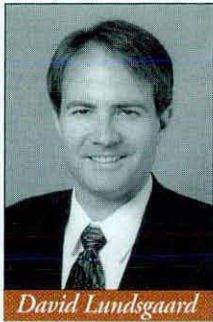
Gonzaga University School of Law was selected by *The National Jurist* magazine as one of 20 law schools nationwide to offer the best in public-interest legal education. The magazine applauded Gonzaga for developing practical skills and practice through its on-campus legal clinic.

Movers and Shakers

Wendy S. Goffe has been elected as a shareholder of Graham & Dunn in Seattle. Goffe's practice focuses on estate planning, estate and gift taxation, probate and trust administration, and family-owned business succession planning. Also elected as a shareholder at the firm, **David C. Lundsgaard** practices complex commercial litigation with substantive emphasis on antitrust, consumer protection and securities law.



Wendy S. Goffe



David Lundsgaard



John S. Devlin



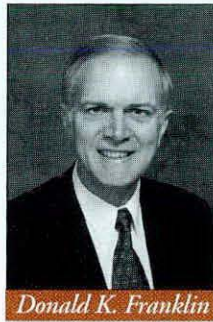
Timothy J. Graham

John S. Devlin III has been elected partner at the Seattle office of Lane Powell Spears Lubersky LLP. He is a trial lawyer, concentrating his practice in maritime, commercial and products liability litigation. Timothy J. Graham, whose practice focuses on property and casualty defense, insurance coverage and bad faith matters, has also been elected partner at the firm.

Sue Donaldson, former Seattle City Council President, has joined the University of Washington to run a public-policy forum and teach courses in public affairs and law.

Miller Nash LLP in Seattle has welcomed Donald K. Franklin as a partner. Franklin's practice emphasizes general business law and business transactional work with a concentration in agricultural cooperative law. Also joining the firm as counsel in the intellectual property department is Richard D. Multer, who has 38 years' experience as a patent, trademark and copyright lawyer. The Vancouver office of Miller Nash LLP now includes new

Cassie N. Crawford and Merridee E. Pabst have joined the firm's real estate practice. New associate Kim M. Mingo has been integrated into the firm's labor and employment department. Steven F. Hill, whose practice emphasizes environmental, admiralty, insurance litigation and land use law, has relocated to the firm's Vancouver office.



Donald K. Franklin



Richard D. Multer

Susan M. Troppmann has become a principal in the Spokane firm of Etter, McMahon, Lamberson & Clary PC. Troppmann's practice areas are general civil and trial practice, with an emphasis in labor and employment law.

PLLC have been promoted to member status. Cleveland's practice focuses on general municipal litigation. Hongladarom's practice is built on the construction industry. Larson's commercial litigation practice centers on complex construction disputes, products liability litigation, and unfair competition disputes. Nomura practices in the area of health care, representing hospitals, physicians and other health care providers. New associate Grace Han practices in the intellectual property area, with particular emphasis in trademark.

Gary A. Bergquist has joined Betts Patterson & Mines PS as a director. He brings to the firm more than 20 years of experience in business and tax law, as well as significant transactional experience in the acquisition and divestiture of businesses.



Stephen Horenstein



LeAnne M. Bremer

William J. Powell, Larry Kuznetz and Michael M. Parker have announced the formation of a law firm in Spokane, appropriately named Powell, Kuznetz & Parker PS. The new firm will represent clients in employment, discrimination, civil rights, personal injury, family, real estate, probate, labor, and general business and bankruptcy-related matters.

Dorsey & Whitney has added three attorneys to its Seattle office. New partner Michael W. Droke adds labor and employment law capabilities to the Seattle group. New associate Gregory A. Hendershott focuses his practice on labor relations, employer counseling, litigation and training. New associate Gwynne L. Skinner's practice centers on civil litigation in all areas of employment law.

Douglas Luetjen and Medora Marisseau have become shareholders in the Seattle office of Bullivant Houser Bailey PC. Luetjen is a member of the firm's business and intellectual property groups. Marisseau belongs to the firm's employment, life



Cassie N. Crawford



Merridee E. Pabst



Kim M. Mingo



Steven F. Hill

partner Stephen W. Horenstein, who practices in real estate, land use and growth-management planning, business planning, and transactions and government affairs. LeAnne M. Bremer, also joining the firm as a partner, focuses her practice on real estate and land use law and government affairs. New associates

Samuel S. Chung was recently elected a member of Short Cressman & Burgess PLLC. Formerly Of Counsel to the firm, he concentrates his practice in the areas of commercial and business litigation.

Seattle attorneys Grover Cleveland, Jon Hongladarom, Jake Larson and Lori Nomura of Foster Pepper & Shefelman

by **Sherrie Bennett**

February 18, 2000 meeting

Court Funding and Operations Top Concerns of Board of Governors

Court funding and operations were top concerns and topics of discussion for the Board of Governors at the February 18, 2000 meeting in Tacoma. Immediate Past-President **Wayne Blair** reported on new internal rule changes within the Board for Judicial Administration (BJA) which should make it a more effective forum for policy decision-making within the judiciary. The BJA has formed a new subcommittee, dubbed Project 2001, to study court reform. Former WSBA President **Paul Steere** and **Thomas A. Swayze**, a former president of the Superior Court Judges Association, will co-chair the subcommittee.

After announcing the appointment of **Eugene I. Annis** of Spokane to the Public Trust and Confidence Committee of the BJA, President **Dick Eymann** presided over a discussion regarding legal services funding, and the chronic underfunding of state courts. Governor **Walt Krueger** pointed out the need for WSBA members to further educate themselves on the legislative funding process. The Board subsequently formed an ad hoc budgetary study group to meet over brown-bag lunches to reach a better understanding of legislative budgetary forces and processes.

Young Lawyers Strut Their Stuff

YLD President **Lisa Castilleja** reported on efforts to recruit diverse membership, including lawyers of various ethnic and geographic groups, government lawyers and lawyers in solo practice.

Katrina Glogowski encouraged attendance at YLD's Mid-Year Conference, which will be held in Winthrop May 5-7, 2000. She also reported on YLD's Pre-Law Student Leadership Conference, to be held in Yakima on April 15, 2000. At the conference, high school students are encouraged to become lawyers through leadership development training with lawyers as role models.

Steve Marsalis gave the Board an overview of YLD's Aspiring Youth Program, designed to educate and inspire at-risk



Gary A. Bergquist

health and disability practice groups. New associate **Matthew R. Wojcik** is a member of the firm's business litigation and intellectual property practice groups.

Van Ness Feldman in Seattle has announced the addition of attorney **Malcolm McLellan** as

Of Counsel, representing clients in the areas of energy, environment, municipal and commercial law.

Dmitri Iglitzin has become a partner at Schwerin, Campbell, Barnard LLP in Seattle. He will continue his primary practice representing union and individual clients in labor and employment cases.

Christensen O'Connor Johnson & Kindness PLLC in Seattle has promoted **Maria L. Culic** to member status. She will continue her intellectual property practice, focusing on U.S. and international software and electrical patent prosecution, copyright law, trademark law, intellectual property litigation and technical licensing.

The law firm of Smith, Freed, Heald & Chock PC in Portland has announced that **Jeffrey D. Eberhard** has been named Managing Partner of the firm. A civil litigation partner, Eberhard's practice includes defending

personal injury claims, construction defect litigation, business torts, and insurance coverage analysis and litigation.

Webforia of Bellevue has appointed **Brian Deagle** as General Counsel and Secretary. He will handle all company legal affairs, including corporate governance, intellectual property and equity financing.

Peter S. Hicks has joined Seattle's Lee Smart Cook Martin & Patterson PS Inc., where he will practice in the area of employment-related matters.

Sandra L. Perkins has opened her own law office in Seattle, where she will continue to practice estate planning and probate law, including assisting clients with prenuptial and postnuptial agreements, charitable transfers and challenging family issues.

Reed McClure in Seattle recently added two attorneys to its growing business and intellectual property law practices. **Jodi L. Hansell** concentrates her practice in domestic and international business and securities law, including business formation, transactional law, securities compliance in obtaining new financing, and mergers and acquisitions. **Emmanuel P. Tangas** advises clients in the



Jodi L. Hansell



Emmanuel Tangas

software development industry, e-commerce companies, artists, authors, enologists and musicians.

Martin E. Snodgrass and **Renee C. Warren** have opened a law office in Everett under the name of Snodgrass & Warren, Inc. PS. They will provide expertise in the areas of bankruptcy, insolvency and creditor/debtor law.

In Memoriam

Bill Bantz of Spokane passed away January 14, 2000 at the age of 81. Donations in his memory may be made to the Hospice of Spokane.

King County Superior Court Judge **Jim Bates** passed away February 13, 2000 at the age of 52. Serving admirably for many years on the King County bench, Bates still found time for recreational fishing.

Spokane attorney **Maury Cooper** passed away at age 84 on January 9, 2000. Memorial contributions may be made to the Shriners Hospital.

Melville Monheimer, Jr., of Seattle, passed away January 9, 2000 at the age of 79. Former owner of the Seattle SuperSonics basketball team from 1967 until 1983, he practiced law for almost 50 years, and was known for his extensive charitable work.

Jack Steinberg of Seattle passed away January 16, 2000. He practiced law for 61 years, 29 of those in partnership with his son **Quentin Steinberg**. ☞



Jeffrey D. Eberhard

youth. The pilot program now operating in Spokane is destined to future expansion into the Seattle area.

YLD president-elect **Tom Quinlan** described YLD's Scholarship Mentorship Program, which pairs attorneys and judges with high school students who observe the attorneys in action. Students then write about what they learned. YLD awards scholarships for college expenses. The program started in Tacoma, but has now spread to Seattle.

Vonda Sargent reported on YLD's ABA model program for community outreach and education clinics staffed by young attorneys, tackling such issues as domestic violence, family law and landlord/tenant problems.

John Brangwin talked about YLD's sponsorship of brown-bag lunch discussions regarding equality in practice. **Paul Lehto** described the Law Student Mentorship Program, which is venturing into an area the Board of Governors encouraged all to explore.

Walt Olsen discussed the Youth and Law Program, for elementary and middle school children to participate in mock trials and related discussions. Law enforcement officers are part of this program, which included Johnnie Cochran as a speaker last year.

YLD's immediate Past-President **Patrick Palace**, showed a representative video of YLD's Law Talk, providing TV programming regarding basic legal rights and remedies, processes and legal resources. Upcoming video topics include tobacco litigation (with Attorney General Christine Gregoire), the inner workings of Congress (with Jay Inslee and Patty Murray) and health insurance (with Tom Kinkle).

Jon Winemiller reported on YLD's Trial Advocacy Program, a 12-week intensive mock trial program. **Brian Born** described YLD's Greater Access Program (GAP), which YLD has partnered with the Access to Justice Board and the Northwest Justice Project to interface with the CLEAR project in providing discounted legal services on a sliding scale. **Ken Norris** discussed some of the focus points for YLD's Practice Conditions Program, including professional development, stress of young lawyers, financial planning and

balancing young lawyers' personal lives with the law.

Legislative Status Report

WSBA lobbyists **John Fattorini** and **Gail Stone** gave the Board an update on the fast-and-furious workings of the legislature during the pending session. As of press time:

WSBA-sponsored SB 2320 and **SHB 2321**, regarding electronic notice and proxies for nonprofit and for-profit corporations, passed the House and Senate and was on the way to Governor Locke for action. The bill was amended in the House Judiciary Committee to address a member's concern about the security of electronic voting, requiring transmittal with security or validation controls.

WSBA-sponsored EHB 2322, regarding limited liability partnership, is in front of the Governor for action.

WSBA-sponsored SSB 6186, an overhaul of Uniform Commercial Code Article 9, has passed and is waiting for the Governor's approval.

WSBA-sponsored bill SB6138, modifying disclaimers of interest under the probate and trust laws, has passed and is on the way to the Governor.

WSBA-sponsored SB 6139, modifying estate tax apportionment, passed and is on the Governor's table.

WSBA-sponsored SB 6140, updating probate and trust laws, passed and is waiting for the Governor's action.

SSB 6550, amending the Equal Access to Justice Act, died in the Senate Ways and Means Committee under the weight of a nearly \$10 million fiscal note from the Department of Labor and Industry. This issue will continue to be developed between sessions.

2SSB 5659, regarding offers of compromise in mandatory arbitration and supported by the WSBA, passed the Senate but died in the House Judiciary Committee. The bill, which also included an increase in the MAR jurisdictional amount to \$50,000, made it out of the Senate with only nine "no" votes, but could not get out of the House.

WSBA-supported EHB 2713 on mandatory arbitration fees, passed the House and the Senate, and is on its way to the Governor. This bill creates a local-

option fee of up to \$120 for filing a statement of arbitrability. The bill came out of the House with an amendment requiring that the fee be sent to a vote of the people if a court of competent jurisdiction determines that the fee is subject to I-695.

HB 2571/SB 6379, clarifying that attorneys' fees may not be awarded against administrative tribunals, died in House committee. The Senate version passed out of committee but got caught in a strategy to revive SSB 6550 by amending it onto this bill. As discussions proceeded, time ran out and the underlying bill did not make it to the Senate floor for a vote.

You can access more information on the legislative progress at <http://www.leg.wa.gov/wsladm/bills.htm>.

Public Legal Education Report

The Board received a report on Public Legal Education Council progress from **Marlin Appelwick**, **Judith Billings**, former Board member **Mary Alice Theiler**, **Laurie Rosenfeld** and **Joan Fairbanks**. The organizational structure, which will likely be a 501(c)(3) corporation, is expected to be decided shortly. Members are looking at the effectiveness of institutional civics class opportunities in the short-run, and will develop additional methods of education over time.

Reciprocity Admissions Study Group

General Counsel **Bob Welden** and Governor **Steve Henderson** met with Oregon and Idaho Bar Association representatives in February to discuss the WSBA's newly adopted reciprocity rule and ways to make it easier for Washington, Oregon and Idaho lawyers to practice in the other states. Discussions centered on the potential of a two-day course and two-hour exam on black-letter law differences and court structure differences among the states. The group will meet again shortly to continue discussions.

Discipline Diversion Report

President-elect **Jan Eric Peterson** and **Randy Beitel** reported on a potential program to develop a kinder, gentler WSBA disciplinary system. According to Jan Eric Peterson, the diversion program would move the disciplinary process "away from crime and punishment toward preven-

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tion, education, reform and customer service." Potential diversion programs could include fee arbitration, mediation, law office management assistance, lawyer assistance programs, psychological or behavioral counseling, monitoring, restitution and continuing legal education programs. The Board will discuss this matter further in the future.

Long-Range Planning Goal Implementation Continues

Wayne Blair, Governor Krueger and former Governor **Marijean Moschetto** discussed the future of implementation of long-range planning goals developed by the Board over the past two years. The issue of how to involve members of more diverse backgrounds came to the forefront. Moschetto suggested that the Long-Range Planning Committee could assume many roles (for instance, as a think tank, administrators, etc.) into the future, and would await the Board's direction.

Amicus Brief Committee Report

Bertha Fitzer reported to the Board regarding the activities of the Amicus Brief Committee, including a decision not to file an amicus brief in a case where the issues were fact specific and well briefed.

WSBA Budget On Target

Governor Krueger reported that the WSBA budget is on target for the year, financial auditors have given WSBA a "clean bill of health," and the conversion to a standard accounting system is going well. No further staff additions are expected at this time, there will be no reductions in staff salary this year, and staff turnover is down from 25 percent to 18 percent.

New Appointments

The Board appointed Judge **Rebecca Baker** and **Richard W. Kuhling** to the Access to Justice Board. The Legal Foundation of Washington representative will be **Dwight Williams**.

Mark D. Schedler was appointed to the Limited Practice Board.

Phillip Ginsberg will be the WSBA's new representative on the Defender Association Board. ☐

Lawyers' Fund for Client Protection

The Lawyers' Fund for Client Protection Committee meets quarterly to review applications for gifts from the Fund. The Committee is authorized to make gifts of up to \$3,000 to qualified applicants. On applications for more than \$3,000, the Committee makes recommendations to the Board of Governors, who are the Fund's Trustees. At their meeting on February 4, 2000, the Committee took the following action:

- **Dennis M. Brouner** (WSBA No. 8859, Seattle; disbarred): Last year, the Committee approved 15 applications concerning Brouner (ranging from \$149 to \$6,000). Brouner maintained a bankruptcy practice that was co-owned by a suspended Arizona lawyer. Brouner placed his law firm in bankruptcy, and was eventually prohibited by the bankruptcy court from filing bankruptcy proceedings on behalf of others. These two applications, like many of the previous ones considered by the Committee, involved failure to return unearned fees. The Committee approved payments of \$894 and \$775 to the applicants.

- **Charles W. Burns** (WSBA No. 12957, Colville; administrative suspension): The Committee reviewed 14 applications and approved eight. After Burns abandoned his law practice, the Office of Disciplinary Counsel conducted an audit of his trust account that showed Burns had converted client funds to his own use. All of the approved claims involved failure to return or account for funds held in trust as advance fees or costs, ranging from \$393 to \$3,200, and totaling \$9,743.

- **Irving Leroy Dane** (WSBA No. 6587, Vancouver; interim suspension): At their November meeting, the Committee recommended payment of \$30,000 and \$10,494 respectively to two clients in separate personal injury actions. This application involves an advance fee paid to Dane, which was the subject of a restitution hearing in Dane's sentencing on his plea of guilty to first-degree theft. The Court ordered resti-

tution of unearned fees in the amount of \$12,187.50. The Committee recommends payment of that amount from the Fund to the applicant.

- **William R. Hebler** (WSBA No. 14373, Lynnwood; deceased): Two applications were approved at the November meeting for \$6,500 and \$500 paid to Hebler in immigration matters. In this case, the applicant paid a fee to Hebler to apply for citizenship. Hebler performed no service and failed to refund the fee. The Committee approved payment of \$500.

- **Michael B. Markham** (WSBA No. 11388, Seattle; interim suspension): Markham pleaded guilty to attempted tax evasion in May 1997. One of these applications concerned failure to account for funds paid to Markham for deposition costs. The Committee approved payment of \$613. The other application concerned failure to account for settlement funds Markham withheld to pay medical costs. The Committee approved payment of \$1,801.

- **Melinda Monet** (WSBA No. 25676, Seattle; interim suspension): Last year the Committee approved 28 applications concerning Monet (ranging from \$200 to \$900). Two additional applications were approved in November. This application, as many of the previous ones, concerned failure to account for an advanced filing fee paid to Monet. The Committee approved the application for \$175.

The Committee considered an additional 11 applications which were denied on the basis that they were fee disputes, claims for malpractice, or failed to demonstrate any dishonest conduct by the lawyer. At this meeting, the Committee also approved an information brochure to be published about the purposes and procedures of the Fund.

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

Ethical Considerations as to Liens

by **Barrie Althoff** • *WSBA Chief Disciplinary Counsel*

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

These materials give a brief overview of some features of attorney liens in Washington and then consider some ethical issues arising in the interplay between those and other liens.

Overview of Attorney Liens

Washington has long recognized a lawyer's right to a lien to secure compensation for services rendered to a client. The right arises both under common law and by statute, with the current general statutory attorney lien being set out at RCW 60.40.010. *Ross v. Scannell*, 97 Wn.2d 598 (1982) observes that the statute, being in derogation of common law, is to be strictly construed.

The lien is generally viewed in Washington as a possessory or retaining lien which allows a lawyer to retain a client's papers or money in the possession of the lawyer, and in certain cases, to make claims on money in the hands of adverse parties. The lien is a charging lien to the extent it applies to some judgments, where in effect it prevents clients from reaping the benefits of the lawyer's work, but depriving the lawyer of earned compensation.

As a retaining lien, if the lawyer gives up possession of the possessed property, or assigns it to another without agreeing to retain the lien or secure an assignment of assets, the lien terminates. For example, in *Mahomet v. Hartford Insurance Co.*, 3 Wn.App. 560, 477 P.2d 191 (Div. II, 1970), the lien ended when the lawyer surrendered insurance policies without an agreement to retain his lien. Similarly, the lien ends when it is assigned. See *Gottstein v. Harrington*, 25 Wn. 508 (1901), 65 P. 753 (1901). Although not stated in the statutory lien, it does not apply to money

in the lawyer's possession for support of minor children. See *WSBA Formal Opinion 144* (1970).

The retaining lien is not enforceable by foreclosure or sale. Thus a lawyer may not sell, for example, a client's papers or documents to satisfy the lawyer's claim for unpaid legal fees. *Gottstein v. Harrington*, 25 Wn. 508, 65 P. 753 (1901); *In re Eighth Ave. in the City of Seattle*, 82 Wn. 398,

144 P. 533 (1914). Where the lawyer secures a judgment for the client, the lien may attach to that judgment and be enforced against the client, but an attorney's lien may not attach to real property. The concern is that lawyers might unfairly cloud, or threaten to cloud, title to their clients' real estate to coerce them to pay claimed fees. *Ross v. Scannell*, cited above.

Ethical Considerations

Some Preliminary Thoughts. A lawyer's lien rights are subject to the lawyer's ethical obligations under the Rules of Professional Conduct. The RPCs specifically recognize, although indirectly, a lawyer's lien rights. For example, 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, except that the lawyer may: (1) Acquire a lien granted by law to secure the lawyer's fee or expenses." Similarly, RPC 1.15(d), on terminating representation of a client, permits a lawyer to "retain papers relating to the client to the extent permitted by other law," thus

indirectly recognizing a lawyer's retaining lien on client papers.

An attorney considering claiming or enforcing a lien for allegedly unpaid legal fees or costs should seriously consider whether the effort is worth the aggravation and risk. While clients often do not pay all owed fees and costs, when sued for nonpayment they almost equally often file malpractice and disciplinary complaints claiming professional and ethical violations by their lawyer. In *Gustafson v. City of Seattle*, 87 Wn.App. 298, 941 P.2d 701 (Div. I, 1997), the Court of Appeals suggests that a lawyer's breach of ethical duties may result in denial or disgorgement of the lawyer's legal fees. Thus, before claiming or enforcing an attorney's lien, a lawyer should assure that the lawyer's representation of the client has been professional and ethical.

While some dishonest clients intentionally cheat their lawyers, many nonpayment cases more likely arise from either a good-faith, but perhaps mistaken, belief by the client that the lawyer did not serve the client well, or from a client's financial inability (perhaps temporary) to make payment. In either case, the lawyer should objectively determine the cause of nonpayment, and then ask whether life is long enough to expend efforts to pursue the nonpaying client rather than better servicing paying clients. The author believes most lawyers would be far better to chalk up nonpaying clients to the category of "involuntary pro bono" service, recognizing that few, if any, lawyers ever recover 100 percent of amounts billed, and take pride that as professionals they served well even those clients who cheated them.

The following discusses some ethical issues relating to liens. Although organized under the four stated categories of statutory attorney's liens, namely (1) liens on client papers, (2) liens on money in the

An attorney considering claiming or enforcing a lien for allegedly unpaid legal fees or costs should seriously consider whether the effort is worth the aggravation and risk.

lawyer's possession, (3) liens on money in the possession of adverse parties, and (4) liens on judgments, it relates to other liens as well. It does not address, as outside its scope, questions relating to liens that may arise under bankruptcy law.

Liens on Papers/Files. The principal ethical limitations on a lawyer's lien claim on client papers and files are in RPC 1.15, describing a lawyer's obligations on terminating a client representation. RPC 1.15(d) requires the lawyer to

take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

The rule's permission to retain papers recognizes the lawyer's common-law and statutory lien right. In practice, however, the lawyer's ethical ability to retain papers is very limited, and is rarely of economic use to the lawyer, since the lawyer's duty to protect the client's interests supersedes the lawyer's right to protect his or her own interests. Since the primary role and rationale of a lawyer as a professional is to serve others, this is a proper result, although it leaves the lawyer subject to abuse by possibly dishonest clients.

WSBA Formal Opinion 181, holding that a lawyer may retain papers only where the client's interest is not prejudiced by doing so, recognizes the priority of client service over lawyer self protection. The client, when requesting his or her files, is generally presumed to need them and is presumed likely to be prejudiced by not having them. Practically, a lawyer may retain files under that opinion only where the client can afford to pay outstanding fees and there is no dispute as to the amount owed. This is rare, since unhappy clients usually claim lawyer fees are too high. Generally, where there is legal need for the files, the lawyer must release the files to the client or the client's new lawyer. The lawyer need not deliver files to a

client who has not fully paid the amount owed where a legal representation has been completed and there is no further ongoing legal need for the files. Thus, an unpaid lawyer need not hand over souvenirs of a completed legal conflict to a nonpaying client.

Lawyers representing a client whose file is being retained by a client's former lawyer claiming a retaining lien on the file should familiarize themselves with the attorney lien statute and with *WSBA Formal Opinion 181*. If they cannot convince the former lawyer to release the file to them, and the client in good faith disputes outstanding legal fees and cannot pay them, and if the former lawyer's withholding of the file materially interferes with their ability to represent the client, they should contact the Washington State Bar Association's Office of Disciplinary Counsel for assistance in recovering the file. That office has often successfully resolved many file disputes and secured release of files by explaining applicable ethical rules. If that fails, the successor lawyer may move a court of record (no pending litigation is required) under RCW 60.40.020 to compel delivery of the files. The court will usually immediately order release of the files. See *State ex rel Robinson Co. v. Gilliam*, 94 Wn. 243, 161 P.2d 1194 (1917); *Krein v. Nordstrom*, 80 Wn.App. 306, 908 P.2d 889 (1995). Such summary proceedings do not apply to property (other than the client's papers or money) which the client may have provided the prior lawyer as security for payment of legal fees. *Golden v. Hyde*, 117 Wn. 677, 202 P.272 (1921).

Money in the Hands of Lawyers. RPC 1.14 requires lawyers to preserve the identity of client funds and property. While this principally requires lawyers to maintain trust accounts for the deposit of client funds, more generally it requires lawyers to safeguard client funds and property, to safely invest them where appropriate, and to account to clients for them.

The rule recognizes that not all funds held by a lawyer in the name of, or for a client, will necessarily belong to the client. RPC 1.14(b)(4) requires a lawyer to promptly "pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the

lawyer which the client is entitled to receive." (emphasis added).

Where the client is not entitled to receive moneys held by the lawyer, the lawyer is neither obligated nor permitted to pay those moneys to the client. This includes moneys held by the lawyer due to third parties. For example, *WSBA Formal Opinion 185* (1990) authorizes a lawyer to pay settlement or trust funds to third parties where the lawyer has "guaranteed" them payment from judgment or settlement proceeds, provided that the lawyer has previously obtained client consent to do so. It is very often in the client's interest to provide such a consent, since without such consent and assured payment, the third party (such as a chiropractor) might be unwilling to provide the client with continued necessary services. The lawyer should not personally guarantee payment, but instead should at most very clearly limit the guarantee to payment out of the client's portion of the proceeds of judgment or settlement of the case. The lawyer should discuss with the client such guarantees at the outset of the representation, and include in the lawyer's contingent fee agreement a provision for the client's informed consent, or refusal to give consent. The lawyer should, if intended, clearly limit the guarantee to a specified maximum dollar amount of services, or specified time period during which the services must be rendered, so that the third-party service provider's fees do not consume a disproportionate, if not entire, amount of the expected recovery. In accordance with RPC 1.5(c)(1), the lawyer's contingent fee agreement (and any guarantee), should clearly state, if intended, that any such "guaranteed" costs are to come only out of the client's portion of any judgment or settlement proceeds and not from the lawyer's portion, since otherwise the "guarantee" may well consume the lawyer's share of such proceeds. Without such limitations, other service providers may remain unpaid, and what was once an economic case for the lawyer to undertake may become, due to the guarantee, a dog of a case with the lawyer unlikely to recover even costs advanced.

Sometimes after the client has consented to, and the lawyer conveyed, a guarantee of payment to a third party, the cli-

ent tries to revoke the consent. Where the client does so in a good-faith dispute over amounts owed the third parties, the lawyer should retain the moneys in the lawyer's trust fund, paying neither the client nor the provider, until the dispute is resolved. If there is no such good-faith dispute, however, *WSBA Formal Opinion 185* directs the lawyer to pay the third party over the client's objection, recognizing that failure to do so leaves the lawyer open to possible disciplinary charges under RPC 4.3 and RPC 4.4 for lack of candor.

The determination of whether there is a good-faith dispute between the lawyer's client and the third party leaves the lawyer in a very awkward situation. If the lawyer pays the third party over the client's objection, the client will likely file a disciplinary grievance or malpractice action against the lawyer, even where the lawyer long previously explained the lawyer's ethical need to do so. If the lawyer fails to make the payments, the "guaranteed" third party may file grievances claiming misrepresentations and abuse of process by the lawyer. Anticipating such situations, the lawyer may want to include in contingent fee agreements a provision clearly authorizing the lawyer to advise third-party service providers when they request guarantees of payment, and include within the lawyer's written guarantees, that if the client seeks to revoke consent to payment after the consent is given, the lawyer will hold contested funds in the lawyer's trust account until the dispute is resolved between the client and the provider. This forewarns the client and third party of possible disputes and that the lawyer may be caught in the middle, so that the client understands what will happen, and the third party does not doubt the lawyer's guarantee and impugn the lawyer's reputation.

If the lawyer guarantees payment to a third party without obtaining the client's consent, the lawyer may not, if the client objects, pay the provider out of judgment and settlement proceeds. In such a case, the third-party provider will likely contend that the lawyer is personally responsible for payment of guaranteed costs since the lawyer misrepresented to the provider that payment of the costs was guaranteed out

of judgment or settlement proceeds, and the provider relied on such purported guarantee in providing services to the client. The lawyer may also be subject to disciplinary action for misrepresentations to the provider, for taking actions beyond the authorized scope of the lawyer's representation, and for inappropriately advancing or guaranteeing client living expenses. RPC 1.8(e) specifically prohibits a lawyer from advancing or guaranteeing financial assistance to the client other than "expenses of litigation, including court costs, expenses of investigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses." The permitted expenses do not

The determination of whether there is a good-faith dispute between the lawyer's client and the third party leaves the lawyer in a very awkward situation.

include, for example, ongoing medical services or other services of third-party providers that are clearly litigation expenses. Thus, authorized "expenses of medical examination" should not be read so broadly as to include any medical examination expenses other than those needed for the litigation. *WSBA Formal Opinion 140* (1969) provides that where a lawyer has requested litigation-related services but has failed to make clear to the provider that the client, not the lawyer, is responsible for payment, that the lawyer himself or herself should pay such expenses, seek reimbursement from the client, and failing that, assume the risk of nonpayment. The same rationale seems to apply to non-litigation-related expenses which the lawyer has, in violation of the RPCs, guaranteed without client consent.

A lawyer is not required to pay to the client moneys owed to the lawyer. The RPC's trust rules require that once the lawyer has determined that the lawyer is entitled to those funds, the lawyer should remove them from the lawyer's trust account and place them in the lawyer's operating account. If the lawyer and client dispute the lawyer's entitlement to those

funds, the funds should remain in the trust account until the dispute is resolved. A lawyer may offset amounts held in the lawyer's trust account against amounts owed the lawyer, and may even stop payment on a trust account check, as a method of enforcing the lawyer's lien rights to the funds. *Crane Co. v. Paul*, 15 Wn.App. 212, 548 P.2d 337 (Div.I, 1976). Where a lawyer has a fee dispute with the client, the lawyer should not misuse the client's confidences and secrets in violation of RPC 1.6 in an attempt to coerce payment. In *Discipline of Boelter*, 139 Wn.2d 81 (1999), the Court suspended a lawyer from practice for six months for threatening to disclose client confidences as a means of coercing a client to pay claimed legal fees. The case also makes it clear that RPC 1.6(b)(2), allowing a lawyer to disclose client confidences and secrets in order to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, does not authorize the lawyer to make wholesale disclosure of client confidences and secrets.

Guidance from the ABA Model Rules. Although Washington's RPCs are generally based on the American Bar Association's Model Rules of Professional Conduct, Washington did not adopt Model Rule 1.15, relating to a lawyer's duty to keep client property safe. Instead, it adopted its own version of a rule dealing with the lawyer's duty to preserve the identity of funds and property which the lawyer receives, discussed above and set out in RPC 1.14. Nevertheless, ABA Model Rule 1.15 and its official comments help a lawyer understand some of the ethical issues related to competing claims and liens on funds held by a lawyer. ABA Model Rule 1.15(b) and 1.15(c), as they currently exist and as the ABA Ethics 2000 Commission proposed in November 1999 to amend them, are as follows:

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with

the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both two or more persons (one of whom may be the lawyer and another person) claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the any dispute about the interests is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Several of the ABA's official comments to Model Rule 15 (b) and (c), also not adopted by Washington, explain these provisions and provide useful analysis. Comments 2 and 3, as they now exist and as the ABA Ethics 2000 Commission proposed in November 1999 to amend them, are as follows:

[2] Lawyers often receive funds from ~~third parties from~~ which the lawyer's fee will be paid. ~~If there is risk that the client may divert the funds without paying the fee, the~~ The lawyer is not required to remit the portion from which funds to the fee is to be paid client that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds ~~should~~ must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[3] Third Paragraph (c) also recognizes that third parties, such as a client's creditors, may have just lawful claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-

party claims against wrongful interference by the client, and accordingly may in such cases must refuse to surrender the property to the client until the claims are resolved. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but the lawyer may file an action to have a court resolve the claims.

The Commission explained its rationale for the proposed changes generally as an attempt "to get the Rule more in line with prevailing case law relating to lawyer responsibility as to funds whose ownership is disputed." As to comment 3, it noted:

This Comment deals with a practical problem in which a client's creditor tries to get at funds in the hands of the lawyer. There is no doubt that, as a matter of substantive law, in some cases the lawyer would be required to make the creditor whole if the lawyer remitted property to the client to which the creditor was found entitled. In those but only those cases, paragraph (c) mandates a lawyer's refusal to remit the funds to the client until the dispute is resolved, while this Comment reinforces and tries to explain this sometimes controversial point. The controversy arises when clients think lawyers are being disloyal when they give credence to the creditor's claim. That reaction is understandable, but this draft makes clear that lawyers may not legally give in to client pressure to ignore the creditor's possible rights.

The ABA has not yet acted on the Ethics 2000 recommendations, and is unlikely to do so before late 2000. Nevertheless, Washington lawyers may find helpful ABA Model Rule 1.15 and its commentary and proposed changes in analyzing ethical issues of competing liens and interests in property held by the lawyer which arise under Washington's RPC 1.14 as interpreted through various WSBA opinions.

Money in Hands of Adverse Party. Clause 3 of RCW 60.40.010 provides that a lawyer has a lien "upon money in the hands of the adverse party in an action or pro-

ceeding, in which the attorney was employed, from the time of giving notice of the lien to that party." *Plummer v. Great Northern Ry. Co.*, 60 Wn.214, 110 P 989 (1910), indicates that the underlying action must be a Washington action. Under *McRea v. Warehime*, 49 Wn.194 (1908), the notice of lien must be in writing. Under *Suleiman v. Cantino*, 33 Wn.App.602, 656 P.2d 122 (Div.I, 1983), the lawyer's client must prevail in the litigation for the lien to be effective. It is unclear whether the lien on moneys held by adverse parties is a possessory or charging lien, since the Supreme Court in *Ross v. Scannell* says it is a retaining lien (although the dissent concludes to the contrary), while the Court of Appeals in *Jones v. International Land Corporation*, 51 Wn.App. 737, 755 P.2d 184 (Div.I,1988), distinguishes that case and suggests it is a charging lien that can be foreclosed on, although not in the case before it.

Judgment Lien. RCW 60.40.010(4) grants a lawyer a lien on a judgment to the extent of the value of services performed, provided certain requirements are met. Unlike the lien on papers or money retained by the lawyer, the judgment lien is a charging lien which can be judicially foreclosed (see *Ross v. Scannell*), although the statute does not specify an enforcement procedure. See *Keyes v. Ahrenstedt*, 164 Wn.106, 1 P.2d 843 (1931); *State ex rel. Angeles B. & M. Co. v. Superior Court*, 89 Wn.342, 154 P. 603 (1916).

For a judgment lien to be effective, a judgment must have been entered (except in rare cases of collusion between parties), *Cline Piano Co. v. Sherwood*, 57 Wn.239, 106 P.742 (1910), and the judgment must have been in favor of the lawyer's client. *Wilson v. Henkle*, 45 Wn.App. 162, 724 p.2d 1069 (Div. I, 1986). Like other liens, the lien on a judgment can be waived, although it is not altogether clear under what circumstances. Compare, for example, *Holbrook v. McKee*, 147 Wn.386, 266 P.187 (1928) (lien waived) with *Niagara Fire Insurance Co. v. Hart*, 13 Wn.651, 43 P.937 (1896) (not waived, express waiver required). No attorney's judgment lien may exist as to judgments for child support. *Fuqua v. Fuqua*, 88 Wn.2d 100, 558 P.2d 801 (1977).

Disciplinary Notices

In seeking or enforcing a judgment lien, the lawyer must comply with RPC 3.1, prohibiting a lawyer from bringing or defending a proceeding, or asserting or controverting an issue therein, unless there is a basis for doing so that is not frivolous. The lawyer must also assure that in doing so the lawyer complies with RPC 4.4, which prohibits a lawyer, in representing a client — himself or herself, in this case — from using means that have no substantial purpose other than to embarrass, delay or burden a third person. Unless the lawyer has a good-faith belief he or she is entitled to the judgment lien, the lawyer should not seek to coerce the client into payment of claimed legal fees by threatening to tie up the client's judgment with a claimed lien.

Conclusion

While the statutory attorney's lien gives lawyers some protection from being deprived of justly-earned compensation for their professional services, lawyers should be very careful in claiming or seeking to enforce such liens.

As a practical matter, a retaining lien against a client's papers is usually of little value where the client in good faith disputes claimed amounts due, or where a subsequent lawyer representing the client reasonably believes that retention of the client's papers by the client's prior lawyer will materially interfere with the subsequent lawyer's representation of the client. As to other attorney liens, the lawyer should resolve any disputes as to the amount owed, and assure that the dispute will not result in malpractice or disciplinary complaints, before seeking to enforce the lien.

The lawyer should also secure informed client consent before "guaranteeing" to any third-party payment out of judgment or settlement proceeds. Failure to do so may make the lawyer liable for such guaranteed payments and result in malpractice or disciplinary charges. Finally, the lawyer should weigh heavily whether the effort to collect from the client is worth the effort and risks, or whether the lawyer might be better served treating the nonpayment as "involuntary pro bono" and using the time saved to better serve existing clients who will pay the lawyer for services. ☐

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

For a complete copy of any disciplinary decision, call the Washington State Disciplinary Board at 206-733-5926, leaving the case name and your address.

Suspended

Jonny Ludington Green (WSBA No. 18552, admitted 1989), of Bellevue, 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 her depositing money paid by firm clients into her personal account.

Ms. Ludington Green was employed as a full-time contract lawyer and later as an associate with a law firm. The firm's unwritten policy, which Ms. Ludington Green was aware of, was that all client money was given to the bookkeeper to be deposited.

On at least four occasions with three clients, Ms. Ludington Green deposited the clients' checks into her personal account. Although Ms. Ludington Green believes that she documented these payments in file notes that would have been sent to the bookkeeper, none of the amounts showed up on the clients' billing statements. When the bookkeeper told Ms. Ludington Green that a client had asked about a \$1,200 payment, she asked the bookkeeper if the payment could be considered as an advance. The bookkeeper and Ms. Ludington Green agreed that the money should be paid back to the firm through payroll deduction. Only \$100 was actually deducted.

A firm partner wrote to Ms. Ludington Green in September 1994, asking why a client's checks had not been delivered to the bookkeeper. Ms. Ludington Green responded that she had "bonuses on the books." She offered to repay the amount if asked, and also volunteered that she had deposited another client's payments into her personal account. In February 1995, the firm asked Ms. Ludington Green to sign a \$10,894.88 Confession of Judgment.

Although both Ms. Ludington Green and her spouse signed the document, they refused to have their signatures acknowledged. At the time of the stipulation, Ms. Ludington Green had made no payments on the judgment. The Supreme Court order requires the judgment amount to be repaid prior to reinstatement.

Ms. Ludington Green's conduct violated RPC 1.14, requiring that client funds be deposited into a lawyer's trust account; and RPC 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation.

Marsha Matsumoto represented the Bar Association. Leland Ripley represented Ms. Ludington Green. The hearing officer was Timothy Esser.

Suspended

George Wittemyer (WSBA No. 4498, admitted 1967), of Portland, has been ordered suspended for four months, by order of the Supreme Court of Washington, dated December 6, 1999. The Supreme Court's order of reciprocal discipline, pursuant to Rule for Lawyer Discipline (RLD) 12.6, is based on the Oregon Supreme Court's April 29, 1999 order approving a stipulation to discipline. The Court ordered the Washington suspension to run concurrently with the Oregon suspension, beginning on June 28, 1999.

From August 1989 through July 1991, Mr. Wittemyer represented Pacific Chips, a timber corporation. During this time, he served as legal counsel, secretary and registered agent. He also owned stock in Pacific Chips.

Also in 1989, Mr. Wittemyer began representing a client, Ms. X. From mid-1989 through mid-1990, he was involved in a romantic relationship with Ms. X. Pacific Chips asked Ms. X for a \$300,000 business loan. Ms. X agreed to loan Pacific Chips \$150,000 if Mr. Wittemyer would do the same. He agreed, but did not reduce the agreement to writing or inform Pacific Chips of his participation. Mr. Wittemyer did not advise Ms. X of the potential conflicts of interest, even though another attorney suggested this. The loan closed in December 1989. Mr. Wittemyer drafted the promissory note,

UCC financing statement and security agreement, all indicating the whole \$300,000 was owed to Ms. X. He told Ms. X it would look better if his interest was not disclosed. After a few interest-only payments on the loan, Pacific Chips defaulted. Mr. Wittemyer took several actions to collect the loan, including retaining a lawyer. He instructed the lawyer to bill Ms. X, but to send the bills to his office. Mr. Wittemyer drafted a lawsuit against Pacific Chips, which the lawyer filed. The lawsuit named only Ms. X. Mr. Wittemyer accepted service of the lawsuit on behalf of Pacific Chips. In July 1991, the court entered a default judgment against Pacific Chips for \$300,000, plus \$50,000 in punitive damages and costs and attorney's fees. Ms. X recovered her initial investment, but not her attorney's fees or interest on the loan. Mr. Wittemyer recovered approximately \$25,000 of the amount he loaned Pacific Chips.

Mr. Wittemyer's actions violated Oregon DR 5-101(A), prohibiting accepting or continuing employment when the exercise of judgment on behalf of the client is or may be affected by business, property or personal interests; DR 4-104(A), prohibiting entering a business transaction with a client in which the lawyer and the client have differing interests; and DR 105(E), prohibiting representing multiple clients with conflicting interests.

Joanne Abelson represented the Bar Association. Mr. Wittemyer represented himself.

Reprimand

Stephen Thomas (WSBA No. 2388, admitted 1968), of Burien, has been ordered to receive a reprimand, two censures, and restitution pursuant to a stipulation for discipline approved by the Disciplinary Board on January 12, 2000. The discipline is based upon his failure to diligently represent and accurately communicate with clients.

Matter 1:

In spring 1992, Mr. Thomas agreed to represent a client in a wrongful garnishment matter. A credit reporting company issued an inaccurate credit report, causing the client's garnishment. Mr. Thomas prepared and filed the lawsuit in King

County Superior Court. The case scheduling order set the trial date as September 26, 1994. Mr. Thomas did not notify his client of the trial date. In August 1994, the defendant tendered a settlement check to Mr. Thomas. Even though Mr. Thomas's client did not agree to the settlement, he retained the check. Mr. Thomas did not prepare or appear for trial. Since neither party appeared for trial, the case was dismissed the following day. Based on inaccurate information from Mr. Thomas, the client believed that the lawsuit was still pending. In fall 1995, the client contacted the court and discovered that the case had been dismissed. The client was not able to find another lawyer to pursue his case.

Matter 2:

In 1996, Mr. Thomas agreed to represent the wife in a dissolution action. In August 1996, he obtained temporary orders that did not address two of his clients' concerns — payment of medical bills and dental costs. In February 1998, the client met with her husband to try to resolve the case because she believed that Mr. Thomas was not making any progress. Later that month, opposing counsel sent Mr. Thomas proposed final pleadings. Mr. Thomas approved the pleadings for entry without consulting his client. Mr. Thomas believed that the proposed orders were consistent with his client's objectives. The client learned that she was divorced in a phone call from her ex-husband. The client obtained new counsel who resolved the case with increased child support and medical payments.

Matter 3: In August 1997, Mr. Thomas agreed to represent grandparents in a case to obtain care and custody of their three-year-old granddaughter. The child's father was incarcerated and the mother had experienced intermittent drug dependence. Mr. Thomas prepared a guardianship agreement providing that the grandparents would have physical custody and control of the child, and the mother would have visitation, so long as she remained drug free. The parties signed this agreement in September 1997. In December 1997, the grandparents asked Mr. Thomas to obtain permanent custody of the

child for them. Mr. Thomas prepared pleadings, which both parties signed. He also prepared a nonparental custody petition. He never filed these documents. Based on inaccurate information from Mr. Thomas, the clients believed that the petition had been filed. The clients retained new counsel who completed the case.

Mr. Thomas' conduct violated RPC 1.3, requiring lawyers to act with reasonable diligence and promptness in representing a client; RPC 1.2, requiring a lawyer to abide by a client's decisions concerning the objectives of representation; RPC 3.2, requiring a lawyer to make reasonable efforts to expedite litigation consistent with the interests of the client; RPC 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters; and RPC 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation.

Maria Regimbal represented the Bar Association. Leland Ripley represented Mr. Thomas.

Censured

Carole Sureau (WSBA No. 21909, admitted 1992), of Snohomish County, has been ordered censured pursuant to a stipulation approved by the Disciplinary Board on December 10, 1997. This discipline is based on Ms. Sureau's practicing law prior to being admitted to practice in Washington, and conflicts of interest.

Ms. Sureau and her husband moved to Washington from California, where Ms. Sureau was admitted to practice in 1987. Mr. Sureau's daughter lived in Washington. Mr. Sureau's mother, Ms. E, was transferred to a Washington convalescent center while Mr. and Mrs. Sureau lived in California. The daughter signed a promissory note for convalescent care for Ms. E, because she lived close to the center. The daughter believed that the care would be paid for either by insurance or sale of Ms. E's home. In May 1992, the convalescent center sued the daughter. The daughter contacted Ms. Sureau in California for advice about the lawsuit. Ms. Sureau advised the daughter and provided form pleadings for the daughter's use. The daughter typed her answer on Ms. Sureau's computer. Ms. Sureau advised the daughter to implead Ms. E's in-

insurance company, which the daughter did. These pleadings were filed July 9, 1992. On July 30, 1992, Ms. Sureau sent a copy of the pleadings to the New York State Insurance Department for service of process. The letterhead identified Ms. Sureau as a lawyer and listed her Washington address. Ms. Sureau was admitted to practice in Washington on November 5, 1992. In early 1993, Ms. Sureau told the daughter that she planned to stop representing her, and in March the daughter retained new counsel. After this, Ms. E and Mr. Sureau were added to the lawsuit. Ms. Sureau appeared for Ms. E and her husband in the lawsuit. She filed an answer that included a claim for contribution, reimbursement and indemnity against the daughter. The daughter filed a motion to disqualify Ms. Sureau from representing Ms. E and Mr. Sureau. Ms. Sureau opposed the motion, stating that she should be allowed to remain in the case to protect her own financial interest. The court disqualified her.

Ms. Sureau's conduct violated RPC 5.5, prohibiting practicing law in a jurisdiction where doing so violated the regulation of the legal profession in that jurisdiction; RPC 1.9(a), prohibiting a lawyer who has formerly represented a client in a matter from representing another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client, unless the former client consents in writing after consultation and a full disclosure of the material facts; and RPC 1.7(b), prohibiting a lawyer from representing a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or by the lawyer's own interests.

Julie Shankland represented the Bar Association. Ms. Sureau represented herself.

Admonished

Kyle Flick (WSBA No. 14963, admitted 1985), of Wenatchee, has been admonished pursuant to an order from a Review Committee of the Disciplinary Board. The admonition is based upon his failing to adequately supervise his bookkeeper's deposits and withdrawals from his client trust account.

Mr. Flick, a sole practitioner, employed

his wife as his bookkeeper. From 1994 to 1996, the bookkeeper removed approximately \$45,000 from Mr. Flick's client trust account. During this time period, Mr. Flick did not investigate missing blank checks and bank statements, or check the bank trust account statements against the computer balance. He did begin an investigation when he called the bank and learned that his trust account balance was approximately \$18,000 less than he expected. Mr. Flick's lack of safeguards was due in part to the fact that his bookkeeper was his wife.

Mr. Flick's conduct violated RPC 5.3, requiring a lawyer having direct supervisory authority over a non-lawyer to make reasonable efforts to ensure that the person's conduct is compatible with the lawyer's professional obligations.

Jeffrey Julius and Randy Beitel represented the Bar Association. Mr. Flick represented himself.

Admonished

Rosalynn Guillen (WSBA No. 22872, admitted 1993), of Seattle, has been admonished pursuant to an order from a Review Committee of the Disciplinary Board. The admonition is based upon her failing to diligently represent and communicate with a client.

Ms. Guillen agreed to represent a client in a deportation matter. She told the client that she was not available on the day of the master calendar hearing and would request a continuance. Ms. Guillen did obtain a continuance of the date and sent notice of the new date to her client. The client called the day prior to the new hearing date and asked for another continuance. Ms. Guillen attended the hearing, conceded her client's deportability, and obtained additional time for the client to decide to apply for further relief. Ms. Guillen sent the client a letter containing a copy of the order. She did not otherwise communicate with her client until the day of the hearing, when she discovered that the client's phone had been disconnected. The client contacted Ms. Guillen after the hearing and stated that she had not attended the hearing because she had not received notice. Ms. Guillen agreed to file a motion to re-open the client's case. The client paid an additional

\$110 to re-open the case. Ms. Guillen took no further action on this case. The client obtained substitute counsel, who found the \$110 check in the client file.

Jeffrey Julius and Randy Beitel represented the Bar Association. Ms. Guillen represented herself.

Admonished

Timothy D. Kosnoff (WSBA No. 16586, admitted 1986), of Seattle, has been ordered admonished following a hearing. The admonition is based upon his surreptitiously tape-recording a witness interview.

Mr. Kosnoff represented a criminal defendant in a charge of raping his step-daughter. The prosecutor listed the defendant's wife as a witness. Mr. Kosnoff arranged to interview the wife at the King County Prosecutor's Office. Mr. Kosnoff believed that it was important to tape-record this witness interview. To avoid the risk of being denied permission, Mr. Kosnoff taped the interview surreptitiously and without permission, concealing a hand-held tape recorder in an empty laptop computer bag. When the tape recorder ran out of tape, Mr. Kosnoff became flustered, and the prosecutor discovered the recording. Mr. Kosnoff stated that he thought the prosecutor knew of the tape-recording and that he intended to ask for permission at the end of the interview. The witness refused to continue the interview, and expressed concern about the personal nature of the matters discussed on the tape.

Mr. Kosnoff's conduct violated RPC 8.4(c), prohibiting engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Sachia Stonefeld represented the Bar Association. Kurt Bulmer represented Mr. Kosnoff. The hearing officer was Michael V. Riggio.

Admonished

Kasha Krug (WSBA No. 7065, admitted 1976), of Mount Vernon, has been admonished pursuant to an order from a Review Committee of the Disciplinary Board. The discipline is based upon her representing a client on a contingent fee basis without a written fee agreement.

In March 1993, parents and a child

stricken with e-coli contacted Ms. Krug about representing them. She agreed to the representation on a contingent fee basis, but did not prepare a written fee agreement. After the child turned 18, Ms. Krug filed a complaint naming him as the sole plaintiff. The parents believed that Ms. Krug was also representing them in claims including medical expenses and pain and suffering. Later, subsequent counsel amended the complaint to add the parents' claims and obtained a settlement.

Ms. Krug's conduct violated RPC 1.5(c)(1), requiring contingent fee agreements to be in writing.

C. Elizabeth Williams represented the Bar Association. Ms. Krug represented herself.

Admonished

Gary Marshall (WSBA No. 15344 admitted 1985), of Seattle, has been admonished pursuant to an order from a Review Committee of the Disciplinary Board. The discipline is based upon his communicating with a person he knew was represented by counsel.

In August 1996, Mr. Marshall agreed to represent a client in a disagreement between three co-founders of a software company. The client left the company and could not reach agreement about the company's purchase of his stock. The company was represented by counsel. On September 27, 1996, the company served a lawsuit against Mr. Marshall's client. On October 3, 1996, Mr. Marshall filed a Notice of Appearance in the lawsuit, and on the same day sent a letter directly to the other co-founders. This letter set out his client's constructive discharge claim, suggested a sales price for the stock, and threatened a counterclaim against the co-founders personally. The co-founders did not answer the letter and Mr. Marshall directed all further correspondence to the lawyer.

Mr. Marshall's conduct violated RPC 4.2, prohibiting a lawyer from communicating about the subject of representation with a party the lawyer knows to be represented by another lawyer.

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

Admonished

Antonio Salazar (WSBA No. 6273, admitted 1975), of Seattle, has been admonished pursuant to an order from a Review Committee of the Disciplinary Board. The admonition is based upon his failure to ensure that his staff properly calendared an appeal date.

Mr. Salazar represented a client in an appeal of his request for asylum and to withhold deportation to avoid prosecution. Mr. Salazar's staff calendared the appeal for 33 days instead of 30. Based on this error, Mr. Salazar's office filed the Notice of Appeal one day late and the Board of Immigration Appeals denied the client's appeal as untimely. The Board of Immigration Appeals denied Mr. Salazar's request for reconsideration and notified the client to appear for deportation.

Mr. Salazar's conduct violated RPC 5.3(a), requiring partners in a law firm to make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that non lawyer employees' conduct is compatible with the lawyer's professional obligations.

Maria Regimbal represented the Bar Association. Mr. Salazar represented himself.

Admonished

Daniel Wright (WSBA No. 11560, admitted 1981), of Olympia, has been admonished pursuant to an order from a Review Committee of the Disciplinary Board. The admonition is based upon his failing to protect secrets and confidences of a prospective client.

In fall 1997, Mr. Wright had two conversations with a client regarding possible grounds for modifying a recently entered parenting plan. During the first conversation, Mr. Wright discussed several possible options, including abuse. In the second conversation, Mr. Wright told the client he could not represent her, because he believed that the recent litigation had settled the issues between the parties. In April 1998, through other counsel, the client filed a petition to modify the parenting plan, alleging the father had abused the children. The father retained Mr. Wright to represent him. When he realized the conflict, Mr. Wright sent the father to another lawyer. Mr. Wright then

wrote a letter to the father's new lawyer setting out the details of his conversations with the wife, and volunteering to sign a declaration for the father. Mr. Wright signed a declaration and new counsel filed it in the modification action.

Mr. Wright's conduct violated RPC 1.6, prohibiting a lawyer from revealing confidences of secrets relating to representation of a client, unless the client consents after consultation.

Douglas Ende represented the Bar Association. Mr. Wright represented himself.

Admonished

Leslie O. Stomsvik (WSBA No. 3071, admitted 1970), of Tacoma, has been ordered admonished following a hearing. The discipline is based upon his failure to diligently represent a client. In 1996, Mr. Stomsvik represented a client in obtaining restitution from her bank. The client's employee had been criminally prosecuted for forging the client's signature on several checks. Mr. Stomsvik wrote one letter on the client's behalf and billed her \$163. He took no further action on the case, never cashed the client's check, and later, upon recommendation from Disciplinary Counsel, returned the check. Mr. Stomsvik did not return his client's phone calls. The client subsequently closed her business due to cash flow problems.

Mr. Stomsvik's conduct 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.

Joanne Abelson represented the Bar Association. Mr. Stomsvik represented himself.

NON-DISCIPLINARY NOTICE

Interim Suspension

Michael K. Tasker (WSBA No. 12426, admitted 1974), of Bellingham, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by Supreme Court order entered October 12, 1999. ☐

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 By-laws, 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 May 16-31, 2000 at the WSBA office. In addition to these interviews, 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*

Commission on Judicial Conduct

Application deadline: April 30, 2000

The Board of Governors of the Washington State Bar Association is seeking applicants interested in serving a four-year term on the Commission on Judicial Conduct. Two positions are available: one as a member and one as an alternate. Incumbents may be eligible for reappointment and must apply.

The goal of the Commission is to maintain confidence and integrity in the judicial system by seeking to preserve both judicial independence and public accountability. The public interest requires a fair and reasonable process to address judicial misconduct of disability, separate from the judicial appeals system that allows individual litigants to appeal legal errors. The Commission meets the first Friday of every other month. At these meetings, the Commission reviews new complaints, discusses the progress of investigations, and takes action to resolve complaints. The Commission consists of 11 members who serve four-year terms — six nonlawyer citizens, three judges and two lawyers. The lawyers must be admitted to the practice of law in Washington and are selected by the WSBA. The four-year term will commence June 17, 2000. Please submit a letter of interest indicating your preference to be a member or alternate, and a résumé to the Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org.

Project 2001: New Subcommittee Formed to Improve Court Operations

The Washington State Board for Judicial Administration (BJA) recently voted unanimously to create a subcommittee to study court reform. The subcommittee will be chaired by former WSBA president **Paul Steere**, and **Thomas A. Swayze**, former President of the Superior Court Judges Association. Charged with the adoption of policies and providing leadership for the administration of justice in Washington courts, the BJA meets bimonthly to take positions on legislative and administrative matters. Under the new court rules published in late January, the BJA will increase representation of all levels of court.

Spokane County Offers Mediation During Settlement Week

April 26-28, 2000 is Settlement Week at the Spokane County Courthouse. Trained mediators will resolve civil or domestic cases at no charge. Parties must complete a case nomination form, and all parties must agree to mediation before it will be

scheduled. For more information, e-mail Diane Robertson at the Superior Court Administrator's Office at drobertson@spokanecounty.org.

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.

Discipline 2000 Task Force

A Discipline 2000 Task Force has been formed jointly between the WSBA and the Washington State Supreme Court to examine our discipline system. The Task Force will meet during the next year and make recommendations to the WSBA Board

of Governors for improvements to the discipline system.

The Discipline 2000 Task Force held its first meeting in February. The next meeting is April 17, 2000 at noon at the WSBA office. The Task Force includes the following subcommittees: Role of the Disciplinary Board, Hearing Officer, Disability Procedures, Organization of the Rules and Miscellaneous/Confidentiality. All meetings of the Discipline 2000 Task Force and its subcommittees are open for observation by the public. Public comments on the matters being discussed by the Task Force and its subcommittees will be at the discretion of the meeting chairperson. Written or e-mail comments are welcome at any time. For more information, contact Randy Beitel, Senior Disciplinary Counsel at the WSBA, at 206-727-8257 or e-mail randyb@wsba.org.

WYLD Lunch and Learn Programs

The WSBA Young Lawyers Division will host the following Lunch and Learn programs at the WSBA office:

- April 19, 2000 — What You Don't Know About Service Animals Can Hurt You
- May 17, 2000 — Top 10 Mistakes New Lawyers Make
- June 21, 2000 — Program with Judge Michael Hurtado

Programs run from noon to 1:00 p.m. Each program is approved for one general CLE credit, with the exception of the May 17, 2000 program, which is approved for one ethics credit. If you have any questions, please call Katrina Glogowski at 206-684-4526.

WYLD Annual Mid-Year Program

The WSBA Young Lawyers Division will sponsor its Annual Mid-Year Program May 5-7 at Sun Mountain Lodge in Winthrop, Washington. Program topics include mediation, trial practice, the ethics of investing in Internet companies, setting up a solo practice, a forum on racial profiling, a judges panel, persuasion techniques and Internet advertising. The program will also include the annual awards luncheon, Cinco De Mayo celebration, and the infamous Croquet Tournament. For more information, please contact Katrina Glogowski at 206-684-4526.

Corporate Counsel Video-conferencing Project Seeking Volunteers

Volunteers are needed to serve on a steering committee for a corporate counsel pilot project. The Corporate Counsel Subcommittee of the Pro Bono Committee is developing a project to involve corporate law departments in pro bono work through the use of video-conferencing technology. The pilot project will allow corporate counsel to remotely provide services to low-income clients in rural areas. For more information, contact Michael Pfau at 253-620-6402.

YMCA Mock Trial Champion Luncheon

A luncheon in honor of the Washington State Championship Mock Trial Team will be held April 12, 2000 at noon at Plymouth Congregational Church in Seattle. The luncheon is sponsored by the YMCA Youth and Government Mock Trial Program. Washington Attorney General **Christine Gregoire** will be the keynote speaker. The cost is \$50 per person, with

proceeds benefiting the Championship Team and Mock Trial Program. For more information, contact Allison Roberts at 360-534-0155.

Thurston County Law Day Speech Competition

In honor of National Law Day, the Thurston County Bar Association will sponsor a high-school speech competition for students residing in or attending school in Thurston County. The preliminary competition will be held April 28 at 4:00 p.m. in the Thurston County Courthouse. The final round will take place May 2 at noon at the West Olympia Rotary Club's luncheon at Cavanaugh's on Capitol Lake. Lawyers are invited to attend the competition. For those planning to attend the luncheon on May 2, the cost is \$13 and reservations are not required. For more information, contact Charlie Williams at 360-786-8000 or Steve Henderson at 360-943-7710.

King County Superior Court Creates Electronic Records

The King County Department of Judicial Administration/Superior Court Clerk is now scanning documents as part of a multi-phase project. When documents are filed, they are scanned and the electronic image is indexed to the case number. The electronic version of the document then becomes the "official" court record. Use of the paper file will continue during this phase of the project. A future phase of the project will allow members of the public to access the images electronically in the Clerk's office. For more information, contact Paul Sherfey at 206-296-9300.

KCBA Gender Equality in the Legal Profession Committee Sponsors CLE

The KCBA will host a CLE entitled *Through the Glass Ceiling: Can Alice Get There From Here?* on May 11, 2000 at 3:00 p.m. The program will feature outstanding members of the legal profession including Karen Mathis, Mary Fairhurst, Hon. Margaret McKeown, Hon. Mary Yu and Lish Whitson. Please contact Catherine Chaney at 206-343-7642 for more information.

Ninth Circuit Court Conducts Self-Exam

The Ninth Circuit Court of Appeals is involved in a self-exam to identify perceived conflicts between decisions of the Court. A form for notifying the Court of the existence of a possible conflict between decisions is available on the Court's website at <http://www.ca9.uscourts.gov>. Forms may be faxed, mailed or e-mailed to the Court any time; however, March 31 is the preferred deadline. Responses may be submitted anonymously and will not affect the disposition of any pending case.

WYLD Seeks Award Nominations

The WYLD is accepting nominations for the Thomas Neville Pro Bono Award, Outstanding Young Lawyer of the Year, and the Professionalism Award. All three awards recognize lawyers who epitomize the best in the legal profession. Nominations are also being accepted for Outstanding YLD Affiliate or Organization for recognition of public service and/or member service programs. Letters of nomination should include the nominator's name, address and daytime phone number, as well as a copy of the nominee's résumé or list of accomplishments.

Nominations must be received by April 14, 2000, and may be mailed to Tom Quinlan, Miller & Dart, 1019 Regents Blvd., Suite 204, Fircrest, WA 98466.

Law Week 2000: A Lawyer and Judge in Every School

There is still time to sign up to participate in Law Week 2000! Throughout the week of May 8-12, 2000, hundreds of lawyers and judges throughout our state will spend all or part of a day in their local schools, reaching thousands of students.

To learn more about Law Week 2000, visit the WSBA website at www.wsba.org/lawweek. The Law Week web page includes lesson plans for all ages, classroom presentation tips, information about public legal education programs in Washington, and school information. To participate in Law Week 2000 and make a difference in your community, call 800-945-WSBA, ext. 8270 or 206-727-8270, or e-mail lawweek@wsba.org.

Celebration 2000 — September 13-16, 2000

Meet your friends and colleagues in Spokane for what promises to be the largest legal gathering in state history — Celebration 2000! In addition to a general Bar conference, Celebration 2000 will include the Annual Fall Judicial Conference, Access to Justice Conference and Bar Leaders Conference. It will be a celebration unlike any other in the country!

There will be outstanding speakers, section-sponsored CLE seminars, exciting workshops and plenary sessions, and numerous social events. The February and March issues of *Bar News* contain the preliminary program and registration form. You can also request information by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Celebration 2000 will be a truly unique, productive and enjoyable event. Please join us!

South King County Bar Association Provides Opportunities to South-End Lawyers

The South King County Bar Association (SKCBA) offers lawyers practicing in the south end of King County an opportunity to network with fellow practitioners in a variety of settings. The SKCBA holds a monthly dinner featuring a guest speaker, annual summer golf tournament, and annual installation dinner at Emerald Downs Racetrack. There is also an annual dinner with the Washington State Supreme Court Justices which includes a tour of the Temple of Justice. Additionally, the SKCBA provides opportunities for service with pro bono programs throughout the year. To join the SKCBA, check the dual membership box on the KCBA renewal form, or call Linda Heaton at 253-833-1072.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in March 2000 is 6.085 percent. The maximum allowable interest rate for April is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears at <http://www.wsba.org/barnews/>.

Announcements

DAVIES PEARSON, P.C.

ATTORNEYS AT LAW

is pleased to announce that

Lamont C. Loo

has become a shareholder of the firm
specializing in business law and
business transactions

and

Heather M. Young

has become an associate of the firm
specializing in family law

920 Fawcett, P.O. Box 1657
Tacoma, Washington 98401
Telephone 253-620-1500
Toll-free 800-439-1112
Facsimile 253-572-3052
email: davies@dpearson.com
www.dpearson.com

The Law firm of

ETTER, McMAHON, LAMBERSON & CLARY

A PROFESSIONAL CORPORATION

is pleased to announce

Susan W. Troppmann

has become a principal of the firm

and

Kathleen M. Thompson

has become associated with the firm.

1600 Paulsen Center
421 West Riverside Avenue
Spokane, Washington 99201-0401
509-747-9100

GOTTLIEB, FISHER & ANDREWS, PLLC

ATTORNEYS AT LAW

are pleased to announce
the opening of their new office
in Olympia, Washington

at

112 Fourth Avenue East, Suite 200
Olympia, Washington 98501-1103
Telephone: 360-705-2088
Facsimile: 360-786-5034

ROBERT J. ("RUSTY") FALLIS
Associate in residence

GROFF & MURPHY, PLLC

is pleased to announce that

Todd R. Hargrove

has joined the firm as an associate.

Mr. Hargrove is a graduate of
University of Washington
School of Law.

Mr. Hargrove's practice will
focus on complex commercial litigation,
with an emphasis on construction disputes.

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

THE NATHANSON GROUP PLLC
ATTORNEYS AT LAW

is pleased to announce that
James L. Spencer
is now a member of the firm.

The firm continues its practice in the areas of
healthcare, corporate, real estate and finance.

**Randi S. Nathanson, Scott S. Yasul,
Shira M. Bayme, Angela L. Humphreys,
Amy W. Mahone**

THE NATHANSON GROUP PLLC
1411 Fourth Avenue
Suite 905
Seattle, Washington 98101
Telephone 206-623-6239

SONG OSWALD &
MONDRESS PLLC

is pleased to announce that

Michael P. Monaco
has become a member of the firm.

Mr. Monaco is an honors graduate of the
Hastings College of Law, University of California,
where he served as Associate Managing Editor
of the Hastings Law Review. His undergraduate
degree is from Stanford University.

Mr. Monaco will continue his ERISA fiduciary
counseling and litigation practice on behalf of
employee benefits plans, trust and their sponsors.

SONG OSWALD & MONDRESS PLLC
720 Third Avenue, Suite 1500
Seattle, Washington 98104
Telephone 206-398-1500
Facsimile 206-398-1501
Email: son@somerisa.com

KENYON LAW FIRM, PS
proudly announces a name change to

KENYON DORNAY MARSHALL, PLLC
THE MUNICIPAL LAW FIRM

We are pleased to announce that the following attorneys have joined Michael R. Kenyon as principals in the firm:

MARGITA A. DORNAY
*Chair of the Firm's Prosecution Practice
Drug and Felony Forfeitures
Police Training*

ROBERT F. NOE
*Tukwila City Attorney
Adult Entertainment Litigation and Regulation Ordinances
Land Use & Real Property*

LISA M. MARSHALL
*Maple Valley & Duvall City Attorney
Public Infrastructure Improvements
Land Use*

BRUCE L. DISEND
*Sammanish, Pacific & Lake Stevens City Attorney
Land Use
Public Sector Labor & Employment*

We are also pleased to announce the expansion of our firm with the addition of the following associates:

SIMON STOCKER
*Seattle University School of Law, 1998
Formerly with the City of Kent*

AARON J. WOLFF
*Seattle University School of Law, 1999, Cum Laude
Formerly with the City of Federal Way*

STEVE C. KARIMI
*Pepperdine University School of Law, 1984
Formerly with the Office of the King County Prosecuting Attorney*

ELIZABETH A. ABBOTT
*Pepperdine University School of Law, 1984
Elizabeth served as a Deputy District Attorney for
Los Angeles County for 12 years*

Since 1993, Kenyon Dornay Marshall, PLLC has provided practical advice and a full range of legal counsel to Washington municipalities.
Please let us know if we can help.

11 Front Street South • Issaquah, Washington 98027-3820 • 425-392-7090 • fax 425-392-7071

Calendar

ADR

9th Annual NW ADR Conference

April 28-29 – Seattle. 11 CLE credits pending. By UW-CLE; 206-543-0059.

AGRICULTURAL LAW

Agricultural Law

April 19 – Spokane. 7 CLE credits estimated. By WSBA-CLE and RPPT section; 800-945-WSBA or 206-443-WSBA.

BANKRUPTCY

Fundamentals of Bankruptcy

April 6 – Portland. 6 CLE credits pending. By Oregon State Bar; 503-684-7413.

13th Annual Northwest Bankruptcy Institute

April 7-8 – Portland. 9.5 CLE credits pending, including 1 ethics. By Oregon State Bar; 503-684-7413.

BUSINESS LAW

Advising the Small Business

April 5 – Seattle; April 12 – Vancouver, WA. CLE credits TBA. By WSBA-CLE and YLD; 800-945-WSBA or 206-443-WSBA.

DISPUTE RESOLUTION

Training to Be a Professional Mediator

April 27-28 – Seattle. 15 CLE credits, including 1 ethics. By Alhadeff Mediation Services; 206-281-9950.

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.

4th Annual Northwest Institute for Dispute Resolution

May 15-19 – Moscow, ID. CLE credits TBA. By Univ. of Idaho College of Law; 208-885-6541.

Training to Be a Professional Mediator

May 25-26 – Seattle. 15 CLE credits, including 1 ethics. By Alhadeff Mediation Services; 206-281-9950.

ELDER LAW

Elder Law

May 10 – Spokane; May 17 – Seattle. 6 CLE credits estimated. By WSBA-CLE and Elder Law section; 800-945-WSBA or 206-443-WSBA.

ENVIRONMENTAL LAW

Environmental & Land Use Law Section Midyear

May 18-20 – Eastsound. 11.25 CLE credits estimated. By WSBA-CLE and ELUL section; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Advanced Will and Trust Drafting

April 6 – Seattle; April 7 – Spokane. CLE credits TBA. By WSBA-CLE and RPPT section; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Family Law Skills Institute

April 28-29 – Seattle. 7.25 CLE credits estimated. By WSBA-CLE and Family Law section; 800-945-WSBA or 206-443-WSBA.

FREE CLES

Service Animals: What You Don't Know Can Hurt You

April 19 – Seattle. CLE credits TBA. By WSBA Young Lawyers Division; 206-684-4526.

Top 10 Mistakes New Lawyers Make

May 17 – Seattle. CLE credits TBA. By WSBA Young Lawyers Division; 206-684-4526.

GENERAL

How to Raise Private Equity Capital

April 6 – Seattle. CLE credits TBA. By UW-CLE; 206-543-0059.

Keys to a Winning Appeal: The Real Basics of Appellate Practice

April 13 – Portland. 6 CLE credits pending. By Oregon State Bar; 503-684-7413.

Senior Lawyers Meeting

April 14 – SeaTac. CLE credits TBA. By WSBA-CLE and Senior Lawyers section; 800-945-WSBA or 206-443-WSBA.

Young Lawyers Division Midyear

May 4-7 – Winthrop. CLE credits TBA. By WSBA-CLE and YLD; 800-945-WSBA or 206-443-WSBA.

Washington Tax-exempt Organizations

May 10 – Seattle. 7 CLE credits. By Lorman; 715-833-3940.

Public Procurement & Private Construction Law Section Midyear

May 11 – Seattle. CLE credits TBA. By WSBA-CLE and PPPC Law section; 800-945-WSBA or 206-443-WSBA.

5th Annual Human Resources Institute

May 11-12 – San Francisco, CA; May 18-19 – Washington D.C. CLE credits TBA. By National Employment Law Institute; 303-861-5600.

INDIAN LAW

Indian Law

April 14 – Seattle. 6.75 CLE credits pending. By WSBA-CLE and Indian Law section; 800-945-WSBA or 206-443-WSBA.

HEALTH LAW

Health Law: Refresher & Primer

May 4 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Health Law Institute

May 5 – Seattle. 6.75 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LAW PRACTICE MANAGEMENT

Time Management

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

LITIGATION

How to Fine Tune Your Trial Practice: The 5th Annual Civil Litigation Institute

April 6 – Seattle. 7.25 CLE credits, including 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Medical Litigation

April 28 – Portland. CLE credits TBA. By Oregon State Bar; 503-684-7413.

Evidence

May 17 – Seattle; May 24 – Spokane. CLE credits TBA. By WSBA-CLE and YLD; 800-945-WSBA or 206-443-WSBA.

VANNESSE FELDMAN

ATTORNEYS AT LAW

is pleased to announce that

Malcolm C. McLellan

has joined the firm as Of Counsel.

Mr. McLellan will represent clients in the areas of energy, environment, municipal and commercial law, with a particular emphasis in Endangered Species Act compliance and corporate (for-profit, non-profit and municipal) operations.

A PROFESSIONAL CORPORATION
821 Second Avenue, Suite 2100
Seattle, Washington 98104
Tel.: 206-623-9372 / Fax: 206-623-4986
www.vnf.com

Professionals

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.

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

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

BURN INJURIES

William S. Bailey,

1991 WSTLA Trial Lawyer of the Year, is available for association or referral of fire, explosion and burn injury cases.

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

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

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

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

Classifieds

FOR SALE

Library for sale: Washington Practice; RCWA; Washington Digest 2d. All current and in excellent condition. Best offer(s). 425-557-5970.

Looking for lawyers who want to use the Coldwell Banker Commercial Network to buy, sell or merge. Practices available: Grays Harbor County large practice, seller will be available for a year's transition; South King County practice with excellent growth opportunity. Call for latest listings and confidential information, Louis M. Millman, CPA, Coldwell Banker Commercial, Landover Corporation. Bellevue 425-467-4180 or 800-459-5860; fax 425-646-5979; e-mail lmmillman@msn.com.

SPACE AVAILABLE

Shoreline: Hard-to-find office space in under-lawyered market. Share reception and/or secretarial in a friendly environment near City Hall. Call Paul at 206-542-1840.

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.

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

Downtown Seattle: Office share in historic Colman Building. One office available plus secretary/assistant space, telephone system, copier, fax, conference room, etc. Perfect for ferry commuter. Call Guy W. Beckett, 206-264-8135.

Offices for rent in Lynnwood: Park setting overlooking pond. Windows open! Services included. Affordable presentation packages. Referrals possible. Must have E&O. Contact James at 425-774-0233.

Bellevue office space available: One to three offices available in recently remodeled building in residential office zone. Additional secretarial space available. Office can be furnished if desired. Conveniently located close to I-405 and 520. Lease includes parking, kitchen privileges, con-

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

ference room, ABC legal pickup and other amenities. Call Sam Ciapanna at 425-454-2347.

University area: Professional office suite plus smaller office suitable for assistant available. Share receptionist, conference room, library and services with senior-level professionals. Estate planning or elder law would be nice complement. Great location, attractive, pleasant environment. Please call 206-523-6470 for more information.

Office share with congenial family law practitioners at 5th and Union in the Logan Building. Great downtown location across from WAC. Two spacious window offices available March 1. Total office area: 950 square feet. Reception/paralegal workstation. Client waiting area. Supply room with fax and small library. Copier room across hall. Rent reasonable. Share minimal expenses. Call Don at 206-624-0393.

Downtown Seattle: Joseph Vance Building. Attorney has one or two offices to share. Water view. Landlord will remodel. Includes library, secretary, telephone system, copier and fax. Call Quentin Steinberg, 206-622-5510.

Four beautiful new offices with secretary stations. UW area. Includes two large conference rooms, copier, fax, scanner, kitchen, shower. Phone system in and network ready. Air-conditioned. 206-522-7633.

POSITIONS AVAILABLE

Small established, thriving, social security disability law firm providing quality legal services seeks aggressive plaintiff's attorney. Experience in social security disability, workers' compensation, or personal injury litigation required. Position offers top starting salary and benefits package with partnership potential. Send résumé and writing sample with letter of interest to: Hiring Partner, 3410 Broadway, Everett, WA 98201.

Assistant corporate counsel: Excellent opportunity to join the legal department of Optiva Corp., maker of the Sonicare® toothbrush. Successful candidate will be a current WSBA member and have at least five years' experience in business law, including international. If you enjoy a dynamic, high-energy environment where your contributions can have a significant impact, we want to hear from you! Competitive compensation package and benefits. EOE. Please send résumé to: Optiva Corporation, Attn: Human Resources, 35301 S.E. Center St., Snoqualmie, WA 98065; fax 425-396-4838; e-mail hrdept@optiva.com; http://www.sonicare.com.

Aris Corporation, a leading IT consulting, training and software company, has an opportunity for a general counsel, VP. Responsible for all legal functions of the company including: mergers and acquisitions, contracts, stock plan administration, and functioning as the corporate secretary. Requirements include: license to practice law in WA, experience with contracts and SEC, prior experience as general counsel or in-house counsel preferred. Competitive compensation package includes stock options. Please forward résumé to: Allison Bizzano at allison.bizzano@aris.com; fax 425-372-2799.

Reply to WSBA Bar News
Box Numbers at:

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

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

Litigation attorney sought for condominium construction litigation practice. Practice is limited to representing condominium associations regarding construction and insurance matters. Applicant should have trial and motions practice experience, good academic credentials, superb writing skills, strong references, and the ability to work independently as well as in a team environment. Compensation DOE and negotiable. Send letter, CV and writing sample to deanmartin@barkermartin.com or fax 425-746-6223.

Associate: At least one year's experience, for extensive and growing civil practice, including intellectual property, personal injury, commercial litigation, construction, health care and professional negligence. Great opportunity for ambitious self-starter. Fax or email résumé to 206-441-5688; avk@seanet.com.

Portland, Oregon intellectual property law firm seeks associate attorney with at least two years' experience preparing and prosecuting electronic patent applications. Candidates must have degree in EE or Physics. Send résumé in confidence to: Charles D. McClung; Chernoff, Vilhauer, McClung and Stenzel, LLP; 601 S.W. 2nd Ave., Ste. 1600, Portland, OR 97204-3157.

Federal law enforcement career opportunity with excellent salary and benefits. For job requirements, visit: http://www.usps.gov/hrisp/pub_vac.htm and click on Postal Inspectors. For an application and more information, contact Judy Kalb at 206-442-6132 or email jkalb@usps.gov.

Attorney: Located in Bothell, Washington, Chiroscience R&D, Inc. is a gene-based discovery company which focuses on innovative small molecule drugs and related diagnostics in the therapeutic areas of inflammatory disease, pain, osteoporosis, cancer and autoimmune diseases.

Chiroscience R&D, Inc. is a subsidiary of Celltech Chiroscience PLC, a UK-based company with offices in Slough and Cambridge, England. We are searching for a motivated, highly qualified individual to fill a key legal position at our Seattle site. This individual will draft and negotiate contract terms, establish legal procedures and standards, and interact with scientific and business staff to coordinate business/legal matters. They will also be responsible for formulating confidentiality agreements and consultancy agreements. The successful candidate will have a good understanding of patent law and the patent application process, and be able to coordinate patent efforts with outside counsel. This individual will be professional, enthusiastic and customer-service oriented. Strong communication and organizational skills are also required. The position requires a JD and at least five years' experience with intellectual property or related experience. Preference will be given to those with experience in the biotech or hi-tech industries. The successful candidate will be a licensed attorney in the state of Washington and have a familiarity with general computer applications such as MS Word and Excel. Chiroscience R&D's team-oriented environment is ideal for highly motivated and innovative employees. We offer our employees competitive salaries and excellent benefits. To apply, please send your résumé and cover letter to: Chiroscience R&D Inc., Attn: ATTY-22000, 1725 220th St. S.E., Ste. 200, Bothell, WA 98021. Applicants may also email their information to careers@chiroscience.com, or fax to 425-489-8019. Please visit us at <http://www.chiroscience.com>. We are an equal opportunity employer.

ERISA/employee benefits attorney: Song Oswald & Mondress PLLC seeks an ERISA/employee benefits attorney for partnership-track position in an expanding and challenging practice involving tax and fiduciary counseling. Technical ERISA expertise is highly desirable. We enjoy the breadth of a large-firm practice in a small-firm environment. All inquiries will be kept confidential. Please submit cover letter, résumé and transcript to: Hiring Committee, Song Oswald and Mondress PLLC, 720 3rd Ave., Ste. 1500, Seattle, WA 98104.

Staff attorney, tribal legal office: Seeking attorney to provide civil legal services for low-income members of the Colville Confederated Tribes.

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., May 1 for the June 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.

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.

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.

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.

Construction & design lawyer: Stoel Rives seeks an attorney with a minimum of two years' experience advising clients with transactions and litigation involving construction projects. We are looking for someone with topnotch legal and client relations skills. Recently ranked the fastest growing law firm in the state, we have over 300 lawyers in six locations. Stoel Rives offers the opportunity to participate in a well-established and growing practice, offering a competitive salary, bonus and benefits package. Check us out at www.stoel.com, then send your letter, résumé and law school transcript to: Mary E. Rehm, Lawyer Recruiting Coordinator, Stoel Rives LLP, 600 University St., #3600, Seattle, WA 98101.

General Counsel for statewide professional nursing association. Primary focus is labor, i.e., arbitrations, consultations on grievances, with additional general association business. Some civil litigation experience or experience with labor agreement arbitrations required. Contract drafting/enforcement experience a plus. The position is part time, with flexible hours and excellent benefits. Please contact: Barbara E. Frye, Director of Labor Relations, Washington State Nurses Association, 206-443-9762; Bfrye@WSNA.org.

Land use and environmental attorneys needed: Short Cressman & Burgess, PLLC, is seeking qualified attorneys for its land use and development group and its environmental and natural resources section. Candidates should be energetic, highly motivated team players capable of working independently and driven by the desire to provide excellent legal services to clients of the firm. Candidates should have at least five years' experience handling real estate development and land use matters or environmental and natural resource matters. Knowledge of federal Indian law a plus. Excellent writing and verbal skills and a demonstrated desire to succeed are essential. Send résumé to: Lateral Hiring Committee; 999 3rd Ave., Ste. 3000, Seattle, WA 98104; or e-mail [\[schlaw.com\]\(mailto:schlaw.com\). All inquiries will be kept confidential. We offer competitive salaries and benefits and the opportunity to join a creative legal team. EOE.](mailto:cosborn@</p></div><div data-bbox=)

Safeco Life & Investments is seeking an attorney who will advise employees on legal matters. Experience with ERISA, taxes, life insurance and annuity products, also retirement plans or trusts and estates is helpful. You must be licensed to practice law in Washington state, have excellent writing and communication skills, and the ability to interact with a variety of internal clients. To apply, send a résumé to Safeco Life & Investments, 5069 154th Pl. N.E., Redmond, WA 98052; fax 425 867-8796; e-mail josflo@safeco.com.

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.

Municipal civil attorney: The City of Kent is accepting applications for the position of Assistant City Attorney, Civil Division. Applicants must be admitted to practice and in good standing with the WSBA. Prior municipal civil law experience is preferred, and experience in public works, planning, and municipal contracts is a plus. Candidates must have excellent written and oral communication skills. Salary range is \$46,305-\$69,605, depending upon experience. We offer an excellent benefits package. All inquiries should be directed to the Office of the City Attorney, 253-856-5774. This position is open until filled.

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Contract attorney: Established Tacoma firm seeking contract attorney for research and brief writing, with strong emphasis in criminal defense, civil litigation and appeals. Excellent opportunity for self-motivated individual. Résumé and writing sample to: Office Administrator, Law Offices of Monte E. Hester, 1008 S. Yakima Ave., Ste. 302, Tacoma, Washington, 98405; fax 253-572-1441; e-mail lomhester@uswest.net.

Litigation attorney: Miller Nash, a full-service law firm, seeks a litigation lawyer for its litigation department in our Seattle, Washington, office. Applicants should have at least four years' experience in general commercial matters, including antitrust or intellectual property. Position and compensation is negotiable based on experience. Superior academic credentials and negotiating/dealmaking skills are also a must. Please visit our website, <http://www.millernash.com>, for more information about our firm. Please send résumé in complete confidence to: Ms. JoJo Hall, Recruiting Coordinator, Miller Nash LLP, 111 S.W. 5th Ave., Ste. 3500, Portland, OR 97204.

E-commerce/advertising attorney: The Nike legal department seeks to add a lawyer to practice as a commercial transactions attorney with emphasis on e-commerce, Internet-related matters and advertising. Current membership in the Oregon State Bar or willingness to seek admission is required. Excellent academic credentials also required. Seeking person with at least three years' practice experience in commercial transactions, including e-commerce, traditional retail and advertising. Responsibilities will include counseling and providing services to Nike's e-commerce group and advertising department. Salary commensurate with experience, with excellent benefits. Send résumé and cover letter, indicating job code WAOSB-LE11809 with salary expectations and any additional pertinent information immediately to jobs@nike.com or mail to: Nike, Inc., Employment Center, One Bowerman Dr., Beaverton, OR 97005-6453; fax 888-767-9855. Nike employs opportunity equally.

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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.

Danielson, Harrigan & Tollefson, AV-rated 13-lawyer firm specializing in complex commercial and maritime litigation seeks associate with a mini-

mum 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.

Associate attorney needed for medium-sized AV-rated Tacoma law firm. At least five years' experience in business and transactional law, with experience in mergers, acquisitions, sales, rollups, etc. preferred. Please send résumé to: Hiring Partner, PO Box 1533, Tacoma, WA 98401.

Labor attorney: Firm with energetic law practice emphasizing representation of public sector labor organizations seeks self-motivated individual with experience in labor or employment law and litigation skills. Looking for individual with solid academic credentials, as well as strong communication and interpersonal skills. Commitment to quality and strong work ethic required as well as a good sense of humor. Applicants should send cover letter, résumé and writing sample to: Hiring Committee, Cline and Associates, 6800 East Greenlake Way N., Seattle, WA 98115 or clinelawfirm@clinelawfirm.com.

Business/corporate attorney – Montana: Small western Montana AV-rated firm seeks business/corporate attorney with a minimum of five years' experience, for a partnership opportunity. Position involves counseling a large Montana corporation on business, tax, corporate, contract and related matters; ability to generate additional business required. Candidates should be admitted to Montana Bar or willing to seek admission. Successful applicant must be willing to relocate to western Montana as well. Please respond to: WSBA Bar News Box 598, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Attorney with a minimum of six years' experience in employment law for a non-litigation position in the operation group of the Washington Mutual legal department. The position includes advising in-house clients on administration of human resources policies; investigating employee charges of discrimination, harassment, wrongful termination, and other employment-related claims; responding to charges filed with EEOC and state and local agencies; and responding to demands from attorneys representing employees in order to effect resolutions and avoid litigation. Washington Mutual offers an exciting and professional work environment with comprehensive benefits. Qualified candidates may obtain an application from any Washington Mutual location or by calling 800-952-0787. Please send résumé and a completed application (required) to: Washington Mutual Bank, Human Resources Dept., Attn: Oralia Lynch, 1191 2nd Ave. SAS0108, Seattle, WA 98111; Position #143556.

Attorney: Safeco Insurance Company of America is seeking an attorney to join its in-house corporate legal staff. Candidate should have a minimum of three years' practical experience either in-house, with a regulator, or at a law firm. Experience working with insurance or other regulated

industries is a plus. We require excellent academic credentials and references, and strong analytical and writing skills. Please note that this is not a litigation position. WSBA membership is required. Safeco offers an excellent salary and benefits package, and a professional working environment with opportunities for advancement based on performance. Qualified candidates, please send your résumé to: Safeco, Attn: Human Resources, Safeco Plaza, T-17/AT/WSBN/0400, Seattle, WA 98185; fax 206-548-7117; <http://www.safeco.com/jobs>. EOE.

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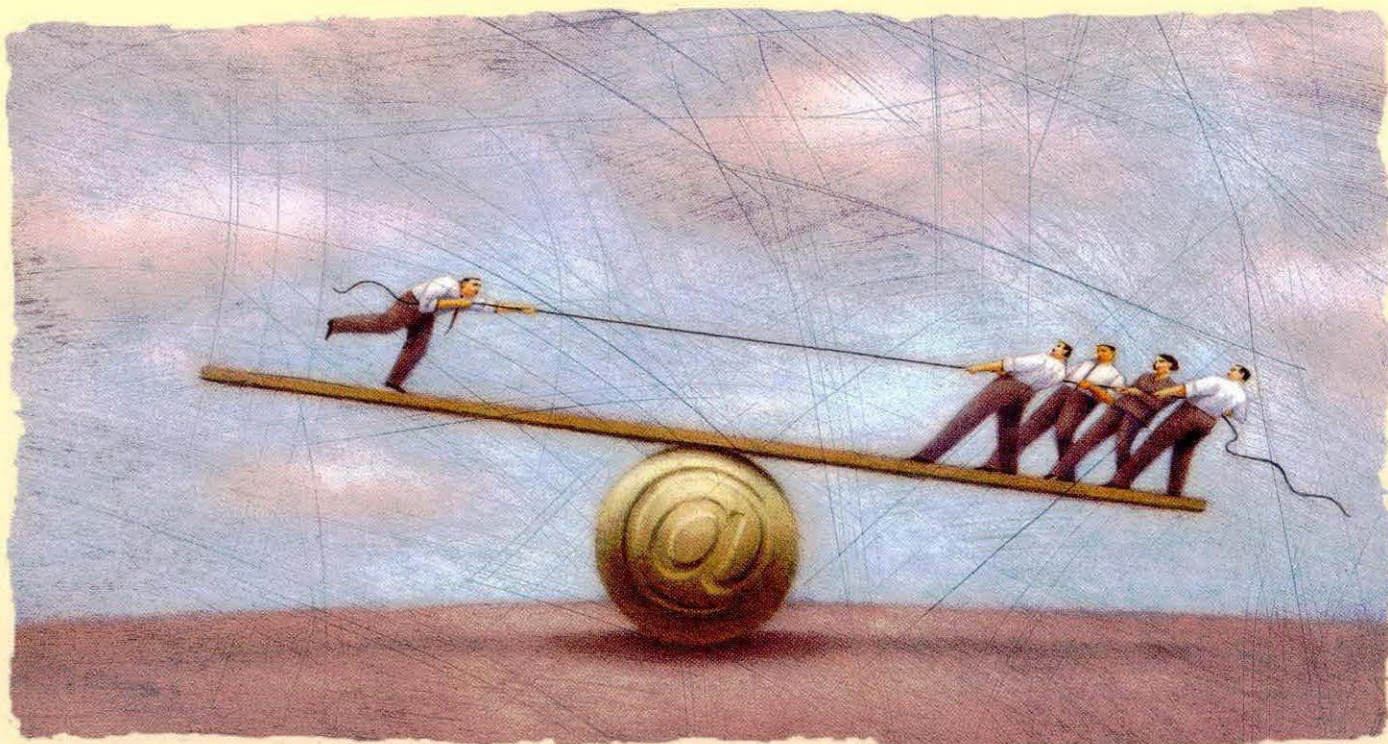
Looking for the attorney who prepared a will for Rebecca Louise Raymond of Olympia, Washington. Please call Nancy L. Wright, 360-534-9262.

MISCELLANEOUS

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Difference of opinion.

536 Minn. 367 NORTH WESTERN REPORTER, 2d SERIES

Eleanor Louis BOOM, Respondent,
v.
Rolland David BOOM, Appellant.
No. C2-83-1956.
Court of Appeals of Minnesota.
April 23, 1985.

536 Minn. 367 NORTH WESTERN REPORTER, 2d SERIES

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Rolland David BOOM, Appellant.
No. C2-83-1956.
Court of Appeals of Minnesota.
April 23, 1985.

Review Denied June 27, 1985.

Case synopsis

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in opinion

this does not preclude trial court from reviewing award if the appeal period has not expired and a party timely moves for amendment pursuant to rule. 48 M.S.A., Rules Civ.Proc., Rule 52.02.

4. Divorce ¶254(1)

A property distribution in a judgment and decree is not "final" until after the appeal period expires.

See publication Words and Phrases for other judicial constructions and definitions.

Syllabus by the Court.

1. A disproportionate award of marital property to the husband is justified where 13 years elapsed between service of the summons and complaint and the dissolution and the property was acquired solely by the husband during that period.

2. A court may amend its judgment anytime before the appeal time on the judgment expires.

Robert E. Van Nostrand, Wheaton, for respondent.

John E. Mack, New London, for appellant.

Heard, considered and decided by POPOVICH, Chief Judge, and SEDGWICK, and NIERENGARTEN, JJ.

OPINION

SEDGWICK, Judge.
Appellant Rolland Boom and respondent Eleanor Boom both challenge the trial court's division of property. Rolland also alleges the trial court erred: (1) in amending its judgment decree without any findings, explanation or justification; and (2) awarding Eleanor attorney fees. We affirm.

FACTS

Appellant Rolland and respondent Eleanor Boom were married in 1961. They

Headnotes
summarize each
point in case

OPINION

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Appellant Rolland Boom and respondent Eleanor Boom both challenge the trial court's division of property. Rolland also alleges the trial court erred: (1) in amending its judgment decree without any findings, explanation or justification; and (2) awarding Eleanor attorney fees. We affirm.

FACTS

Appellant Rolland and respondent Eleanor Boom were married in 1961. They

OTHERS

Opinion with citations verified, errors corrected and parallel cites added

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