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Celebration 2000 Update Page 14

Washington State
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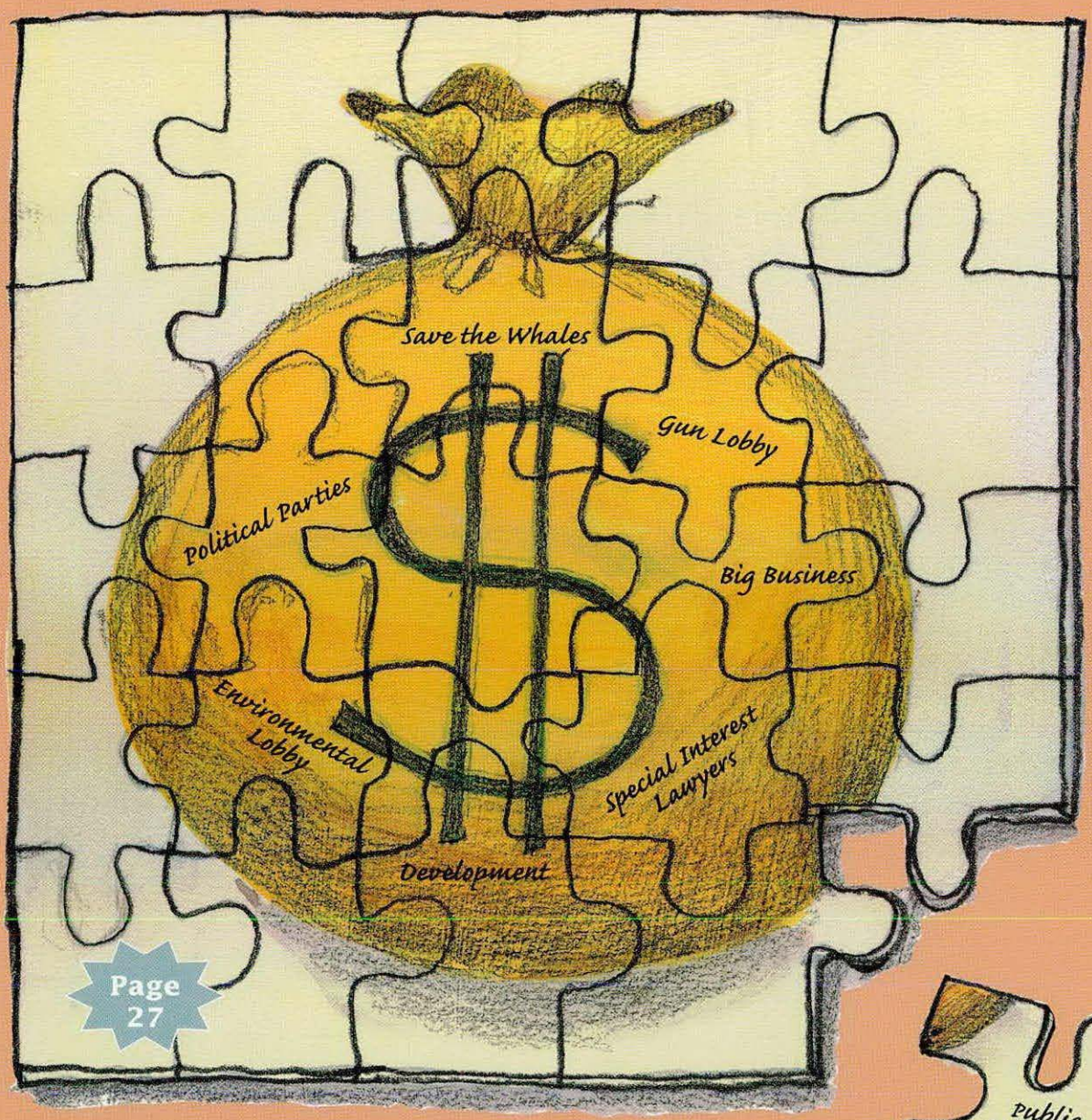
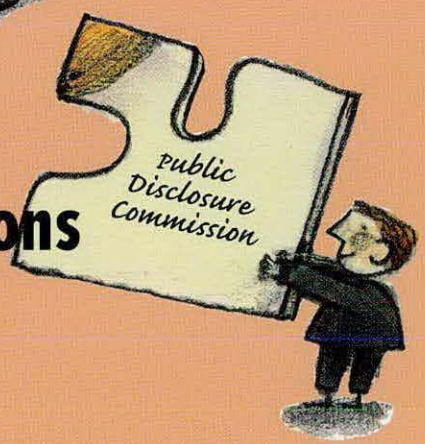


Page 27



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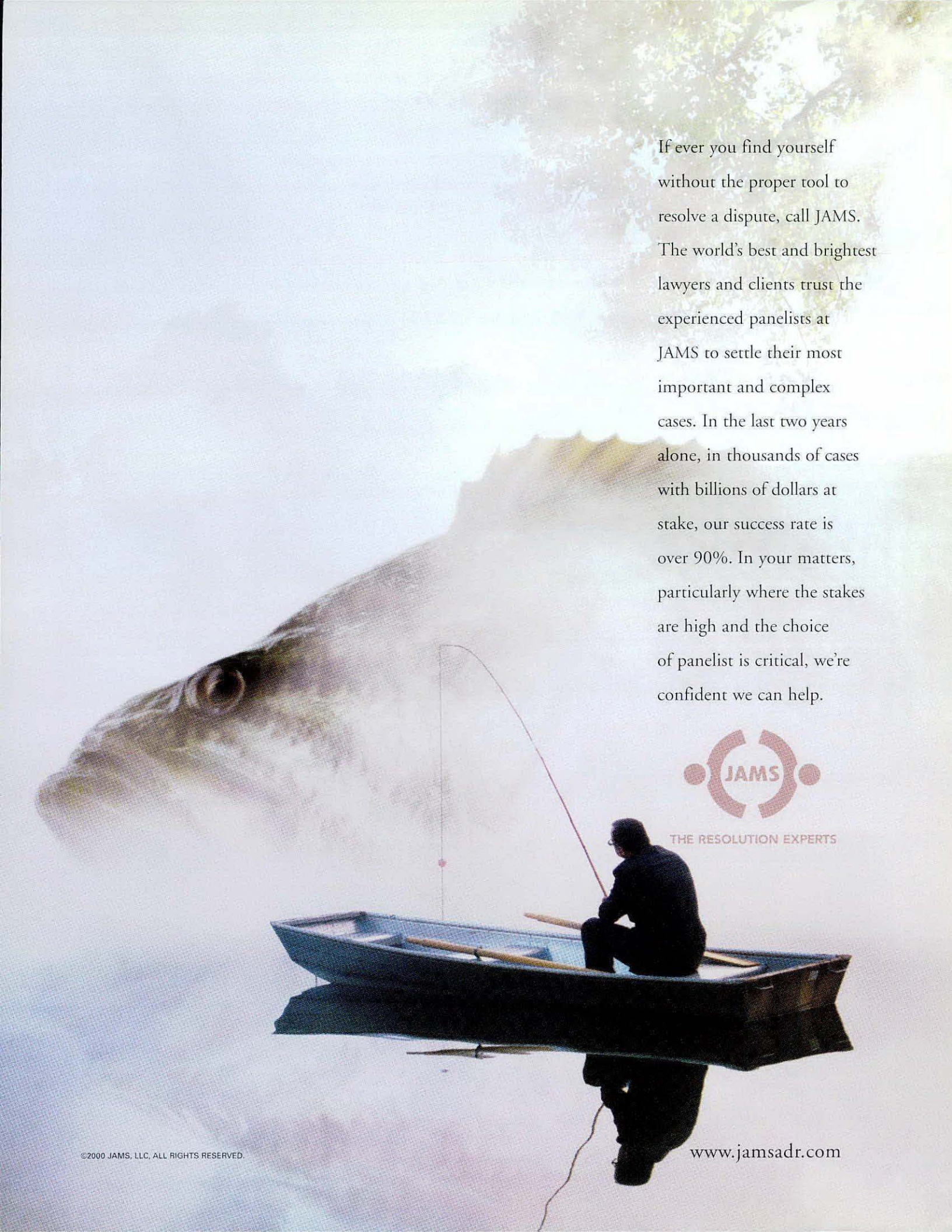

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JUNE 2000

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Completion of Disciplinary Reform

Editor:

On March 31, the Board of Governors approved the proposed rules for diversion of less serious misconduct in the discipline system. This was really a historic moment completing the reform of the discipline system that began in 1992.

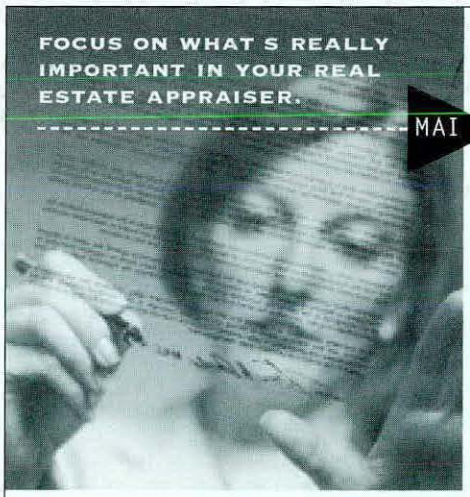
Back then, our status as a self-regulating and disciplined profession was in jeopardy. The discipline system was one of simple crime and punishment — understaffed, underfunded, largely unresponsive to consumer complaints, with a backlog in cases from three to five years. The system was under severe criticism from the press, the public and members of the profession. When a consumer called in a grievance, it was either investigated and prosecuted to a punishment under the rules, or the complaining party was told it did not constitute a violation of the Rules of Professional Conduct. The delay in investigation and decision to prosecute was years, and even longer to final resolution. There were no alternatives. There was no education, prevention or customer service response affording any satisfaction.

With the Board's action on March 31, the Bar Association has completed a reform that is truly a model for the nation. The inspiration for this change began with former Chief Disciplinary Counsel Lee Ripley, who made Washington the first state to respond to the ABA's offer to evaluate state disciplinary programs. A team of evaluators from the ABA was invited by Lee to come to Washington in 1992 and spend a week evaluating our discipline system. From that, a 47-point report was issued.

In response to the ABA evaluation, the Bar, under President Paul Stritmatter, and the Supreme Court, under the leadership of Chief Justice James Andersen, formed the Joint Task Force on Discipline, which was divided into four subcommittees. I had the pleasure of chairing one of those subcommittees. With the most able assistance of the Honorable Anne Ellington and Chris Pence, we rather boldly outlined the creation of a new discipline system that, in addition to the standard functions of investigation, prosecution and punishment, included:

- Diversion of less serious conduct;
- Fee arbitration;
- Mediation;
- Law office management practice assistance;
- Continuation of the Lawyers Assistance Program;
- Customer service or consumer affairs response or ombudsperson and the use of trained professional investigators.

The goal was not only timely and efficient investigation and prosecution of violations of the Rules of Professional Conduct, but also to provide to our members education, training, dispute resolution, and positive consumer complaint responses. This system will provide solutions to aggrieved consumers, member services that aim toward prevention and education, and dispute resolution. We were pleased when the recommendations were adopted by the Joint Task Force and forwarded to the Bar for consideration. The report was adopted by the Board of Governors and the Supreme Court. Over the ensuing years, each of these segments was slowly made a reality by creating the



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Re-Elect Justice Gerry Alexander

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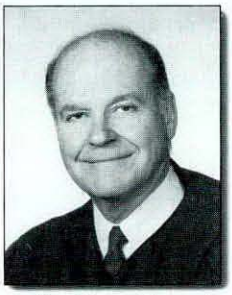

Justice Gerry Alexander

"Our Supreme Court needs people who can forge concensus while adhering to principle. Justice Alexander is able to combine his understanding of the law with a very strong common sense approach to the role of government and the courts. He is precisely the person we need on the Supreme Court."

Justice James Dolliver (Ret.)

"Gerry combines integrity with great knowledge of our court system. He is one of the few judges in the State of Washington who has served on the Superior Court, the Court of Appeals and the Supreme Court. We are extremely fortunate to have him serving on our Supreme Court."

Justice Vern Pearson (Ret.)

Fellow Bar Members:

Justice Gerry Alexander recently announced his plans to run for re-election to the Washington State Supreme Court. I urge you to support him in this effort.

During his service on the Supreme Court, Justice Alexander has been a leader in making the court more accessible to the public. Our Supreme Court was the first in the nation to allow television broadcasting of all of its hearings. Holding court sessions in high schools, our state's law schools, and county courthouses has also opened our legal system to the public. Justice Alexander has supported these initiatives because he believes that the more citizens to see the justice system in action, the more they will be convinced that it provides fair and impartial justice.

Justice Alexander is also committed to addressing the serious problems that confront Washington's court system due to increasing caseloads and the fact that the legislature has thrust many new responsibilities on the courts. That is why he is supporting Chief Justice Guy's efforts to develop a comprehensive plan for modernization of the court system that can be presented to the legislature. He supports this effort to improve the efficiency and accountability of the court system, while guaranteeing due process of law for all.

I have never known a more active and vital justice. Justice Alexander tells me that he loves every minute of his work, and finds election campaigns exhilarating. Justice Alexander's enthusiasm, his 26 years of judicial experience and the fact that he is beholden to no special interests make him an ideal candidate for another term on the court.

Please join me in supporting Justice Gerry Alexander for re-election.

Sincerely,

Justice Robert Utter (Ret.)

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structures, drafting the operative rules, budgeting the money, and hiring the staff to put them in place. Hopefully, the Supreme Court will approve the diversion rules by the end of this year, at which time the ODC will also have completely cleared the backlog of discipline cases. The Board has now put in place the last piece to the model.

When I first ran for the Board of Governors in 1992, I hoped to do something to restore the status of the profession to one of respect by the public for the keepers of the rule of law in a democracy. I asked to be appointed to the Discipline Committee of the Board of Governors because I felt the first step was to put our own house in order.

It has been my privilege to serve continuously on the Board of Governors Discipline Committee since 1992 in an effort to see this project to its end. From that perspective, I have seen the leadership that made this happen. Credit should be given where credit is due, and in addition to those mentioned previously, particular thanks should go to Wayne Blair and Peter Ehrlichman, who spent years shepherding the disciplinary task force's ideas into reality; Randy Beitel of the Office of Disciplinary Counsel, who was the primary draftsman and editor of all of the rules changes, and thus did all the hard work; Barrie Althoff, for his unwavering support and implementation of reform; and finally, the commitment of the membership of the funds and energy to accomplish this continued dedication to self-regulation for the benefit of the public. Well, we've just about done it. We've gone from being a disgrace to being a model for the rest of the country. It is an accomplishment and a system of which we can be justly proud. It's the best in the nation and it is finally a reality.

You've made me proud to be a lawyer again.

Jan Eric Peterson
WSBA President-elect
Seattle

Proposal is Slap in Face to BOG Members

Editor:

I don't understand what logic supports the proposal to reserve seating on the Board of Governors for special groups. Is there some unbridgeable gap between young or minority lawyers and not-so-young or non-minority lawyers? If so, how does this difference manifest itself in practicing lawyers?

Does this mean my interest in long-arm jurisdiction should be different from that of a 27-year-old Asian female? Does this mean my view of the lawyer disciplinary process is a function of my race? Does it mean that if I'm not gay, I am unable to oppose discrimination or that I can't know what discrimination is? Is there a distinctive male view of indigent defense? For that matter, is there any piece of legislation listed on page 44 of the April *Bar News* in which one's views are solely a function of race, gender or age? Do the concepts of truth or due process or freedom of speech become different when you're older?

What is really amazing is the unspoken premise that professionals who daily transcend gender, age and racial differences when acting as advocates for clients are presumed to be incapable of transcending such differences when represent-

ing the interests of fellow lawyers on the Board of Governors. I believe this is an unwarranted slap in the face to all lawyers who have served on the Board. Is it any wonder the public holds lawyers in contempt in light of the Bar's own self-loathing?

William J. Eling
Vancouver, WA

Canadian Boors at the Bar

Editor:

Having once been editor of *The Advocate*, the more or less official publication of the Bar of British Columbia, I still receive the Washington State *Bar News* and read it with interest. I noticed in the February 2000 issue, an article entitled, *Civility in the Practice of Law: Must We Be Rambos to be Effective?* by Robert W. Ritchie. It would appear that you run into the same problems we do in British Columbia with boors at the bar. I wrote an editorial on this very subject in 1993. My editorial had no discernible effect on the members of the British Columbia Bar.

David Roberts
Vancouver, B.C.

Inequities in Child Support Schedules

Editor:

I read John Mills' article, *Calculating Child Support Transfer Payments: A New Approach*, in the March 2000 *Bar News* with great interest, as I too have the same observations. What he is suggesting, however, is far from new. The difficulty is in the accounting and the enforcement of child support orders taking into consideration these issues. Child support guidelines, as we currently know them, were forced upon all 50 states through the Federal Family Support Act of 1988, 42 U.S.C. 667. The federal government demanded "sum certain" uniform guidelines in each state so that collection of child support would be easier.

Besides providing for children through the Aid to Families with Dependent Children program, 40 percent of all child support cases become interstate cases during their term, thus involving the federal government. The federal government wanted simplicity and stability in the guidelines. The driving force behind the guidelines movement in each state was federal money available to the states for the easy enforcement of child support orders. States failing to adopt guidelines meeting federal standards stood to lose millions of dollars in federal aid.

Forcing deadbeats to pay for their families is the right thing to do. This reduces the amount of federal money needed to assist single parents who are not able to provide adequate resources for their children, or who have gone across state lines, thus making enforcement more difficult. But since guidelines were primarily developed to assist states and the federal government in the easy collection of child support, the fairness of the guidelines becomes only a secondary consideration. It is not surprising that inequities exist in the guideline calculations today.

Actually, I think there are two basic inequities to current child support schedules. The first, as Mr. Mills points out, is control over the pool of money representing the amount the guidelines determine is required to raise the children. Both parents are obligated to contribute to this pool. The Washington State Child Sup-

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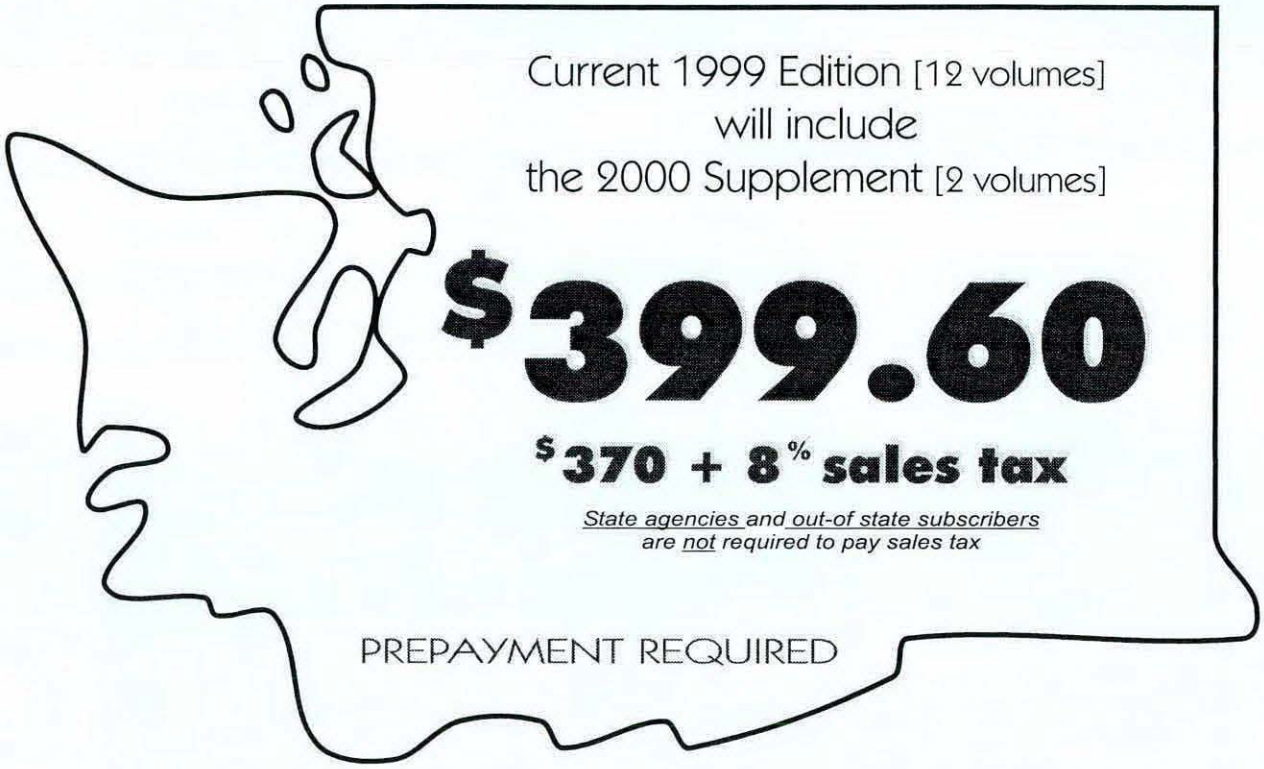

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port Guidelines delineate the amount for both parents on line 15 of the guidelines. The children only benefit from the pool when the money is actually spent on them and their needs each month. The primary parent, or obligee, has a "duty to spend" the entire pool (including their contribution) on the children's support each month. (See my article, *Split Custody and the Oakes Case, or the Mighty Oakes Must Fall*, in the March 1994 issue of the Family Law Newsletter.)

The rub comes because the primary parent or obligee has complete control over the pool. If the primary parent decides to take the children on vacation, she/he has the ability to use the pool for this purpose. Not so for the "secondary parent." If the secondary parent decides to take the children on vacation, he/she must pay the obligated child support transfer payment, and then reach again into his/her pocket for the vacation expenses. There are no provisions for the secondary parent in Washington using any of the pool without a direct court order.

The second inequity concerns investment in real estate. No one will argue about the need of children to have a roof over their heads, and that children in a household increase the need for the size of the residence. Indeed, a large portion of the table amount is designated for this expense, which the primary parent must pay. No problem. And no problem if during the time the children lived in the home or apartment the primary parent spent the money on rent. But what if the primary parent or obligee buys a house? Is not the obligor's money helping the obligee invest in the larger real estate? Hasn't the obligee been unjustly enriched after years of co-investment by the obligor in a large house which the obligee now sells, pocketing the entire profit?

Just ask any obligor what gripes them most about paying child support, and these issues are immediately raised. There are no easy answers to these inequities in the Washington State Child Support Guidelines. It is a nightmare to establish and then enforce child support orders accounting for the sharing of child support resources in relation to time spent with the children. Washington's original child support guidelines tried to address these issues, but abuses by secondary parents promising "overnights" that did not occur led to the removal of these provisions. I know of only a few states that still attempt to accommodate these issues. The resulting child support guidelines in these states have become very complicated and unwieldy.

Resource-sharing provisions in child support guidelines are complicated and easily abused, often leaving children with neither home being adequate. Let's face it — divorce is costly, and two homes cannot function as efficiently as one. Child support laws have opted for properly funding the primary parent's home, at the expense of the secondary parent's financial stability and comfort.

Child support provisions will always evoke strong emotions. The obligor will always complain that he/she is paying too much, and the obligee will always want more money. That is why I have always said that a fair child support settlement is one where both parties walk away from the experience of establishing a child support order equally unhappy.

Stephen L. Sooter, Esq.
Seattle

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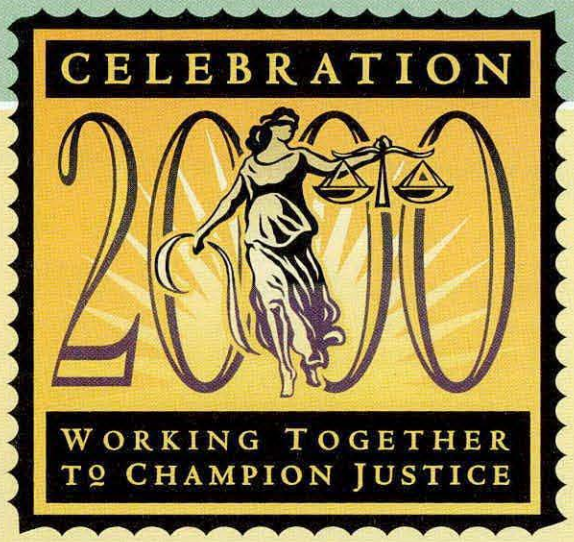
Spokane *September 13-16*

Celebration 2000



Join your friends and colleagues in Spokane for Celebration 2000! This once-in-a-lifetime event is a combination of the annual Fall Judicial Conference, Access to Justice Conference, Bar Leaders Conference, and a revival of the general WSBA Convention. Celebration 2000 will give you plenty of reasons to celebrate! You'll have the opportunity to hear exceptional speakers (see below); participate in seminars and workshops addressing such issues as diversity, multidisciplinary practice, courtroom accessibility, the digital divide, the future of law and the legal profession, and much more; and socialize with friends from around the state. Plus, you'll be able to earn approximately 17.5 CLE credits – 9.5 credits covered in the general registration fee, and eight through section-sponsored CLEs.

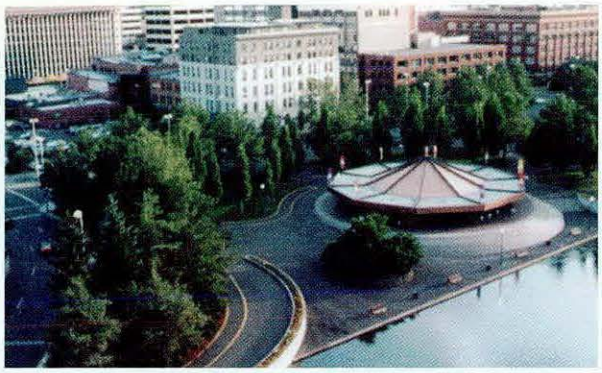
Register before August 1 and save!

The regular registration fee of $245 has been extended through July 31 (beginning August 1 it will be $295). For more information, please contact the WSBA Service Center at 800-945-WSBA (9722) or 206-443-WSBA (9722), or see the Celebration 2000 website at www.wsba.org/Cele2000. Registration forms are also in the February and March issues of *Bar News*. We hope you will join us in Spokane September 13-16. It will be an extraordinary event!

Honorable Gary Locke
Washington's 21st governor, Gary Locke is the first Chinese-American governor in U.S. history. Prior to being elected governor, he was a deputy prosecutor in King County, a member of the Washington State House of Representatives, and chief executive of King County. Believing that education is the great equalizer, he has made it his top priority. He created Washington's Promise Scholarships for top high school students from working, middle-class families, and created the Washington Reading Corps to help students who are struggling as they learn to read.

Honorable Christine Gregoire
Christine Gregoire is Washington's 16th attorney general and the first woman ever elected to the position. Now serving her second term as state attorney general, her legal career began in the AG's Spokane office as an assistant attorney general working child abuse and neglect cases. She is currently the president of the National Association of Attorneys General. Her accomplishments include creating a special criminal unit to prosecute those who abuse vulnerable adults, and establishing stronger legal protections for victims of domestic violence and child abuse.

Honorable Madam Justice Claire L'Heureux-Dubé
Madam Justice L'Heureux-Dubé has been a member of the Supreme Court of Canada since 1987. Prior to her appointment, she was a member of the Superior Court of Quebec and the Quebec Court of Appeal. She is a member of the American Law Institute and an honorary member of the American College of Trial Lawyers. In 1997, she received the Justice Award from the Canadian Institute for the Administration of Justice. She was also a recipient of the Margaret Brent Women Lawyers of Achievement Award from the American Bar Association Commission on Women in the Profession.



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- family barbecue at Riverfront Park
- cruise on Lake Coeur d'Alene
- fun run
- an evening of receptions

Programs and events include:

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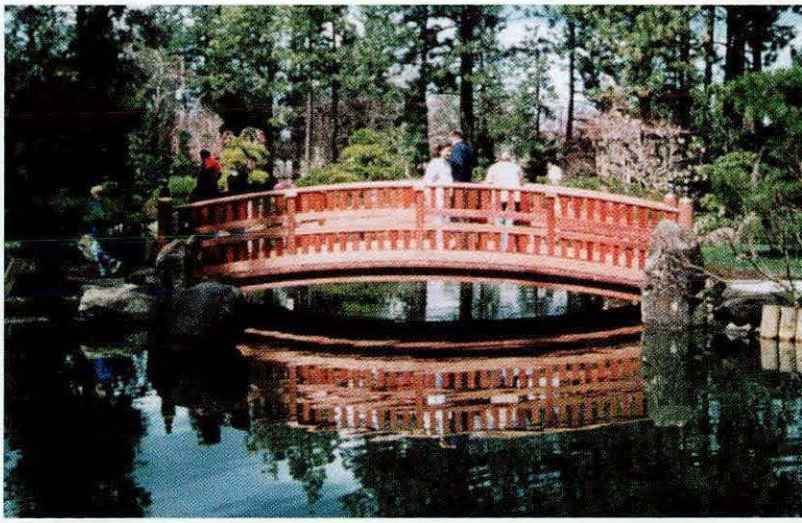
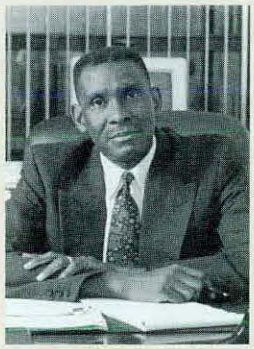
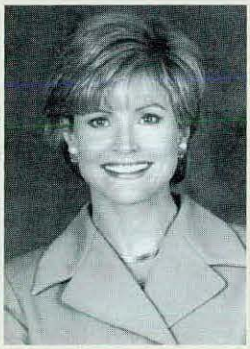
- WSTLA-produced jury trial
- 9th Circuit Court of Appeals sitting of the court and Q&A session
- 14 section-sponsored CLEs
- WSBA Annual Awards Luncheon
- Exhibitor Fair



John McKay
In 1997, John McKay was appointed president of Legal Services Corporation. His tenure there has been characterized by a bipartisan approach to working with Congress, driven by his commitment to the principle of equal justice. Mr. McKay frequently visits legal services programs around the U.S., encouraging them to improve delivery of services by becoming more efficient and technologically proficient. He received the WSBA's Pro Bono Award in 1995, and served as state chairman of the Equal Justice Coalition from 1995 to 1996. Currently, Mr. McKay is on a leave of absence from his position as managing partner of Cairncross & Hempelmann in Seattle.



David Hall
David Hall was appointed provost and senior vice president for academic affairs at Northeastern University in 1998, after having served as dean of Northeastern's law school. His top priority as dean of the law school was improving legal education and the ethical standards of the profession. Prior to his tenure at Northeastern, he taught at the University of Mississippi and University of Oklahoma law schools, practiced with the Federal Trade Commission, and played professional basketball in Italy. He writes and lectures nationally on social justice inequality, ethics, and social and spiritual values.



Catherine Crier
Catherine Crier joined Court TV in 1999 and is host of *Crier Today*, which offers insightful commentary and analysis on legal news stories and current issues. She is also a contributing anchor on other Court TV productions. Before joining Court TV, Ms. Crier worked for Fox News Channel, ABC News and CNN. An Emmy award-winning journalist, she is also a former professor, trial lawyer and state judge. She became the youngest elected state judge in Texas history in 1984. Ms. Crier is a frequent speaker and author for national, state and local bar associations.

Clay Jenkinson
Clay Jenkinson is considered the finest exemplar of first-person historical interpretation in the nation. His performance as Thomas Jefferson has been seen by such groups as presidents, Supreme Court Justices, school children, and maximum-security felons. His method is to stay resolutely in character, but to permit Mr. Jefferson to comment carefully on a world he did not live to see. Mr. Jenkinson is currently working on a biography of Thomas Jefferson, which will be published later this year. He is the host of the nationally syndicated *Thomas Jefferson Hour,* which is broadcast on more than 30 NPR stations across the country.

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Proud to Be a Lawyer: A Family History

by Linda A. Marousek
Guest Editor

I am a fourth generation lawyer. I used to say, joking, that it was a genetic defect. I don't say that anymore. After 20 years as a lawyer, when I look at my family history, I have begun to understand what has drawn us all to the law.

My maternal great-great-grandfather read for the bar in Dakota Territory, before there was a law school, or even a state, on the Great Plains. He was a probate judge. Other than those facts, I don't know much about his legal career. He inspired his son to want to be a lawyer, and he died young. The son (my great-grandfather) never got the opportunity to fulfill his dream of becoming a lawyer. So when his own daughter (my grandmother) married a fleet-footed young track star from another town, my great-grandfather encouraged the young man to go to law school.

By the time I knew my grandfather, he had a bald head with a thick fringe of white hair around the edges. He had only one arm; he had lost the other in a hunting accident. He loved his hunting dogs, and he swore in a way I had never heard in my Baptist home.

Grandpa was fair, and he was a fighter. He told me, "The law's a good profession for a girl." He told me that when he was practicing law, he had defended "drunks and Indians," South Dakota's two most oppressed groups. Grandpa ran afoul of the state bar hierarchy a couple of times in his legal career, but even people who didn't like him then, now think that he was in the right. I met his contemporaries later, as my teachers when I was in law school. They told me again, "He was a fighter." At his funeral, a young Baptist minister wasted a fine Christian sermon on my grandpa, the atheist. But Grandpa's oldest living friend gave the best eulogy Grandpa could have had: "If it wasn't for Jake, a lot of poor people in Clay County would have had no justice at all."

When Grandpa said law was a good profession for a girl, my mother listened. She went to law school in South Dakota in the early 1950s. She was the only woman who graduated with her law school class. She practiced law with Grandpa for a while, and then took 18 years off to raise kids. She went back to practicing law 25 years ago. The year that she went back to the law, she was one of only five women who were members of the South Dakota bar.

Like Grandpa, Mom is a fighter. A few years ago, she took on the biggest bank in the state and their impressive lawyer (a former state bar president) in representing a hospital janitor stuck in a bad real estate deal. She won. More importantly, the janitor won.

My mom practiced law until she was 70 years old. Most of her practice was municipal law. In a small South Dakota town, that means doing legal research on everything from weed nuisances to hospital bonds. It also means occasionally requesting that the City Council convene in executive session, telling the Council members that they are behaving like children and that they should remember their legal responsibilities, and then having them behave like she asked them to.

Like my mother, I listened to my grandfather say that law was a good profession for a girl. I went to law school in the same building where Grandpa and Mom studied. People in the building remembered them both, and Grandpa's vacant law office, with his name still on the window, was downtown. From the way that people responded to the family name, I knew that I was following heroes.

Those heroes were small-town lawyers in private practice for most of their legal careers. I have spent most of the last 20 years in the administrative hearing system, as a state employee. I make quasi-judicial decisions about child support owed by people who are too poor to go to court with a member of the private bar representing them. I make life-and-death decisions about whether a person gets welfare benefits next month. The work is emotionally challenging and legally complex. The obvious professional successes are few and far between, but every now and then someone tells me what impact my work has had. I will always treasure the letter from the public assistance client who wrote, "It seems to me that justice is all too rare for the poor and the powerless. You have restored my faith in legal justice, at least in the state of Washington." Sometimes I reread that letter, and then I go on with my work.

After 20 years as a lawyer, I never say anymore that being a lawyer is a genetic defect. It was a bad joke, anyway. Now, I say that the blood of heroes runs in my veins. It's not a joke. It's the truth.

Linda A. Marousek is a Review Judge with the Department of Social and Health Services Board of Appeals.

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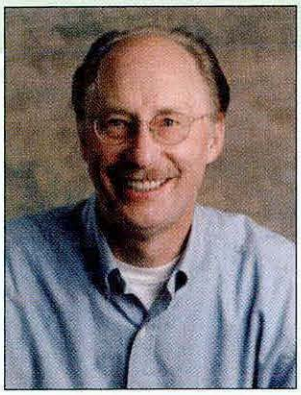


Hockey or Civil Litigation?

by Richard C. Eymann
WSBA President

Last night I went to a Spokane Chiefs hockey game. The Chiefs are in the playoffs, going for the Canadian/American Memorial Cup. Among the crowd of over 8,000 were many lawyers that I recognized. As I watched these 17- to 20-year-old, up-and-coming hockey stars, it reminded me of our current adversarial system of justice. There was high-sticking, body-checking, tripping, slashing, roughing, hooking, interference, obstruction, and fist fighting. Was I watching litigation, or was I watching hockey?

Older lawyers today (and by older I mean anyone over my relatively young age of 54) say that compared to when they started practicing law, today's new breed show less respect toward what George Washington wrote about:

> In disputes, be not So Desirous To Overcome as not to give Liberty to each one to deliver his Opinion and Submit to the Judgment of the Major Part especially if they are Judges of the Dispute.
>
> George Washington, 86th Rule from *110 Rules of Civility and Decent Behavior in Company and Conversation.*

When polled at a recent National Association of Bar Presidents meeting, 90 percent of the presidents-elect of state and local bar associations believed that lack of respect is a problem in their jurisdictions. Over 50 percent felt that the problem existed not only among lawyers, but also between lawyers and judges.

Federal District Court Judge and former law school dean Louis Pollack notes that less communication results from a growing polarization within the Bar. He said lawyers tend to gather more in specialized groups that reflect either the firms where they work or their narrow areas of practice such as claimant or defense, debtor or creditor, prosecution or defense. From their small groups, attorneys look out and see lawyers in the other groups from a distance and are more inclined to question their actions and motives. The other side is the "bad guys" or "enemies," says Judge Pollack, while "our side" represents truth, justice and the American way. We do know that when lawyers speak with each other, it is often as if their minds are tilted by years of seclusion within their smaller practice groups.

Many clients expect their lawyer to be the toughest, ugliest and meanest lawyer in the world, but they fail to consider the long-range ramifications of such a tactic. Likewise, the public must be responsible in its demands on the legal system as a whole and on attorneys as individuals.

It follows that too often our adversary system lacks civility and is not a search for truth, fairness and justice, but rather is a match between the meanest of lawyers, or who can pay for the best experts, or who can pay for the "high-priced attorney." Civility refers to the respect accorded other lawyers, the courts, litigants, clients and all other participants in the legal system. It is the foundation of professionalism in the practice of law. It relates to ethics and attorney discipline, and as our elder lawyers say, it is the most missed aspect of the "way it used to be."

Think about it for a moment. Civility affects not only how lawyers treat each other, but also how clients treat us, how the media treats us, and at times, how the judges treat us. How can we seek respect from the general public if we do not respect one another? Do not fool yourselves — clients realize that their legal bills are increased by protracted discovery, litigation delays and repeated attempts to contact opposing counsel. In the end, this incivility not only takes the fun out of the practice of law, but harms us all — lawyers and clients alike.

Recognizing that I may be only preaching to the choir (civil lawyers who read the president's column), I still call upon each member of the Bar to be civil as she/he practices law. It is easy to blame the other lawyer, the other client, anybody, for your defeats or losses. Public opinion polls show that 99 percent of all Americans believe that their own behavior is civil, and lawyers are no different. The overwhelming percentage also think it is others' behavior which is less than civil. Please reassess your actions, for their effect on the profession and the practice of law is much greater than we recognize or would like to admit. It

will take all of us — courts, practicing lawyers, law schools, public and the media — to work together to combat the problem of incivility in the practice of law (which, ironically, is to provide justice to all).

Some of my best friends in the legal community are defense lawyers in the area of civil litigation. I respect what they do; they get little thanks and are often under the circumspect eye of some person in another state who questions each time entry. As a plaintiff's lawyer, I communicate with these advocates on a daily basis. I hear them complain about some of my fellow plaintiff's lawyers, their tactics, their insensitivity and rudeness. I have also experienced a few defense counsel with these traits. Fortunately, they are a minority, but it only takes one to wreck your day, and if you are not careful, cause you to resort to tactics that are reciprocal instead of professional.

A healthy tension between plaintiff's counsel and attorneys representing defendants is the bedrock of the adversarial system. A cooperative and truthful relationship is in the best interest of the clients and our civil justice system. Often times the actions and motives of an opponent are misinterpreted. Anger becomes a knee-jerk reaction. I must take responsibility and admit that I, too, have fallen into that trap.

The better response is to never lose your temper. If you are right, you have no need to lose it. If you are wrong, you cannot afford to lose it. More often than not, the misunderstanding can be amicably settled, thereby strengthening the professional relationship. In instances where the opponent's dealings are persistently uncivil and dishonest, say to them what you mean, mean what you say, but do not say it "mean." It is okay to disagree, but it is not okay to be disagreeable.

This is not just a lawyer issue. The public has the right to insist on civility in their legal system. Whatever ails the legal system affects the rights and remedies of all citizens. Many clients expect their lawyer to be the toughest, ugliest and meanest lawyer in the world, but they fail to consider the long-range ramifications of such a tactic. Likewise, the public must be responsible in its demands on the legal system as a whole and on attorneys as individuals.

I began my term as president by speaking to the improvement of the perception of the legal system, its lawyers and our judiciary. By returning to the "good old days" in the practice of law, I believe we can make great strides in that effort. Although some say that the best days of practicing law are over, are we just going to throw in the towel? It is not yet too late to revitalize the cooperation that once characterized our profession. Therefore, I ask you today as you read this to talk to your partners, your associates, and especially the young lawyers, and ask them that while not neglecting their advocacy necessary to meet client needs, to remember their duty to the profession, to secure its future in our eyes and the public eye. Keep the hockey on the ice.

Multidisciplinary Practice: What is It and Who Cares?

by Jan Eric Peterson
WSBA President-elect

According to the American Bar Association, multidisciplinary practice is the major issue confronting the organized bar at the advent of the new millennium. "MDPs," as they have come to be known, are professional associations, partnerships, alliances or other business organizations owned jointly by lawyers and nonlawyers whose functions include the provision of legal services for which fees are shared among the members. For nonlawyer members of such organizations, it is potentially the illegal unauthorized practice of law. For lawyer members, it is an ethical violation of the Rules of Professional Conduct. Some examples include:

- a partnership of lawyers, accountants, financial planners and tax advisors providing multidisciplinary services to a client that may include auditing, estate planning, tax advice; and
- environmental lawyers joining forces with engineers to provide comprehensive environmental consulting services.

...multidisciplinary practices are already a reality and the lawyers engaged in them are subject to discipline under the current rules, with the entities involved exposed to prosecution for unauthorized practice of law.

Some of these already exist. King Spalding Ernst & Young LLP is the merger of a law firm and an accounting firm. PricewaterhouseCoopers LLP, a global accounting firm, employs lawyers who do essentially the same thing they did at law firms.

What's wrong with this? The Washington State Rules of Professional Conduct 5.4 regarding the professional independence of a lawyer provide that a lawyer or law firm shall not share legal fees with a nonlawyer (RPC 5.4(a)), nor shall a lawyer form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law (RPC 5.4(b)). RPC 5.4(c) prohibits a lawyer from permitting a person who recommends, employs or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services. RPC 5.4(d)(2) and (3) prohibit lawyers from entering into an arrangement that involves, in part, the practice of law where a nonlawyer is a corporate director or officer of the organization, or has the right to direct or control the professional judgment of the lawyer. RPC 5.5, on the unauthorized practice of law, prohibits a lawyer from practicing in a jurisdiction where the lawyer is not licensed (thereby violating the regulation of the legal profession in that jurisdiction), or assisting a person who is not a member of the Bar in the performance of activity that constitutes the unauthorized practice of law. Further, such MDP arrangements arguably violate RPC 1.5 on the splitting of fees; potentially RPC 1.6 on confidentiality, if client information is shared with nonlawyers in the same firm who are not protected by the attorney-client privilege; and RPC 1.7 and 1.8, regarding conflicts of interest. A classic example may be that of an accountant in an auditing capacity having a duty to disclose client information, while a lawyer has an absolute duty not to do so. Note that multidisciplinary practices are already a reality and the lawyers engaged in them are subject to discipline under the current rules, with the entities involved exposed to prosecution for unauthorized practice of law.

The proposal before the ABA is to change the Model ABA Rules of Professional Conduct to allow multidisciplinary practices in some form. The ABA commission on this issue brought the proposal before the House of Delegates last summer, where it was rejected. The commission amended the proposal to limit multidisciplinary practices to firms controlled by lawyers, and provide other safeguards to preserve the core values of the legal profession — independence, confidentiality, the avoidance of conflicts of interest, and pro bono public service.

Who cares, and what's driving this issue? The advocates are primarily the "big five" accounting and consulting firms that employ thousands of lawyers and do business on a global basis. They are potentially subject to these rules only in the United States. Another advocate, perhaps more important, are the law firms that are challenged by competition and wish either a loosening of the rules to allow them to form competitive multi-disci-

plinary practices, or a stringent enforcement of the law to stamp out the MDP competition. The big five accounting firms want new markets, including attorney services. The big law firms are threatened by this global competition. Supposedly, consumers want one-stop shopping for bundled services provided by a multiplicity of disciplines, but this is an undocumented advocacy.

Given that 65 percent of the nation's lawyers practice solo or in firms of fewer than five lawyers, do we really care about this competitive power struggle for international business between the mega accounting, consulting and law firms? Or is this just the tip of the iceberg in a global economy, in an increasingly complex and multidisciplinary professional world in the Internet-access information age?

Can you envision the real estate department of your local bank branch offering an attorney, loan officer and real estate agent for one-stop real estate transactions? Can you imagine the family problems center that offers one-stop, full-service, family dispute resolution through counselors, facilitators, mediators, lawyers, child psychologists and domestic tax advisors? How about the injury recovery center providing lawyers, adjusters, counselors, rehabilitation specialists, vocational counseling, financial planning, and structured settlement services all at the same address as the ambulance company next to the hospital? Could we have the family death-planning practice that employs certified estate planner paralegals, accounting experts on death, gift and inheritance taxes, a probate lawyer, life insurance purveyors, undertakers, funeral directors, cemetery plots and headstone engravers at your local mall? Farfetched? How about any or all of this available from anywhere on the Internet? This is completely imaginable for a service sector business in the post-industrial, information-based, global economy.

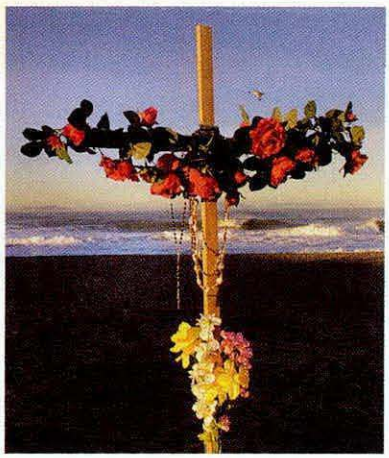
The multiplicity of related issues is staggering: multijurisdictional practice and reciprocity, the unauthorized practice of law, the definition of the practice of law, the provision of affordable access to justice, and the collision of state jurisdictions and rules with the potential preemption of federal treaties like NAFTA, GATT and the WTO. The issue has the potential of affecting each and every one of us in the profession.

Is this a good thing or a bad thing? Allowing MDPs can be seen as a good thing, allowing lawyers to compete by joining up with other disciplines to provide full service to clients in a global economy and one-stop shopping to consumers that keeps up with technology. It would allow lawyers to join forces and compete with nonlawyers who provide legal services in violation of the unauthorized practice of law rules that we seem unwilling or unable to enforce. It may provide opportunities for access to justice by providing more affordable, simpler, accessible legal services through vast utilization of nonlawyers and technology in the delivery of those services. On the other hand, lawyers are a unique profession — officers of the court, guaranteed in the Constitution as an arm of a separate branch of government. The independence of lawyers and the adherence to those core ethical values of independence, confidentiality and conflict of interest must not be compromised or diluted in a constitutional democracy. Lawyers have a fiduciary duty to clients and the public under the rule of law that is different than any other profession with which they might join forces. For lawyers, it is not all about the money. The core ethical values are essential. Can they be retained without compromise in a multidisciplinary practice?

Goal XI of the ABA Mission Statement is "to preserve the independence of the legal profession and the judiciary as fundamental to a free society." It is the essence of the separation of powers doctrine. In theory, no democracy can survive unless someone stands between the individual and the abuse of authority, whether it be corporate or governmental.

Lawyers are fiduciaries of the law first, charged to preserve the rule of law and the public interest. Goal XI of the ABA Mission Statement is "to preserve the independence of the legal profession and the judiciary as fundamental to a free society." It is the essence of the separation of powers doctrine. In theory, no democracy can survive unless someone stands between the individual and the abuse of authority, whether it be corporate or governmental. Lawyers and judges have stepped forward in times of crisis to preserve individual rights, equal protection and the rule of law. Can that independence and client loyalty survive when blended with a business unit where nonlawyers or even shareholders hold the purse strings? Why not? Can we segregate transactional legal services from court representation and preserve the latter solely for attorneys? Do we have the resources and the will to prosecute unauthorized practice of law or grant a variety of limited practice licenses and regulate them? Are there less restrictive ways of preserving the core values that would allow us to better serve the public by eliminating undue limitations on the settings in which lawyers may practice? Will such devices preserve the professional integrity and independence that give real value to legal advice? Can we still afford the patchwork of state-by-state regulation where lawyers and nonlawyers provide legal services in multiple jurisdictions all over the world, all at the same time, with the aid of the new information technology that blurs physical boundaries? Should the Bar have rules it is not ready, willing and able to enforce and is not, in reality, actually enforcing?

Times have changed, and so must the delivery of legal services. The question is, what is truly in the public interest, and what will we do about it? The debate on national and international levels has already begun. What will we in Washington have to say about it? And what do you want your Bar Association to do, if anything? The WSBA is forming a discussion group and will have a point-counterpoint workshop at Celebration 2000 in September. To participate in this group, please contact Jan Michels at oed@wsba.org, or the Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.



by Robert F. Hedrick

Flight 261 Update: The DOHSA Conundrum

Unique Aviation Claims Tend to Linger On

Airline accidents are unique human disasters in a class of their own. They can occur at any time, at any place, and be the result of many different remote factors, all of which strangely come together at the same time. In many major aviation accidents, the liability and/or damage issues do not fall squarely within developed law. When that occurs, the legal warriors from each side enter the litigation trenches to do battle.

Unfortunately, for many family members the great battle means waiting, sometimes 10 to 15 years or more, before they receive any money. How can that be? Case in point: the 1983 KAL 007 downing over the Sea of Japan. Litigation arising out of that accident has been before the Federal Court of Appeals on at least 10 occasions, with two decisions going all the way to the U.S. Supreme Court in 1996 and 1998.[1] Both decisions relate to efforts to limit damage recovery under the Death on the High Seas Act (DOHSA).

In the meantime, the surviving sons and daughters, who may have been children at the time of the accident, are now grown up. After burying their loved ones, they were raised without one or both parents, went to grade school, high school and likely to college, all without a dime of compensation from the culpable defendants. Over the years, the money at issue gained strong investment earnings for the holder.

A similar scenario played out with regard to the 1988 Pan Am Flight 103 crash over Lockerbie, Scotland. Once the liability round was over, the bell rang for the second round, where a plethora of damage issues were tossed into the ring of dispute. The same fight is occurring in the TWA 800 litigation, where there are issues involving DOHSA and the retroactive effect of new DOHSA amendments, which may cause that case to drag on in the courts for many years. Since the aftermath of Flight 261 may lead to similar disputes over damages, it too could be caught in the dark web of legal jostling and judicial delay.

Can aviation disaster claims be streamlined? It is interesting to note that insurance costs to airlines appear very low, typically averaging 0.3 to 0.5 percent of total operating costs.[2] Even though airlines can be very cost sensitive, a minute change across the industry might help alleviate these significant delay problems.[3] Believe it or not, in the aviation accident arena, the tortoise judicial system becomes a hare when compared to congressional response. (That is a topic for another day.)

What's New with DOHSA?

Since the time the original Flight 261 article went to press for the April issue of *Bar News*, there have been some significant developments regarding DOHSA. It appears that DOHSA,[4] which contains serious limitations on recoverable damages, will probably not apply to Flight 261 for a number of reasons. However, depending on how the case unfolds, the final word on DOHSA may not come for some time, and perhaps not until the battle dust settles.

First, the location where Flight 261 crashed into the Pacific Ocean has been reported at less than three miles off the coast of Anacapa Island, one of the California Channel Islands. If so, that location is outside the scope of DOHSA coverage, which, by its original language, begins beyond three nautical miles from shore. However, the exact location may be too close to call at this time.

Second, on April 5, 2000, President Clinton signed the Aviation Investment and Reform Act for the 21st Century (AIR-21).[5] It contains a provision that precludes DOHSA application to "commercial aviation accidents" occurring within 12 nautical miles of the U.S. shore. Importantly, the DOHSA provision applies retroactively to July 17, 1996, in order to cover claims arising from the TWA 800 accident. The retroactive effect is also needed to cover Flight 261 claims, because that accident occurred more than two months before AIR-21 was signed into law.

Last, on March 29, 2000, the 2nd Circuit (in a 2-1 decision) held that Presidential Proclamation 5928,[6] extending the territorial sea from three miles to 12 miles, also acted to shift the boundary where DOHSA begins to apply to 12 miles.[7] Since TWA 800 crashed into the Atlantic Ocean eight miles from Long Island, DOHSA's restricted damage remedies were held not to apply.

Despite AIR-21 and the 2nd Circuit decision, the DOHSA issue is not yet laid to rest in the TWA 800 litigation. Boeing has petitioned for a rehearing, and for a rehearing en banc. In addition to the merits of the issue involving DOHSA application and Proclamation 5928, another issue involving the constitutionality of the retroactive provision of AIR-21 will be raised once the case is remanded back to the district court in the first instance.[8] The curve ball that AIR-21 throws into the equation may warrant further appellate review in light of the retroactive provision, the alleged confusion of congressional intent behind DOHSA (and as amended by AIR-21), and the alleged inconsistent treatment by the 2nd Circuit. Unless Flight 261 crashed within three nautical miles of shore, the resolution of the DOHSA issue in the TWA 800 litigation will likely have legal ramifications for Flight 261 claims.

Another related issue is the effect of the 2nd Circuit's decision on non-aviation claims. Though decided in the aviation context, and unlike AIR-21, the TWA 800 decision also applies to non-aviation accidents occurring within 12 miles of shore. Therefore, maritime deaths (and non-commercial aviation deaths) occurring from three to 12 nautical miles are no longer governed by DOHSA, but are now covered under general maritime law and/or state tort law. However, the effect of the decision is inconsistent with AIR-21, because the 106th Congress apparently treated the DOHSA boundary at three miles, and did not extend it to 12 miles via Proclamation 5928. This inconsistency will someday be resolved in the courts.

Two other provisions of the DOHSA portion of AIR-21 are worth mentioning. First, the law does not define "commercial aviation," of which the amendments only apply. There is no dispute that the term includes regularly scheduled commercial airline flights. However, there are many other types of flying activity where the lack of definition will cause uncertainty and future legal dispute.[9] All we know for certain is that the pre-AIR-21 law (and the 2nd Circuit decision) will apply to non-commercial aviation accidents occurring between three to12 miles from shore.

Second, there is a supplemental damage provision for commercial aviation accidents covered by DOHSA. If the accident occurs beyond 12 miles, family members can now recover one type of non-pecuniary damage, which is "loss of care, comfort and companionship." Obviously this does not include other non-pecuniary damages such as survivors' grief and anguish, and passenger pre-death pain and suffering. Punitive damages are expressly excluded.

...maritime deaths (and non-commercial aviation deaths) occurring from three to 12 nautical miles are no longer governed by DOHSA, but are now covered under general maritime law and/or state tort law.

Conclusion

The reason that the damage issue is so highly contested is the amount of money involved. As pointed out in the April article [*Bar News*, p. 21], DOHSA could make the difference of whether or not approximately 60 percent of total damages are recoverable. That amount, and its inherent investment value, makes it cost effective to wage battle from the defendants' perspective. Though the liability mystery is nearly solved, issues surrounding compensation are lining up to linger on.

Mr. Hedrick is an attorney with The Hedrick Law Firm in Seattle, where he practices aviation law and product liability. He can be reached via e-mail at hedrick@air-law.com or by phone at 206-892-2252.

See next page for endnotes.

NOTES

1 *See* Zicherman v. Korean Air Lines, Inc., 516 U.S. 217 (1996); and Dooley v. Korean Air Lines, Inc., 524 U.S. 116 (1998).

2 P. Chrystal, *Warsaw Requiem or Unfinished Symphony? Specific Aspect of the New-Law Making: The View of the Reinsurer*, XXII-I Annals of Air & Space Law 131 (1997) (citing Swiss Reinsurance Company, Economic Research Department, *High Volatility in Aviation Insurance: Are Premium Rates Due for a Nosedive?*, Sigma No.1/1996 (Zurich: Swiss Reinsurance Company, 1996). The author notes that 0.3 to 0.5 percent is a minute fraction compared to what he pays for car insurance, which is about 25 percent of the total operating cost.

3 On the international level, there has been some talk and movement in favor of payment of early front money. Under this approach, airlines would pay a lump sum shortly after the accident to assist family members. That amount would then be considered in any subsequent settlement, or offset from final judgment.

4 46 U.S.C. sec. 760 et seq.

5 H.R. 1000, 106th Cong. (2000) (enacted), sec. 404; Pub. L No. 106-181 (signed by President Clinton on April 5, 2000).

6 16 Presidential Proclamation 5928, 54 Fed. Reg. 777 (Dec. 27, 1988).

7 In Re: Air Crash Off Long Island, New York, on July 17, 1986, 2000, U.S. App. Lexis 5637 (2d Cir., March 29, 2000).

8 With regard to the constitutionality issue, Article 1, Clause 10 of the U.S. Constitution provides that: "No State Shall...pass any...law impairing the obligation of contracts..." The contract clause has been held to apply to the federal government via the Fifth Amendment's due process clause. *See generally* Lynch v. U.S., 292 U.S. 571 (1934). It applies to both government contracts (United Trust v. New Jersey, 431 U.S. 1 (1977)), and private contracts (Allied Structural Steel v. Spannaus, 438 U.S. 234 (1978)).

The contracts that could be impaired are: (1) the insurance policy between the airline and its insurer, (2) the contract between the airline and passengers, and (3) agreements relating to the manufacturer (indemnity and/or insurance contracts).

The risks related to these contracts involve the application of DOHSA (with its restrictive remedies), which are much less than under general maritime law or state tort law. Therefore, a retroactive change in these risks arguably subjects the defendants to greater exposure. However, the application of DOHSA to aircraft accidents occurring on the high seas was only recently confirmed in Zicherman v. Korean Air Lines, Inc., 516 U.S. 217 (1996), and considered the exclusive remedy in Dooley v. Korean Air Lines, Inc., 524 U.S. 116 (1998). This suggests that since the law was not well established before these cases, there was no essential difference in the risks underlying the contracts. *See* Energy Reserves Group, Inc. v. Kansas Power and Light Co., 459 U.S. 400 (1983) (where the court set out the threshold elements for violation of the contract clause).

Another argument in favor of constitutionality despite retroactive effect might be that the law is a "curative statute." When congressional intent is thwarted by unforeseen judicial decision, and Congress acts to clarify its intent with retroactive application, the law may be constitutional as a curative statute. In Anderson v. Mt. Clemens Potter Co., 320 U.S. 680 (1946), the Fair Labor Standards Act was interpreted by the U.S. Supreme Court in an unforeseen way, allowing potentially huge overtime wage claims. In response, Congress passed an act that precluded the miners' right to sue. All constitutional challenges to the retroactive effect of the act were lost because the act restored the original congressional intent, and was thus curative. *See, e.g.,* Battaglia v. General Motors Corp., 169 F.2d 254 (2nd Cir. 1948), *cert. denied*, 335 U.S. 887.

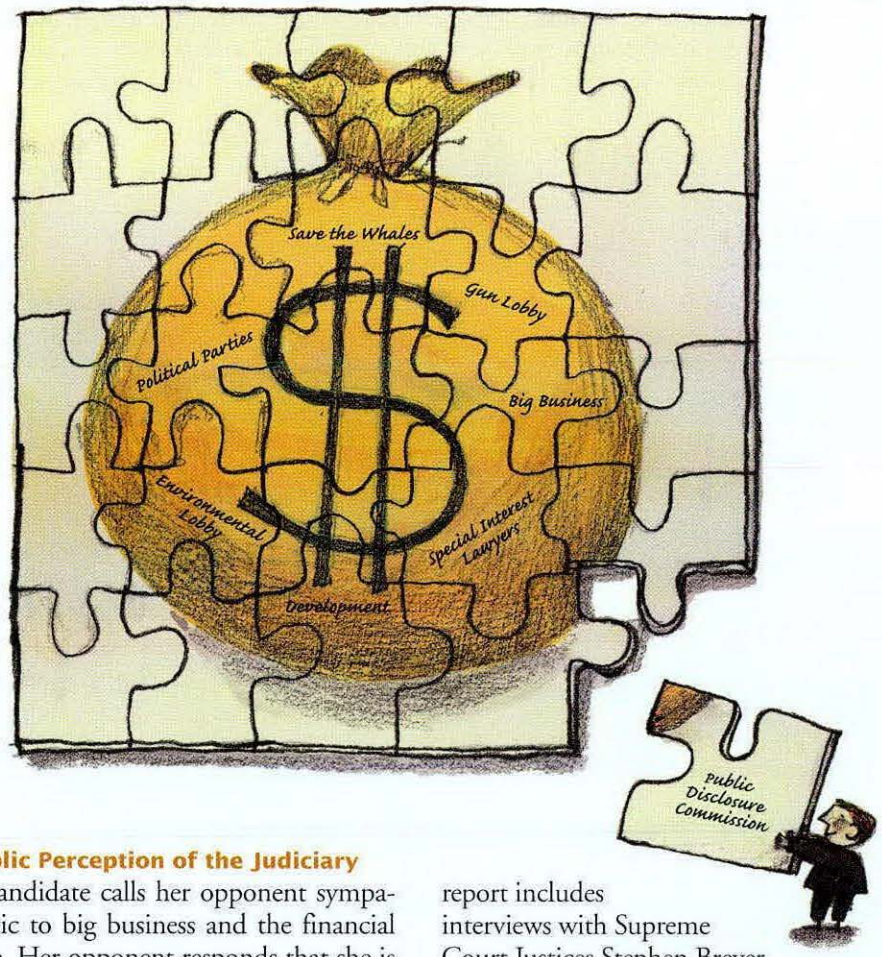
9 For example, helicopter flights to offshore oil platforms, sightseeing flights, charter flights, commercial fishing flight operations and flight instruction.

Futures Trading in Judicial Elections

David B. Koch

"The greatest scourge an angry heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent Judiciary."[1]
John Marshall (1830)

"Money in elections presents us with a tremendous challenge, a tremendous problem, and we are remiss if we do not at once address it and correct it."[2]
Anthony Kennedy (1999)



Public Perception of the Judiciary

A candidate calls her opponent sympathetic to big business and the financial elite. Her opponent responds that she is nothing more than a mouthpiece for trial lawyers, citing numerous financial contributions from the plaintiff's bar. A scene from a hotly contested legislative race? No. Sound bites from a contentious gubernatorial contest? Guess again.

Unfortunately, this may be a preview of things to come in Washington judicial elections. Across the country and in our state, there is concern about the process by which judges are selected and the influence of campaign contributions on an independent and fair judiciary. In November 1999, PBS's investigative show *Frontline* addressed the adverse effects of campaign cash on America's courts in an hour-long report entitled "Justice for Sale." The report includes interviews with Supreme Court Justices Stephen Breyer and Anthony Kennedy, both of whom lament the effect of campaign contributions on the public's perception of judicial integrity.[3]

Indeed, a recent study reveals that while the public generally respects judges, there remains significant concern that campaign money influences judicial decision-making. In 1999, Washington's Office of the Administrator for the Courts commissioned a study to gauge public perception of state and local courts. Five hundred (500) randomly selected Washingtonians were questioned on subjects including fairness, independence and accountability. The results were compared with a larger 1999 national survey.[4]

Public perception of the courts is good, but not outstanding. When asked if "judges are generally honest and fair in deciding cases," 76 percent of the national respondents answered in the affirmative. In the Washington survey, that number was 73 percent. But more precise questions revealed troubling attitudes. Sixty-two (62) percent of those surveyed nationally and 59 percent of those surveyed in Washington agree that "when a person sues a corporation, the courts generally favor the corporation." Moreover, 78 percent of the national survey participants agree that "judges' decisions are influenced by political decisions" and 70 percent agree that "elected judges are influenced by having to raise campaign funds." In Washington, those numbers are 76 and 66 percent, respectively — not exactly a shining endorsement of the current system.

Some are proposing drastic change — providing state-managed funding to those candidates rated "qualified" by a commission, and imposing term limits.[5] The American Bar Association suggests that judicial candidates be removed from the electoral process and appointed based on "merit selection,"[6] described as:

> a process by which a nominating commission, consisting of lawyers, non-lawyers, and sometimes judges, recruits, investigates, interviews, and evaluates applicants for judicial office. The nominating committee sends a short list of those deemed most qualified to an appointing authority, usually the governor, who is then required to make his or her selection from that list.[7]

Radical reform isn't neccessarily required. Changes can be made without sacrificing the right of Washington's citizens to elect their judges. But changes *must* be made, or we risk a further loss of confidence in what has accurately been described as the cornerstone of the rule of law — an independent and fair judiciary.[8]

Why All the Fuss?

One need only glance at the newspaper headlines to understand that many are troubled by campaign finance. The perception is that money can buy a sympathetic ear. Many are nonetheless willing to live with the current system because, after all, when we support a president, legislator or governor, we do so because they share our views. We don't hand them a check and our vote because we expect neutrality on the issues. We demand partisanship.

But the judiciary is different. It has a special role, recognized in the preamble to Washington's Code of Judicial Conduct (CJC):

> Our legal system is based on the principle that an independent, fair and competent judiciary will interpret and apply the laws that govern us. The role of the judiciary is central to American concepts of justice and the rule of law. Intrinsic to all sections of this Code are the precepts that judges, individually and collectively, must respect and honor the judicial office as a public trust and strive to enhance and maintain confidence in our legal system. The judge is an arbiter of facts and law for the resolution of disputes and a highly visible symbol of government under the rule of law.

In the words of Supreme Court Justice Stephen Breyer, the public's belief that campaign contributions influence judicial

...changes must be made, or we risk a further loss of confidence in what has accurately been described as the cornerstone of the rule of law — an independent and fair judiciary.[8]

decisions "threatens the institution of the judiciary. To threaten the institution is to threaten the administration of justice and the protection of liberty."[9]

Yet, despite the judiciary's unique role in the concept of justice, judicial elections have the flavor of their executive and legislative counterparts. Part of this is inherent in the election process: candidates need to raise funds to educate the public on their credentials. But the manner in which contributions are accepted in Washington may be contributing to public skepticism.

Washington's CJC attempts to mitigate the appearance of judicial favor by insulating candidates from financial sources. Candidates, including incumbent judges, for a judicial office that is filled by public election between competing candidates cannot personally solicit or accept campaign contributions. They may establish committees of responsible persons to secure and manage campaign funds and to obtain public statements of support. Such committees may solicit campaign contributions and public support from lawyers and others. Candidates must comply with all laws requiring public disclosure of campaign finances, which may require knowledge of campaign contributions. When an unsolicited contribution is delivered directly to the candidate, receipt and prompt delivery of the contribution to the appropriate campaign official is not prohibited.[10]

While the candidate is prohibited from directly soliciting financial support, the CJC does not prevent candidates from learning the source and amount of campaign contributions. Nor does the Washington Public Disclosure Act (Act),[11]

which contains specific campaign reporting requirements. The Act's purpose is to assure the public of integrity, honesty and fairness in elected officials.[12] The problem, however, is that it treats judicial candidates just like candidates for any other office, and fails to acknowledge the judiciary's special role.

Rather than shield judicial candidates from the source of donations, the Act permits full knowledge. Mandatory contribution reports, filed with the Public Disclosure Commission, must include "[t]he name and address of each person who has made one or more contributions during the [reporting] period, together with the money value and date of such contributions and the aggregate value of all contributions received from each such person during the campaign...."[13] The campaign must have a treasurer, but the candidate is not prohibited from serving in that capacity.[14] The candidate may maintain records of contributions.[15] Moreover, both the treasurer and the candidate (assuming they are not one and the same) must certify that certain reports are correct.[16]

If nothing else, the system breeds an appearance of impropriety, as damaging to the rule of law as actual misconduct. Under the CJC, "Judges should not allow family, social, or other relationships to influence their judicial conduct or judgment...nor should judges convey or permit others to convey the impression that they are in a special position to influence them."[17] The current record-keeping and reporting provisions violate the spirit, if not the letter, of this prohibition.

It is hardly surprising that to 70 percent of Washingtonians, the judicial campaign resembles the futures market. Like the futures trader who speculates today on the price of March soybeans, some campaign contributors forecast future litigation and bet on a pay-off.

Supporters of the current scheme may argue that disqualification standards mitigate any appearance of impropriety. "Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned."[18] This may suffice in some instances where a known campaign contributor is also a party in the proceeding. But in many cases, the contributor is not a party, but a person or group with implicated interests — for example, the business community,

Mothers Against Drunk Driving or the Sierra Club. Where the court is presented with an issue of importance to a non-party contributor, the judge's impartiality is still open to question. Yet, the CJC would not require recusal.[19]

Nor would contribution limits solve the problem. Last year, the ABA amended its Model Code of Judicial Conduct to include a contribution limitation measure. The new provision provides:

> A candidate shall instruct his or her campaign committee(s) at the start of the campaign not to accept campaign contributions for any election that exceed, in the aggregate, $[] from an individual or $[] from an entity.[20]

Each jurisdiction is left to set its own contribution cap.

This provision suffers the same deficiency found in other limitation provisions. It would not prevent a political action committee or anyone else from mobilizing individuals to submit contributions for a common cause — whether restoration of salmon habitat, health care reform or business tax reductions. And it would not prevent these individual contributions from being bundled and presented to the campaign with the candidate's full knowledge. The technically separate contributions can have a shared impact on the candidate. Or so it may appear.

What's the Solution?

In any state where judges are elected, there will remain those who question the integrity and independence of the judiciary. That is not unique to the electoral system; judicial appointments raise similar allegations that judges are beholden to those who appoint them. There are changes we can implement, however, to reduce public skepticism and the potential influence of campaign money.

Judicial candidates should be truly insulated from the source of financial contributions. The committee system, where individuals solicit and receive contributions on behalf of candidates, should remain. But only committee members, and not candidates, should know the source of those contributions.

When the ABA adopted the 1972 Model Code, upon which Washington's CJC is based, the ABA specifically envisioned shielding the identity of contributors from judicial candidates.[21] Ironically, in recognizing the benefit of such a rule, the ABA looked to Washington state. The notes to the 1972 Code state that non-disclosure "has worked effectively in the state of Washington."[22]

Washington should return to its former practice. An amendment to Canon 7 of the CJC, with additional amendments to the Public Disclosure Act, would accomplish this goal. Colorado is a model. Its Code of Judicial Conduct provides:

> (d) any [authorized] committee...may raise funds for the judge's campaign, but the judge should not solicit funds personally or accept any funds...; and, (e) the judge should not be advised of the source of funds raised by the committees.[23]

Washington's CJC should contain similar language, and the Disclosure Act should prohibit judicial candidates from serving as treasurer and require that only the treasurer maintain records and certify the accuracy of campaign reports.

As a concomitant feature, this system

More than half of Washington's ci judicially favored over the individu are affected by political decision judges are influenced by t

of "anonymous" donations will decrease contributions from those seeking to hedge their bets and may level the financial playing field to some degree for those unable to compete with such contributions. Of course, in a system of elected judges, the reality will remain — some qualified judicial candidates will always have vastly more financial support than other qualified candidates. But this system's greatest benefit lies in its effect on public perception. Anonymous contributions will help allay fears that judges have been purchased with big money from those with business before the court.

Conclusion

The problem is serious and change is needed. More than half of Washington citizens suspect that corporations are judicially favored over the individual, three-quarters believe that judges are affected by political decisions, and two-thirds think that elected judges are influenced by the need for campaign funds. The current system must be modified. We can ill afford this degree of skepticism surrounding judicial independence, the cornerstone of the rule of law. That is something we can all bet on.

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NOTES

1 *Proceedings and Debates of the Virginia State Convention of 1829-30* at 616 (1830).

2 *Frontline: Justice for Sale* (PBS television broadcast, November 23, 1999).

3 For a videotape of the program, discussions regarding judicial campaign finance, and links to related websites, go to www.pbs.org/wgbh/pages/frontline/shows/justice.

zens suspect that corporations are
l, three-quarters believe that judges
and two-thirds think that elected
e need for campaign funds.

4 *How the Public Views the Courts; A 1999 Washington Statewide Survey Compared to a 1999 National Survey*. GMA Research Corporation, Bellevue, Washington. Survey results can be viewed at http://www.courts.wa.gov/survey.htm.
5 *See Reforming State Supreme Court Elections*, by Todd DeGroff, *Bar News*, March 1999.
6 *American Bar Association Report to the House of Delegates*, from Ad Hoc Committee on Judicial Campaign Finance, Standing Committee on Ethics and Professional Responsibility, ABA Judicial Division, and ABA Special Committee on Judicial Independence, at 1 (1999) (reaffirming the ABA's commitment to merit selection of judges).
7 Jona Goldschmidt, *Merit Selection: Current Status, Procedures and Issues*, 49 U. Miami. L. Rev., 1, 2 (1994).
8 *See* State v. Hansen, 122 Wn.2d 712, 723, 862 P.2d 117 (1993) (Utter, J. dissenting).
9 *Frontline: Justice for Sale* (PBS television broadcast, November 23, 1999).
10 Code of Judicial Conduct, Canon 7(B)(2).
11 RCW Chapter 42.17.
12 RCW 42.17.010.
13 RCW 42.17.090(1)(b); *see also* RCW 42.17.105 (requiring special reports during a defined period preceding primaries and general elections).
14 RCW 42.17.050(1)(a).
15 RCW 42.17.080(4).
16 RCW 42.17.080(6).
17 Code of Judicial Conduct, Canon 2(B).
18 Code of Judicial Conduct, Canon 3(D). The test for disqualification is an objective one and assumes that "a reasonable person knows and understands all the relevant facts." Sherman v. State, 128 Wn.2d 164, 206, 905 P.2d 355 (1995). Although the canon uses "should," it is treated as mandatory. *See* State v. Carlson, 66 Wn. App. 909, 918, 833 P.2d 463 (1992), *review denied*, 120 Wn.2d 1022 (1993).
19 *See* Carlson, 66 Wn. App. at 917-18 (finding that campaign relationships are not within the purview of the disqualification provisions).
20 ABA Model Code of Judicial Conduct, Canon 5(C)(3) (1990 & supp. 1999). *See* Carlson, 66 Wn. App. at 917-18 (finding that campaign relationships are not within the purview of the disqualification provisions).
21 Commentary to Canon 7(B)(2), 1972 Model Code of Judicial Conduct ("Unless the candidate is required by law to file a list of his campaign contributors, their names should not be revealed to the candidate.")
22 E. Wayne Thode, *Reporter's Notes to Code of Judicial Conduct 99* (1973).
23 Colorado Court Rules, Code of Judicial Conduct, Canon 7(B)(2)(e) at 331 (West 2000).

New Legislation of Interest to Attorneys

by Senator Michael Heavey
Chair, Senate Judiciary Committee
and
Senator Stephen L. Johnson
Member, Senate Judiciary Committee
Republican Floor Leader

The Senate Judiciary Committee produced an eclectic and significant array of bills during the 2000 legislative session that will certainly be of interest to members of the Bar. The bills deal with criminal law, family law, domestic violence, corporations and business law, civil law, and other court-related issues.

We worked with the co-chairs of the House Judiciary Committee, Representatives Dow Constantine and Mike Carrell, and with the co-chairs of the House Criminal Justice and Corrections Committee, Representatives Ida Ballisiotes and Al O'Brien. With their input, the legislation that resulted is well-considered and timely.

This article covers Bar-related legislation considered by the Senate Judiciary Committee. Since the Senate Judiciary Committee is one of 14 Senate committees, you may wish to peruse the legislative website (http://www.leg.wa.gov) for details about other bills or to obtain more specific information about the bills described below. In addition, the Senate Judiciary staff can be contacted at 360-786-7462, or by writing to PO Box 40466, Olympia, WA 98504-0466.

As in past years, a full description of all bills that passed the 2000 legislature can be obtained by ordering the 2000 Final Legislative Report. This report will be available for approximately $10 (the price in previous years) by calling the bill room at 360-786-7573, or by writing to PO Box 40482, Olympia, WA 98504-0482.

CRIMINAL LAW

ESHB 2337: Ordering implementation of a statewide city and county jail booking and reporting system
Prime Sponsor: Representative Ballasiotes (similar bill: SB 6390, Senator Goings)

- The Washington Association of Sheriffs and Police Chiefs (WASPC) will implement and operate a statewide central booking and reporting system by December 31, 2001.
- The system will be placed on the Washington Judicial Information Network and will be capable of communicating electronically with city and county jails and Washington criminal justice agencies.
- The WASPC will be responsible for pursuing federal funding for the system.

EHB 2340: Providing for removal of offenders from the drug offender sentencing alternative who are subject to a deportation order
Prime Sponsor: Representative O'Brien (similar bill: SB 6222, Senator Costa)

- Offenders may be administratively terminated from the Drug Offender Sentencing Alternative (DOSA) program if it is determined after sentencing that they are subject to a deportation order.
- All offenders terminated from the DOSA program serve the remaining balance of the original sentence, as well as a period of community custody.

SHB 2345: Requiring the secretary of DSHS to adopt rules for oversight and operation of the sexually violent predator program
Prime Sponsor: Representative O'Brien (similar bill: SB 6207, Senator Hargrove)

- Grants the secretary of the Department of Social and Health Services specific rule-making authority for the special commitment center for sexually violent predators.

EHB 2424: Changing provisions to comply with federal standards for monitoring sex offenders
Prime Sponsor: Representative Ballasiotes (similar bill: SB 6308, Senator Hargrove)

- Responds to federal sex offender registration requirements by requiring quarterly address verification for sexually violent predators, requiring out-of-state registration within 10 days, and prohibiting courts to relieve specified sex offenders from the duty to register.

SHB 2491: Providing a procedure to conduct DNA testing of evidence for persons sentenced to death or life imprisonment
Prime Sponsor: Representative Schindler (similar bill: SB 6498, Senator McCaslin)

- Persons who have been sentenced to life imprisonment or death may make a post-conviction request for DNA testing to the county prosecutor. The person has a right of appeal with the Attorney General's office.
- A prosecutor may file a criminal charge against a person iden-

tified by a genetic code, rather than by the individual's name.

HB 2612: Clarifying when a defendant must appear
Prime Sponsor: Representative McDonald (similar bill: SB 6648, Senator Heavey)
- Language in the law requiring prompt court appearance in DUI cases is clarified.
- Every person charged with DUI who is served with a citation or complaint at the time of arrest must appear before a judicial officer within one judicial day after the arrest.
- Every person who is charged with DUI but who is not served with a citation or complaint at the time of the incident must appear within 14 days after the next day on which court is in session following issuance of the citation.

SSB 6182: Specifying the effect that changes in law will have on sentencing provisions
Prime Sponsor: Senator McCaslin
- Any sentence imposed under the Sentencing Reform Act will be determined using the law in effect when the current offense was committed.

SB 6223: Reorganizing sentencing provisions
Prime Sponsor: Senator Hargrove
- The primary determinate sentencing statute will be divided into 42 separate sections.
- No provision makes a substantive change to the Sentencing Reform Act.
- It is clarified that persistent offenders are not eligible for extraordinary medical placement.

SSB 6244: Extending juvenile court jurisdiction for the purpose of enforcing penalty assessments
Prime Sponsor: Senator Costa
- Extends the length of court jurisdiction over a juvenile ordered to pay a victim penalty assessment.

The following provision from SB 6246 was incorporated into SSB 6244:
- The triggering event for assessment of the victim penalty assessment is the date of the person's conviction.

SSB 6255: Prescribing penalties for unlawful possession and storage of anhydrous ammonia
Prime Sponsor: Senator Rasmussen (similar bill: HB 2746, Representative Schoesler)
- Theft of anhydrous ammonia will be made a class-C felony, ranked at level VIII on the sentencing grid.
- Storage of anhydrous ammonia in unapproved containers will be made a class-C felony, ranked at level VI on the sentencing grid. Approved containers include those constructed to meet standards determined by federal Department of Transportation or other state and federal industrial health and safety standards. Persons authorized under state law to clean up and dispose of hazardous waste are exempted from the unlawful storage provisions.
- Possession of anhydrous ammonia with intent to manufacture methamphetamine will be made a class-B felony, ranked at level VIII on the sentencing grid.
- Persons who unlawfully possess or store anhydrous ammonia are solely responsible for any damage they cause. Lawful manufacturers, sellers, possessors and users are liable only for damages caused by negligent misconduct.

SSB 6260: Increasing penalties for manufacturing a controlled substance when children are present
Prime Sponsor: Senator Rasmussen
- A person convicted of manufacturing methamphetamine, or possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine, will receive a 24-month sentence enhancement in addition to the standard sentence if the underlying crime was committed when a person under the age of 18 was present in or upon the premises.
- The prosecutor must plead the special allegation and prove it beyond a reasonable doubt.

SSB 6336: Eliminating retroactive tolling provisions for restitution/legal financial obligations and allowing tolling for other forms of supervision
Prime Sponsor: Senator Hargrove (similar bill: HB 2511, Representative Ballasiotes)
- Restores community supervision and community placement to the self-executing language of the tolling provision.
- Offenders who commit crimes after July 1, 2000 are under court jurisdiction for their legal financial obligations until the obligations are completely satisfied.
- A child support legal financial obliga-

tion for any child born as the result of a child rape is enforceable for either the civil or the criminal enforcement period, whichever ends later.

SSB 6459: Prohibiting the use of identifying information to solicit undesired mail
Prime Sponsor: Senator Bauer
- It is a misdemeanor to knowingly use identifying information of another person to solicit undesired mail directed to that person.

SSB 6621: Creating a task force to study the interstate compact for adult offender supervision
Prime Sponsor: Senator Costa
- Creates a task force with broad representation to examine whether adoption of the revised Interstate Compact on Adult Offender Supervision is in the best interests of the state.

SB 6741: Adding the secretary of corrections to the organized crime advisory board
Prime Sponsor: Senator Horn
- The secretary of the Department of Corrections will be added to the membership of Washington's Organized Crime Advisory Board.

ESSB 6761: Authorizing agreements for the operation of correctional facilities and programs in any other state
Prime Sponsor: Senator Hargrove (similar bill: HB 2963, Representative Ballasiotes)
- The Department of Corrections (DOC) may transfer offenders out of state to both governmental and private facilities and contract with those facilities to house offenders when a transfer is in the best interest of the state or the offender.
- The DOC must notify registered victims who are affected by an offender's transfer to another state.

FAMILY LAW/DOMESTIC VIOLENCE

E2SHB 2588: Creating domestic violence fatality review panels
Prime Sponsor: Representative Tokuda (similar bill: SB 6421, Senator Costa)
- Subject to available funds, the Department of Social and Health Services (DSHS) will contract with an entity with expertise in domestic violence to coordinate regional domestic violence fatality review panels.
- Annual reports, with recommendations to improve the response to domestic violence and identify patterns in domestic violence fatalities, will be submitted to the Children and Family Services, and Criminal Justice and Corrections committees of the House and to the Human Services, Corrections and Judiciary committees of the Senate.

HB 2595: Authorizing entry of protection order information in the judicial information system
Prime Sponsor: Representative Ogden
- Foreign protection orders and orders for protection of vulnerable adults must be entered into the domestic violence database of the Judicial Information System.

ESHB 2884: Providing notice requirements for parents subject to court orders and standards regarding residential time or visitation
Prime Sponsor: Representative Constantine
- When the person with whom a child resides a majority of the time intends to change the residence of the child, notice must be given to those entitled to visitation or residential time with the child. There is a rebuttable presumption that the

intended relocation of the child will be permitted.

- A person who objects to the relocation of the child may rebut this presumption by showing that the detrimental effect of relocation outweighs the benefit of relocation to the child and to the relocating person based upon certain factors delineated in the act.

E2SSB 6400: Changing provisions relating to domestic violence
Prime Sponsor: Senator Wojahn (similar bill: HB 2402, Representative Ballasiotes)

- The Department of Social and Health Services (DSHS) will be authorized to seek orders for protection on behalf of, and with the consent of, vulnerable adults.
- Courts are authorized to order parties not to come within specified distances of locations in dissolution, paternity, nonparental actions for custody, and order for protection cases.
- Felony violations of domestic violence protection orders are assigned to a seriousness of level V on the sentencing grid.
- Felony violations of foreign protection orders are categorized as crimes against persons.

TRAFFIC/ALCOHOL

SHB 2776: Providing for deferred findings and collection of an administrative fee in an infraction case
Prime Sponsor: Representative Constantine (similar bill: HB 6651, Senator Heavey)

- In a hearing to contest a traffic infraction or in a hearing to explain mitigating circumstances, the court may defer its findings for up to one year and impose conditions on the person who allegedly committed the infraction.
- After the end of the deferral period, the court may dismiss the infraction if the person has met all the conditions and has not committed another traffic infraction.

SSB 6071: Increasing penalties for hit-and-run where an injury or death occurs
Prime Sponsor: Senator Rossi

- In the case of an accident resulting in death, the vehicle operator who does not remain at the scene to provide information and reasonable assistance will be guilty of a class B felony ranked at level VIII on the sentencing grid.
- Juveniles who commit the offense are guilty of a B+ offense.

E2SSB 6683: Reporting information on routine traffic enforcement
Prime Sponsor: Senator Franklin (similar bill: HB 2902, Representative Veloria)

- The Washington State Patrol will be required to collect data on all traffic stops, including the total number of stops; the race or ethnicity, age, and gender of individuals stopped; whether there was a search; and whether there was an arrest or citation issued. A report on this data must be made to the Legislature by December 1, 2000.
- A report concerning voluntary collection of racial profiling data by local law-enforcement agencies must be made to the Legislature by the Washington Association of Sheriffs and Police Chiefs by December 1, 2000.

CIVIL LAW

HB 2329: Changing descriptions in judgments involving real property
Prime Sponsor: Representative McDonald

- The description of real property on a judgment summary may be either an abbreviated legal description of the property or the assessor's tax parcel or account number.

EHB 2713: Regarding mandatory arbitration fees
Prime Sponsor: Representative Constantine (similar bill: SB 6515, Senator Heavey)
- A county legislative authority may impose a filing fee of up to $120 for a mandatory arbitration request. These fees are to be used solely for the mandatory arbitration program. If Initiative 695 is determined to apply, any such fee must be approved by a vote of the people.

SHB 2903: Authorizing sound recordings without prior consent that correspond to video recordings from cameras mounted in law-enforcement vehicles
Prime Sponsor: Representative Delvin
- The privacy act provisions do not apply to sound recordings made in conjunction and simultaneously with video images recorded by video cameras mounted in law-enforcement vehicles.
- The law-enforcement officer must inform the person when such a sound recording is being made except under exigent circumstances.
- These sound recordings may not be divulged by law-enforcement agencies prior to final disposition of court proceedings arising from the incident or for a commercial purpose.
- Wrongful alteration, erasure or disclosure is a gross misdemeanor.

SB 6190: Promoting expeditious resolution of public-use disputes in eminent domain proceedings
Prime Sponsor: Senator Patterson
- County eminent domain proceedings are given precedence over all other court cases except criminal cases.
- A legislative study group consisting of two members from each caucus of the Senate and the House of Representatives will be created for the purpose of studying the use of eminent domain and ways to expedite resolution of public-use disputes in eminent domain proceedings.

SSB 6194: Attempting to limit the incidents of rural garbage dumping
Prime Sponsor: Senator T. Sheldon (similar bill: HB 2586, Representative Haigh)
- Increases the penalty for rural garbage dumping from a civil infraction to a crime. Dumping between one cubic foot and one cubic yard will be a simple misdemeanor; a cubic yard or more will be a gross misdemeanor. Abandoning a junk vehicle in an unincorporated area will be a gross misdemeanor.
- Requires restitution of up to $100 per cubic foot or double the cleanup cost, whichever is greater.
- Restitution is split equally between landowner and law enforcement. First-time offenders can, at a judge's discretion, clean up garbage dumped instead of paying restitution.

DEBTOR/CREDITOR

EHB 2609: Allowing agents to give notice of dishonored checks
Prime Sponsor: Representative Carrell
- An agent, such as a collection agent hired to collect on a dishonored check, is entitled to obtain collection costs currently allowed under Uniform Commercial Code Article 3 (governing negotiable instruments).
- The state child-support registry may also collect such costs if a check is paid to the registry and the check is dishonored.

SSB 6186: Revising Article 9 of the Uniform Commercial Code
Prime Sponsor: Senator Heavey
- Washington's current version of the Uniform Commercial Code (UCC) Article 9, which deals with security interest in all property other than land, will be repealed and replaced with a revised UCC Article 9 which incorporates a number of significant changes.
- The scope of Article 9 will be expanded and a simplified system of filing financing statements will be provided.
- Effective Date: July 1, 2001.

ESSB 6295: Changing garnishment proceedings
Prime Sponsor: Senator Heavey
- Any legal fees charged to the plaintiff in a garnishment proceeding can be included in the amount garnished. Payments in superior court are made through the court clerk, while payments in district court are made directly to the plaintiff. A standardized Judgment and Order to Pay form is created.
- If a defendant or third party attempts to pay off a judgment during the pendency of a garnishment, the costs and attorney fees incurred in the garnishment must also be paid.

PROBATE

SB 6138: Modifying disclaimer of interests under the probate and trust laws
Prime Sponsor: Senator Johnson
- The Washington Probate Code will be amended to protect against an inadvertent waiver by a beneficiary of the right to disclaim any interest in property he or she would be entitled to receive under a will or other bequest or operation of law.

SB 6139: Modifying estate tax apportionment
Prime Sponsor: Senator Johnson
- References in the Washington estate tax apportionment statute to a repealed section of the Internal Revenue Code will be deleted and a provision will be added incorporating the Internal Revenue Code definition of "qualified family-owned business interest."

SB 6140: Updating probate and trust laws
Prime Sponsor: Senator Johnson
- The Washington Probate Code will be updated by providing that any references in wills or trusts to a prior section of the Internal Revenue Code are deemed to refer to the comparable section of the revised Internal Revenue Code.

BUSINESS/CORPORATIONS/PARTNERSHIPS

SHB 2320: Authorizing and applying electronic notice and proxies
Prime Sponsor: Representative Lantz
- The Nonprofit Mutual and Miscellaneous Corporations Act will be amended to authorize notices of meetings, proxy appointments and voting by electronic transmission if permitted by a corporation's bylaws or articles of incorporation.

SHB 2321: Authorizing the transmission of electronic proxy appointments
Prime Sponsor: Representative Esser
- The Washington Business Corporation Act, which governs for-profit corporations, will be amended to allow corporate shareholders to make proxy appointments by electronic transmission.

EHB 2322: Amending the Partnership and Limited Liability Company Acts
Prime Sponsor: Representative Esser
- Changes are made to the Limited Liability Company Act and the Limited Partnership Act relating to the length of

existence, dissolution and withdrawal of members, managers or partners.

- These changes bring these statutes into conformance with current Internal Revenue Service regulations and other state laws and correct technical problems.

HB 2576: Modifying provisions concerning the registration of business trade names

Prime Sponsor: Representative D. Sommers (similar bill: SB 6437, Senator Prentice)

- The registration of a trade name with the Department of Licensing does not have to be performed by specified persons associated with the business. Also, the person registering the trade name does not have to sign the document.

COURTS

HB 2328: Decreasing filing fees for petition for unlawful harassment

Prime Sponsor: Representative Lantz

- Both district court and superior court have jurisdiction over petitions regarding unlawful harassment, but petitions in cases where the respondent is under the age of 18 must be heard in superior court.
- The current filing fee for cases filed in superior court is $110. The bill reduces the superior court filing fee for anti-harassment petitions to $41, the same as the district court filing fee.

HB 2407: Authorizing judges pro tempore whenever a judge serves on a commission, board or committee

Prime Sponsor: Representative Lantz

- When a court of appeals, superior court, or municipal court judge serves on a judicial committee established by the Legislature or the Chief Justice of the Supreme Court, a judge pro tempore may be appointed without any reduction in pay for the judge who is serving on the committee.

HB 2522: Modifying court jurisdiction

Prime Sponsor: Representative Lantz

- The dollar limit on the jurisdiction of district courts will be raised from $35,000 to $50,000.

SHB 2721: Changing provisions relating to venue of actions by or against counties

Prime Sponsor: Representative Morris

- A county may sue or be sued in either of the two nearest judicial districts, rather than the two nearest counties. For an action filed by or against a county in a multi-county judicial district, this assures two alternative court venues.

HB 2774: Revising provisions for appointment of judges pro tempore

Prime Sponsor: Representative Carrell (similar bill: SB 6649, Senator Kline)

- Statutes governing the appointment of judges pro tempore of the municipal courts are amended to provide generally consistent standards.
- The presiding judge, rather than the mayor, will be allowed to make pro tem appointments.
- For cities other than Seattle, a pro tem judge does not have to live within the city or county where the court is located.

HB 2775: Clarifying requirements for the transfer of cases from commissioners to judges

Prime Sponsor: Representative Lambert (similar bill: SB 6650, Senator Kline)

- A motion to transfer a case from a district court commissioner to a judge must be filed before any discretionary ruling is made.

SHB 2799: Granting statewide warrant jurisdiction to courts of limited jurisdiction

Prime Sponsor: Representative Lambert

- The Office of the Administrator for the Courts (OAC) must establish a pilot program for the statewide processing of warrants issued by courts of limited jurisdiction.
- The OAC must report to the Legislature by June 1, 2003 regarding the effectiveness and cost of the pilot program.

SSB 6351: Providing additional authority for superior court commissioners

Prime Sponsor: Senator Kline (similar bill: HB 2504, Representative Constantine)

- The statutory authority of superior court commissioners will be expanded to allow them to preside over a number of adult felony proceedings including arraignments, probable cause determinations, appointment of counsel, bail hearings, waiver of speedy trial rights and non-compliance proceedings.

by Brett Trowbridge, Ph.D., J.D.

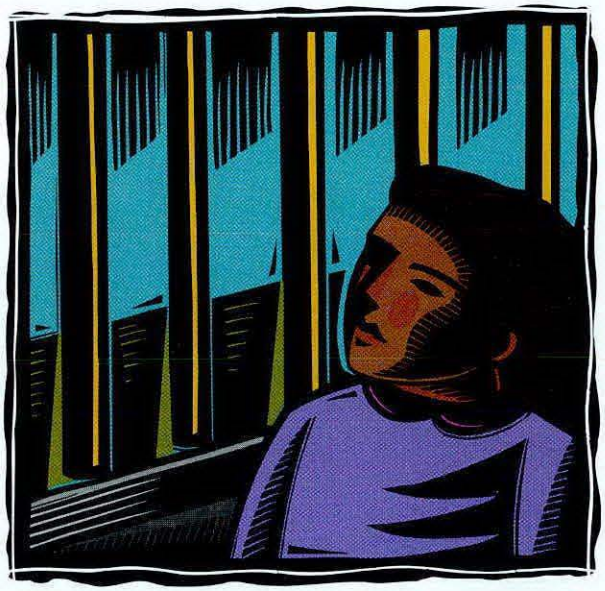
The Child Incapacity Defense

At common law, children younger than seven years old were thought to be incapable of committing crimes, and children aged 14 and older were automatically tried as adults. The period between ages seven and 14 was the zone of presumptive incapacity, with a duty on the state to prove capacity beyond a reasonable doubt. If the government could prove capacity, the child was tried as an adult.[1]

This changed in all United States jurisdictions around the turn of the century. Washington created a separate juvenile court system in 1905, and passed comprehensive legislation concerning the juvenile system in 1913.[2] The underlying theory of the legislation was rehabilitation, with emphasis on attending to the welfare of the offending child. Juvenile offenses were not thought to be crimes, so after 1913 there was little need for special rights for very young children under this parens patriae system, and the child incapacity defense went into disfavor.

In 1977, our current Juvenile Justice Act was enacted in response to concern that some juvenile courts were not holding juveniles accountable. RCW 13.40.020(11) defines "juvenile offender" as any juvenile found by the juvenile court to have committed an offense. An "offense" is an act designated a violation or a crime if committed by an adult under the law of this state.[3] One of the stated purposes of the Juvenile Justice Act was to "make the juvenile offender accountable for his or her criminal behavior."[4] Another stated purpose was to "provide for punishment commensurate with the age, crime and criminal history of the juvenile offender."[5]

Despite the Juvenile Justice Act's new emphasis on punishment and accountability, there are still substantial rehabilitative features, making it distinguishable from the adult system. Accordingly, in 1979 the Washington State Supreme Court held that juveniles are not entitled to jury trials as adults are.[6] Juveniles still enjoy some special benefits not enjoyed by adults, including the rule that a disposition of "guilty" to a juvenile offense is still not considered a "conviction of a crime."[7] In 1980, the Washington State Supreme Court ruled that a juvenile could not be convicted of a felony.[8]



After enactment of the Juvenile Justice Act in 1977, the question arose whether the so-called "infancy defense" in RCW 9A.04.050 (which provides in part that "children over the age of eight years and under 12 years are presumed to be incapable of committing crime") applied to juvenile adjudications, and if so, what standard of proof was required to rebut the presumption of incapacity. The Washington State Supreme Court accepted the consolidated appeals of two juveniles from separate adjudications, QD and MS, both of whom were less than 12 years old at the times of their offenses. QD was charged with first-degree trespass, and MS was charged with indecent liberties. Both trial courts made findings of juvenile capacity.[9]

In *State v. QD*,[10] the Washington State Supreme Court held that juveniles are entitled to the infancy defense.[11] The Court held that the standard of proof necessary to rebut the presumption of incapacity for children at least eight years old to less than 12 years old is "clear and convincing proof," and the burden is on the state to present this proof. The state must prove that at the time of the act the child had sufficient capacity to understand the act (or neglect) and to know it was wrong.[12]

A juvenile's maturity can be used as a factor in determining capacity, as can proximity to age 12, the age at which capacity is assumed. It should be clear that after age 12 there is no incapacity defense, as it is the chronological age of the child at the time of the offense that matters, not the child's mental age.

Capacity must be found to exist separate from the specific mental element of the crime charged. In QD's case, prior criminal behavior was the basis for attempting to prove capacity, so a separate hearing (before a different judge) was thought to avoid prejudice. In MS's case, the facts of the offense itself were used to show capacity, so a separate hearing would have been unduly repetitive. Where the court is not alerted to the capacity issue until after the conclusion of the adjudicatory proceeding, the capacity decision can still be made if it is decided by another judge before a disposition is entered in the case.[13] The determination of capacity must be made in reference to the act charged, and is necessarily fact specific.[14] The QD Court pointed out that proof of only a general understanding of the justice system did not constitute proof that the respondent understood the wrongfulness of the act presently charged.[15]

The Court held that secretive behavior in carrying out the act and telling the victim not to tell were proof of capacity in MS's case, whose case was upheld. A juvenile's maturity can be used as a factor in determining capacity, as can proximity to age 12, the age at which capacity is assumed. It should be clear that after age 12 there is no incapacity defense, as it is the chronological age of the child at the time of the offense that matters, not the child's mental age. In *State v. Jamison*,[16] an expert testified that the respondent had a mental age of 11.7 years despite being chronologically much older. The *Jamison* Court held, "Without question the legislature addressed itself to the chronological age of persons accused of crimes."

Realistically, it may be difficult for prosecutors to meet their burden to prove capacity by clear and convincing evidence if the crime itself does not contain clear elements of secrecy and/or an attempt to flee to avoid apprehension. Prosecutors may attempt to call caseworkers, teachers, etc. to testify to the child's moral understanding of the event at that time. If such witnesses do not exist or cannot be located, the state may have difficulty proving capacity. The state may choose to prosecute only those children between the ages of eight and 12 who they think have committed serious offenses such as sex crimes, robberies, assaults and homicides.

in Washington

In its only major revisiting of the childhood incapacity defense since QD, the Washington State Supreme Court, in 1998, listed seven factors courts should consider in determining whether the child had sufficient capacity to understand the act and to know it was wrong:[17] 1) the nature of the crime; 2) the child's age and maturity; 3) whether the child evinced a desire for secrecy; 4) whether the child told the victim (if any) not to tell; 5) any prior conduct by the child that is similar to the charged conduct; 6) the consequences that attached to that prior conduct; and 7) whether the child acknowledged that the conduct was wrong and could lead to detention. The Court also cited additional factors which may be considered: 1) the child's mental capacity and the effect of mental retardation on the child's ability to understand the wrongfulness of the conduct underlying the charge; 2) the degree to which the child had been educated with respect to the conduct underlying the charge; and 3) whether the child admitted the wrongfulness of the act, and whether that admission came before or after Miranda[18] admonishment, or before or after questioning about the incident by adults. The Court also more specifically described the test for incapacity, holding that a child may be found to have had capacity at the time of an offense even though the child did not know at that time that the conduct was illegal or had legal consequences — it is sufficient that the child knew only that the conduct was morally wrong.

In *State v. James P.S.*, the 11-year-old respondent was accused of an alleged act of intercourse with his three-year-old playmate. The trial court found that despite his mental retardation, the respondent had capacity. The Court of Appeals[19] reversed the trial court, holding that the evidence of incapacity had been insufficient, and that the state's burden of proving capacity is greater if sexual motivation is an element of the crime. James P.S. was charged with first-degree rape, which requires proof that the offender committed an act of sexual intercourse with a child younger than 12 and more than 24 months younger than the offender.[20] The Court of Appeals held that "consequently the specific act which James P.S. must have understood (in order to have had capacity) was sexual intercourse." The Court concluded that, "On balance, it is not clear that James understood his conduct manifested sexual intercourse." The Court of Appeals noted that the crucial question was whether James knew at the time his conduct was legally wrong, stating that the state carries a greater burden when it has to prove a child appreciates the wrongfulness of certain sexual acts.[21] The Washington State Supreme Court agreed there is a greater burden in sexual cases, and upheld the Court of Appeal's reversal of the trial court's finding of insufficient evidence of incapacity. The Supreme Court also specifically rejected the Court of Appeal's holding regarding the necessity of knowing illegality, ruling it is not necessary for the state to prove that the respondent knew the act was legally as well as morally wrong.[22]

In a similar case of alleged first-degree child molestation involving an 11-year-old female respondent who was alleged to have touched the private area of a six-year-old girl, the Court of Appeals[23] reversed a trial court's finding of incapacity, holding that the specific act which the respondent must have understood was "sexual contact." Sexual contact is defined as "any touching of the sexual or other intimate parts of a person done for the purpose of gratifying sexual desire of either party or a third party."[24] The Court held, "There was no testimony that she (the respondent) had learned anything about sexual desire — a sophisticated concept for a pre-adolescent. Without such testimony, the evidence is not clear and convincing that (she) understood the nature of the act."[25] It appears that in cases of alleged sexual misconduct there must often be additional evidence showing that the child had been specifically taught that the behavior was wrong before the instant offense."[26]

RCW 13.40.140(9) provides that a juvenile's waiver of the right to remain silent "must be an express waiver intelligently made by a juvenile after the juvenile has been fully informed of the right being waived." Furthermore, when a juvenile is under the age of 12, the "juvenile's

parent, guardian or custodian shall give any waiver."[27] In practice this rule is frequently violated by the police, who either give no Miranda warnings, or give Miranda warnings in the absence of either parent and obtain purported "waivers," after which they question children under the age of 12 as to the capacity issue without their parents being present by asking them whether they knew what they did was wrong. In each of two consolidated cases[28] the police questioned young boys under the age of 12 without the presence of their parents, and in both cases the boys made incriminating statements as to their knowledge that their alleged acts were wrong. The Court held that these improperly obtained statements are admissible in capacity hearings, although they are not admissible during the adjudication of guilt; the rationale was that Miranda and RCW 13.40.140(10) do not apply to "preliminary determinations," since "exclusion of illegally obtained evidence is not required in preliminary determinations in adult criminal cases."[29] This ruling seems to suggest that statements made by children under twelve year old, which were not preceded by a valid Miranda waiver, are still admissible at capacity hearings, a real advantage to the prosecution. Prosecutors often advise police to question children as soon as possible outside of the presence of their parents as to whether they understood what they did was wrong, so that admissions as to capacity can be obtained. Indeed, often the only evidence the state will have to prove capacity may be what the child told the investigating officer.

Parental intervention after the alleged act through instruction or punishment may also make it impossible to determine whether the child knew at the time of the act that it was wrong. *In State v. KRL*,[30] an eight-year-old boy was charged with residential burglary after allegedly entering a woman's house, removing a live goldfish from her fishbowl, cutting it into several pieces with a steak knife, and smearing it on the counter. He also allegedly clamped a plugged-in hair-curling iron onto a towel in the bathroom. When the police contacted KRL's mother, she confronted the boy, "beating him black and blue" with a belt. Later she took the boy to the police station where he admitted knowing the acts were wrong. The Court held, "When KRL was beaten 'black and blue' by his mother, he undoubtedly came to the realization that what he had done was wrong. We are certain that this conditioned the child, after the fact, to know that what he did was wrong. That is a far different thing than appreciating the quality of his or her acts at the time the act is being committed."[31] It seems clear that in order for the police to obtain useful evidence of capacity, they will have to speak with the child before his parents do!

In my experience, the state is not allowed to have its expert psychologist or psychiatrist examine the respondent without the agreement of the respondent's attorney, or until the respondent has certified as a witness his own mental health expert. At that point, the state is usually allowed to have its expert evaluate the youth. Experts for either side almost always administer intelligence and achievement tests to determine if the youth is relatively mature or relatively unsophisticated for his age. Experts take a history of the child, which may involve review of medical and/or school records, and usually involves speaking with the child's mother or other significant person. Most importantly, experts ask the child ques-

tions about the incident in an attempt to determine what the child understood in a moral sense at the time of the alleged incident. Experts may ask the child why the law against his alleged behavior exists; often children seem to have no idea why the behavior is considered wrong and illegal. The mental health expert should also delve into the area of whether the child has been discovered engaging in such behavior before, and if so, what the consequences were at that time. The mental health expert should inquire whether anyone told the child before the alleged incident that such behavior was wrong.

Mental health experts are usually allowed to testify to the ultimate issue of whether the child had juvenile capacity at the time of the incident. Often such experts are unclear as to what the legal standard is, confusing capacity with competency to stand trial, insanity at the time of the offense,[32] intellectual capacity, or other issues, and the court should be encouraged to view their opinions critically. The standard of RCW 9A.04.050 itself is a rather subjective one — whether the child had "sufficient capacity to understand the act or neglect, and to know that it was wrong" — so reasonable lawyers, experts and judges may apply the standard differently, and may well disagree as to their opinions about a given case.

Brett C. Trowbridge, Ph.D., J.D., is a member of the Washington State Bar Association and a Washington licensed psychologist. He is also a Fellow of the American College of Forensic Psychology. *The writing of this article was funded by the Trowbridge Foundation.*

NOTES

1 Wayne R. LaFave and Austin W. Scott, Jr., Criminal Law (2nd Ed.) 1986.
2 State v. Schaaf, 109 Wn2d 1 (1987).
3 RCW 13.40.020(15).
4 RCW 13.40.010(2)(c).
5 RCW 13.40.010(2)(d).
6 State v. Lawley, 91 Wn.2d 654 (1979).
7 RCW 13.04.240.
8 In re Frederick, 93 Wn.2d 28 (1980).
9 State v. KRL, 67 Wn.App 721 (1992).
10 State v. QD, 102 Wn.2d 19 (1984).
11 Around that same time legal scholars were arguing that the increasing criminalization of the juvenile court requires use of the defense in order to fairly address the question of moral and criminal culpability. *See* Andrew Walkover, *The Infancy Defense in the New Juvenile Court*, 31 U.C.L.A. Law Review 503 (1984).
12 State v. QD, 102 Wn.2d 19, 26 (1984); RCW 9A.04.050.
13 State v. JB, 91 Wn.App 659 (1998).
14 State v. QD, 102 Wn.2d (1984) at 26.
15 *See also* State v. KRL, 67 Wn.App 721 (1992), which held that evidence of unrelated and relatively innocuous previous incidents of misconduct by an eight-year-old was not sufficient to overcome the presumption of incapacity.
16 State v. Jamison, 23 Wn.App 454 (1979).
17 State v. JPS, 135 Wn.2d 34 (1998).
18 Miranda v. Arizona, 384 U.S. 436 (1966).
19 State v. James P.S., 85 Wn.App 586 (1997).
20 RCW 9A.44.073(1).
21 *See* State v. Linares, 75 Wn.App 404 (1994).
22 State v. JPS, 135 Wn.2d 34 (1998).
23 State v. Erika D.W., 85 Wn.App 601 (1997).
24 RCW 9A.44.010(2).
25 Ibid.
26 State v. SP, 49 Wn.App 45 (1987).
27 RCW 13.40.140(10).
28 State v. Linares, 75 Wn.App. 404 (1994).
29 Ibid.; in a footnote the Washington State Supreme Court seemed to agree. *See* State v. JPS, 135 Wn.2d. 34 (1998), footnote 2, at page 40.
30 State v. KRL, 67 Wn.App 721 (1992).
31 Ibid. at page 725.
32 Incompetency to stand trial must be due to a "mental disease or defect," and relates to the child's state of mind at the time of trial or plea, not at the time of the offense. The test is whether the child understands the nature of the proceedings against him, and whether he is able to assist his attorney in preparing a defense. RCW 10.77.010(6). For insanity, a "mental disease or defect" is also required, and the respondent must establish by a preponderance that he was either (1) unable to perceive the nature and quality of the act charged, or (2) unable to tell right from wrong with reference to that act. RCW 9A.12.010(1)(a)(b). To show capacity, the state must establish by clear and convincing evidence that the child had sufficient capacity both to (1) understand the act or neglect, and (2) understand it was wrong. RCW 9A.04.050. Incapacity does not require a mental disease or defect, and is usually based on the child's lack of developmental sophistication and maturity.

Hiring Emotionally Intelligent Associates

by Larry Richard

Reprinted with permission from *Law Practice Quarterly*, the newsletter of the ABA Law Practice Management Section, February 2000.

We've all encountered the "900-pound gorilla" partner who throws his weight around, intimidates other partners, excoriates hapless associates who displease him, and eviscerates the poor secretary who forgets a comma.

The wayward partner can be managed. However, it's much easier to hire emotionally intelligent lawyers in the first place than to change the behavior of 900-pound gorillas once you've got them at the firm. Many hiring partners and managing partners state that they seek to hire well-rounded associates who are not only good lawyers, but good people. But if you look at the actual criteria that are used by the firm to evaluate potential associate candidates, much greater emphasis is placed on academic prowess — law school attended, grades, law review, etc. Little systematic attention is paid to the temperament of the associate. Temperament is really a lay term for the visible layer of personality traits possessed by an associate. Personality tends to be stable, which means that if you hire an associate who has a short fuse, in seven or eight years you'll be admitting a partner with a short fuse.

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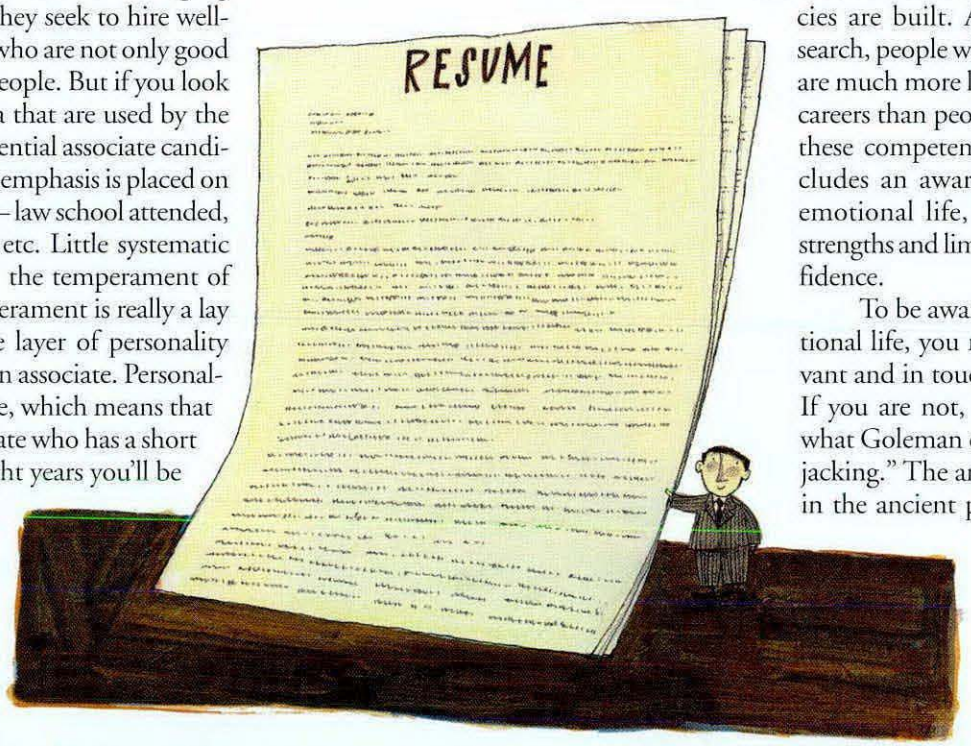


For years, lawyers have dismissed psychological matters as irrelevant, touchy-feely and insignificant. In the practice of law, which is fundamentally a service business and hence a people business, temperament and people skills often play a large role in the ultimate success of a lawyer.

Significant research conducted over the past 15 years establishes in more scientific terms the important role that these "softer" factors play in a lawyer's success on the job. This is an area called "emotional intelligence," often abbreviated as EQ (in distinction to academic intelligence, which is known as IQ). In 1995, psychologist and journalist Dan Goleman published a book entitled *Emotional Intelligence,* which has become an international best-seller. In 1998, Dr. Goleman published *Working with Emotional Intelligence,* in which he demonstrated the importance of EQ principles to the workplace.

What is emotional intelligence and why does it matter? It embraces four clusters of psychological skills, or what are more aptly called "emotional competencies."

Self-Awareness

This is the gold standard of emotional intelligence, the foundation element on which all the other emotional competencies are built. According to the research, people who lack self-awareness are much more likely to derail in their careers than people who are skilled in these competencies. This cluster includes an awareness of one's inner emotional life, knowledge of one's strengths and limitations, and self-confidence.

To be aware of your inner emotional life, you need to be self-observant and in touch with your feelings. If you are not, you can easily suffer what Goleman calls "an amygdala hijacking." The amygdala is a structure in the ancient part of the brain that stores emotional memories and helps us to make instant, primitive decisions such as "Am I its prey or is it mine?" When a mangled phrase in an associate's first draft of a pleading leads a senior litigator to see red and publicly excoriate the associate, the litigator has suffered an amygdala hijacking. At the time he blasted the associate, chances are he

didn't have a conscious awareness of his anger before he got to the point where that anger triggered a powerful flood of hormones that led to the behavior. His lack of awareness resulted in his having little choice in the moment. Emotionally intelligent people can detect an emotion and identify it early enough to allow the higher cerebral function to intervene and thus head off embarrassing and ineffective behavior.

Knowing your strengths and limitations is also a key part of the self-awareness cluster. Lawyers unaware of their limitations can all too easily accept a case outside of their core area of expertise and become a malpractice suit looking for a place to happen. The emotionally intelligent lawyer knows when to refer a matter.

Closely allied with this is the self-confidence element. Many lawyers present a bold, assertive air of certainty when arguing a point. This gives the impression that the lawyer is confident. Confidence in this sense includes the idea that the individual is thick-skinned enough to take criticism and not become defensive, instead listening and reflecting on the feedback to see if there's an element of truth to it. Research on lawyers' personalities reveals that the majority are on the thin-skinned side of the spectrum, are defensive, and do not readily hear or accept criticism without arguing or deflecting it. The emotionally intelligent lawyer has an interest in getting feedback and using that feedback to become aware of shortcomings and blind spots so he can learn and improve.

Self-Management

It's not enough just to be aware of your emotions. Another key set of competencies revolves around the ability to take the next step and manage those emotions. In research that centered on business leaders who were pursuing promising careers and then "derailed," the most significant factor for derailment was lack of impulse control. In other words, whether they were aware of their emotions or not, they allowed them to erupt in ways that got them into trouble. Lack of impulse control shows itself in inappropriate behavior such as telling off-color jokes, blowing up at people, slamming your fist down in a meeting, or committing sexual harassment. The emotionally intelligent lawyer is both aware of his emotions and able to head off those that will hurt others or get him into trouble.

The research clearly shows that adaptable people succeed in a wider variety of ways than dogmatic people. Adaptability also allows lawyers to selectively use certain personality traits.

Another type of self-management has to do with being able to develop an impulse that you don't presently have — to motivate yourself, especially when it comes to doing something you don't really want to do, like returning a call to a client you don't like dealing with. The emotionally intelligent lawyer doesn't take the easy, comfortable way out, but is able to buckle down and do the unpleasant but necessary tasks.

Finally, self-management includes adaptability and flexibility. How many times have you seen a partner insisting that it be his way or the highway? The research clearly shows that adaptable people succeed in a wider variety of ways than dogmatic people. Adaptability also allows lawyers to selectively use certain personality traits. For example, in our research we have learned that lawyers, on average, score about 20 percent higher on a personality trait called "skepticism." Being a skeptic can actually be an asset in the practice of law, and that's probably why so many lawyers have an elevated score on this trait. But that same trait can become a weakness in some of the other important roles lawyers play — mentor, partner (in the true sense of the word), team member, client relationship manager, committee chair, etc. These roles require good people skills. Lawyers who are flexible are able to turn off their natural skepticism in these situations and turn it back on when they have to step back into the lawyering roles that require analysis, argument and research.

Awareness of Others

Emotional intelligence competencies include not only dealing effectively with oneself, but also dealing effectively with others. This cluster of competencies includes the ability to be empathetic, to understand organizational politics, and to be service-minded.

This empathy isn't the "I feel your pain" type of emotional empathy, or emotionally identifying with another person. Rather, it is the cognitive component of empathy — the ability to shift perspective, to imagine what another person might be thinking or feeling, to discern the likely effect your own behavior might have on someone else, and the ability to read the emotions of others. For example, lawyers who continue speaking long past

the point at which the listener's eyes have glazed over are not demonstrating empathy.

Understanding organizational politics speaks for itself. Being service-minded simply means that the individual places a value on being considerate, thoughtful of others, and interested in helping another human being instead of being self-absorbed.

Social Skills

This last cluster includes eight different competencies. The most important of these is the ability to influence others in such a way as to preserve the relationship when the influencing is done. Likewise, the emotionally intelligent lawyer is able to resolve conflict with others in such a way as to preserve the relationship when the resolving is done. And the emotionally intelligent lawyer is able to build coalitions, social bonds and relationships, and ultimately to collaborate and work with colleagues in a team. Other competencies include the ability to lead, communicate and be a catalyst for change.

Why do these competencies matter, and how can we hire associates who have them? These competencies matter for at least two reasons. First, the practice of law is changing and will continue to change. In the old days, you could say, "If I just practice good law, the clients will come to me," and you would have been right. Today, this is no longer the case. In the old days, the number of lawyers per capita was relatively low. Today, there is not only a glut of lawyers competing for the same business, but we are facing new types of competition — from technology, accounting firms and other multi-disciplinary practices (MDPs), and from the self-help movement.

In today's marketplace, many of the entities we compete with are run like businesses. They select, hire, develop and train their people to behave in emotionally competent ways. Clients have choices in their legal counsel, and over the long run, these factors will give the accounting firm, the bank and securities firm a competitive advantage. Recently, an ABA committee recommended eliminating the restriction on nonlawyers practicing law. Within two years, we will see a very different legal landscape. MDPs will be commonplace in the U.S. legal marketplace. You can't afford to wait until then, because competing providers of legal services will already have a significant head start in cultivating emotional intelligence among their professionals. At least one of the "big five" professional service firms (they used to be called accounting firms) has instituted a formal program to train all their consultants in emotional intelligence competencies in order to achieve a measurable standard of behavior. I know of no law firm that has done so yet.

The second reason that these competencies are important is quite straightforward. Research by Goleman and others has demonstrated that the cognitive factors we always valued in the legal profession simply do not predict success. These include academic intelligence, work experience and technical knowledge, which for the lawyer means competence in a particular practice area. The research suggests that these three factors taken together account for only one-third of the factors that predict who is going to be successful, while the emotional intelligence factors predict the other two-thirds. And as you climb the ladder of responsibility, EQ increases in importance. Among leaders such as company CEOs and managing partners of practice group leaders in firms, it's been estimated that EQ factors account for over 90 percent of a person's success.

Does this mean that we have to stop hiring smart associates? Not at all. The three factors mentioned above are not unimportant. IQ, experience and technical knowledge are critical factors in getting into a field. They're just not predictive of success once you get in it. Supplement selection of the best and brightest by paying attention to the EQ factors of the associates you hire. If you hire well at the associate level, you'll get emotionally intelligent partners at the other end of the pipeline.

There are two main ways to hire associates with emotional intelligence. One way is to use psychological testing to help hire people who have personality traits that fit the job they will be doing. You can also train interviewers to ask the right questions, listen to what candidates say, and observe their behavior in order to discern their level of emotional intelligence. Psychological testing is less expensive and more effective, but more controversial. Lawyers are a risk-averse lot, and seem to err on the side of avoiding potential liability, whereas most business leaders seem to view risk as something that must be weighed against the benefits to be gained. The American Management Association reports that 68 percent of Fortune 500 companies use psychological testing for hiring, while I estimate that less than one percent of law firms use it.

Lawyers give all kinds of theoretical objections to psychological testing, including that, "It will turn off associates," and "We'll be sued." In firms that have used it, none of the predicted consequences have actually occurred.

Interview training takes time, but can be very effective. Lawyers tend to be "quick studies." They frequently resist training, and would rather read some literature to absorb the information that would be conveyed in the training program. But this kind of training works not because the participants gained a cognitive understanding of certain ideas, but because they saw effective interviewing in action, tried it themselves, received feedback, and had a chance to rehearse.

In summary, hiring emotionally intelligent associates will eventually result in an increase in the number of emotionally intelligent partners. Emotional intelligence is not a peripheral, inconsequential irrelevancy, but rather a body of knowledge that gives you a roadmap about how to compete effectively with other well-run businesses that pay attention to the development of their human capital. If you hire associates who are smart and interpersonally effective, you will be on your way to building a world-class law firm.

Lawrence R. Richard, J.D., Ph.D., is a principal with Altman Weil, Inc. in Newtown Square, PA. As a psychologist and former trial lawyer, he consults with law firms on issues of management and organizational behavior. He is certified to administer a number of tests that measure emotional intelligence in the law office. Dr. Richard can be reached at 610-359-9900, ext. 428; e-mail lrrichard@altmanweil.com.

Washington State's Legal Services Provider Network:

Legal Resources for Low-Income Residents

Washington state has an innovative and integrated delivery system which is dedicated to providing a full range of legal services to the broadest spectrum of clients in need. This system is considered a model throughout the United States, providing assistance and improving the lives of indigent people who otherwise would have no meaningful access to the justice system without these programs.

This delivery system is a model public-private partnership. Its providers leverage state, federal and private funding to provide critically needed legal assistance for thousands of low-income people each year. There are four foundations in Washington that exist primarily to support the work of Washington's legal services provider network. By giving generously to these foundations and to your local volunteer program, you increase resources for the entire state of Washington.

King County Bar Foundation

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

LAW Fund

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

Legal Foundation of Washington

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

Pierce County Bar Foundation

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

You can help increase public awareness about access to justice issues by:

- joining the Equal Justice Coalition – 206-447-8168; www.ejc.org;
- serving on an Access to Justice Board committee – 206-727-8282; www.wsba.org;
- joining a WSBA section dedicated to public-service issues – 206-727-8293;
- attending the annual Access to Justice Conference (part of Celebration 2000) – 206-727-8262;
- serving on a committee of the Council on Public Legal Education – 206-727-8282.

The unmet need is great, and resources are stretched beyond their limits. All of the programs listed below depend on volunteer attorneys to provide advice and/or representation and serve as board members. To find out how to help in your community, please contact the WSBA Access to Justice Programs Liaison, Sharlene Steele, at 206-727-8262, e-mail sharlene @wsba.org, or access the WSBA website at www.wsba.org/atj.

Referrals to any of the programs listed below (with the exception of King County) must go through CLEAR (Coordinated Legal Education, Advice and Referral), the Northwest Justice Project's telephone access system. Callers from King County may call with mobile home problems or when they have a hearing pending with the Department of Social and Health Services. CLEAR provides low-income individuals with a variety of services including legal advice, legal information, publications, brief service, and referral to further legal assistance in their communities by calling a toll-free number. Some legal information publications include pro se instructions and forms. Callers may be referred to Columbia Legal Services or Northwest Justice Project offices, or local volunteer programs, law school clinics, or other resources in the caller's community.

Columbia Legal Services (CLS)

CLS is a statewide civil legal services program serving low-income clients from offices located in regional centers throughout the state. In accordance with the State Plan for Delivery of Civil Legal Services to Low-Income Clients, CLS dedicates substantial resources to address unique and/or disparate legal needs of poor and vulnerable clients and client groups. CLS receives the majority of its funding from the Legal Foundation of Washington

(IOLTA) and the state of Washington.

Northwest Justice Project (NJP)

NJP is a statewide legal services program that provides direct services to low-income clients in offices located throughout the state. In addition, NJP serves as a primary point of access for clients through CLEAR, its centralized statewide intake and access system. NJP's primary source of funding is the federal Legal Services Corporation. NJP also maintains a website with free legal education materials available for download at http://www.nwjustice.org.

Volunteer Attorney Programs

More than 4,000 attorneys provide free legal services for low-income clients through Washington's network of 25 volunteer attorney programs. Types of cases handled by attorneys participating in these programs include housing, protection of financial resources, consumer protection and family law.

Benton-Franklin Legal Aid Society

Volunteer attorneys provide legal representation, parenting plan assistance, and dissolution clinics in conjunction with the Volunteer Center and the Benton-Franklin Counties Bar Association.

Blue Mountain Action Council

Volunteer attorneys from Walla Walla and Columbia Counties provide direct representation, family law clinics and pro se document review.

Chelan-Douglas Legal Aid

Volunteer attorneys provide legal advice, representation and pro se dissolution assistance in conjunction with the Community Action Agency and the Chelan-Douglas County Bar Association.

Clallam County Pro Bono Lawyers

Volunteer attorneys provide legal advice and direct representation in a variety of civil legal areas.

Clark County Volunteer Lawyers Program

Volunteer attorneys provide legal representation, advice, a bankruptcy clinic and dissolution classes.

Cowlitz-Wahkiakum Legal Aid

Volunteer attorneys from Cowlitz and Wahkiakum Counties provide advice clinics and representation to low-income people.

Eastside Legal Assistance Program

Volunteer attorneys provide legal advice, dissolution workshops and representation in east King County.

Grays Harbor Bar Pro Bono Program

Volunteer attorneys provide legal advice, representation and dissolution clinics, in conjunction with Coastal Community Action.

Jefferson County Bar Association

Volunteer attorneys assist with monthly do-it-yourself dissolution workshops.

King County Bar Community Legal Services

- *Family Law Clinic*
  Volunteer attorneys provide family law representation, advice and classes.

- *King County Bar Association Volunteer Attorneys for Persons with AIDS/HIV and AIDS Legal Access*
  This is a free service that finds volunteer, reduced-fee or full-fee attorneys for persons who are living with HIV or who have legal problems related to HIV.

- *Neighborhood Legal Clinics*
  Volunteer attorneys provide 30 minutes of free legal consultation.

- *Newcomers Resource Coordination Project*
  This project coordinates and directs newcomers, refugees and immigrants to the legal resources currently available in King County. The program serves the newcomer community through three specialized clinics, community workshops, and referral to pro bono attorneys to assist newcomers on issues other than immigrant issues. A panel of volunteer and low-cost interpreters is also available as required.

- *Self-Help Plus*
  This program assists low- and moderate-income King County residents in processing their own non-contested divorce, child support and minor parenting plan matters.

- *Volunteer Legal Services*
  Volunteer attorneys provide legal representation in a variety of civil legal areas.

Kitsap County Volunteer Attorney Services

Volunteer attorneys provide legal representation, advice, and dissolution clinics in conjunction with Kitsap Community Action Program and the Kitsap County Bar Association.

Kittitas County Volunteer Legal Services

Volunteer attorneys provide representation, advice and dissolution clinics.

Law Advocates

Volunteer attorneys from the Whatcom County Bar Association provide legal assistance, advice and a dissolution clinic.

Lewis County Bar Legal Aid

Volunteer attorneys from the Lewis County Bar Association provide legal representation and advice.

North Columbia Low-Income Legal Assistance

Volunteer attorneys from the Grant and Adams County Bar Associations provide advice, representation and divorce assistance in conjunction with the Community Action Council.

Northeast Washington Legal Aid Program

Volunteer attorneys in Stevens, Ferry and Pend Oreille Counties provide advice, legal representation and dissolution classes.

Okanogan Legal Services Program

Volunteer attorneys from the Okanogan County Bar Association provide advice, representation and pro se dissolution assistance, in conjunction with the Community Action Council.

Skagit County Volunteer Lawyers Program
Volunteer attorneys from the Skagit County Bar Association provide legal advice, representation and dissolution assistance with the assistance of the Community Action Agency.

Snohomish County Legal Services
Volunteer attorneys from the Snohomish County Bar Association provide advice, family law self-help classes and legal representation.

Spokane Bar Association Volunteer Lawyers Program
Volunteer attorneys from the Spokane County Bar Association provide representation and legal advice.

Specialized Legal Services Providers

Fremont Public Association
The program provides King and Snohomish County residents with representation in public entitlement cases.

Legal Action Center
The program provides advice, consultation and representation in landlord/tenant, debtor/creditor and consumer protection cases at six sites in King County.

Tacoma-Pierce County Bar Volunteer Legal Services Program
Volunteer attorneys from the Tacoma-Pierce County Bar Association provide dissolution self-help classes, legal advice through a neighborhood legal clinic, and direct representation.

Thurston County Volunteer Legal Clinic
Volunteer attorneys provide 30 minutes of free legal consultation in the general areas of family law, consumer law and landlord-tenant law.

Thurston-Mason Pro Bono Program
Volunteer attorneys provide direct representation in these counties.

Whitman County Pro Bono Program
Volunteer attorneys provide representation, legal advice, and a dissolution clinic in conjunction with the Community Action Center.

Yakima Bar Association/YWCA Volunteer Attorney Services
Volunteer attorneys, with support from the Yakima YWCA, provide legal representation, advice and dissolution assistance.

Northwest Immigrants Rights Project
The program provides statewide immigration assistance to low-income persons.

Northwest Women's Law Center
Staff and volunteers provide family law information, referrals and workshops statewide.

The Tenants Union
A statewide, toll-free hotline provides landlord/tenant information to callers.

Unemployment Law Project
Low-income persons receive counseling, assistance and representation in unemployment hearings statewide.

University Legal Assistance
Gonzaga Law School student interns provide family law assistance for low-income clients in Spokane County.

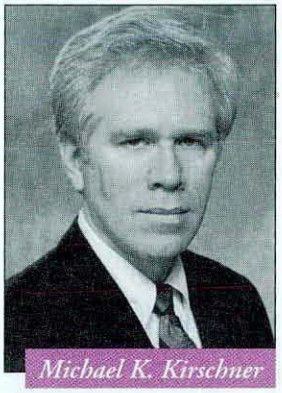
Changing Venues

Paradise Lost?

Seattle attorney **Mike Wrenn** was the victim of this year's associate pranking at the Heller Ehrman firm. Tradition has it that associates "decorate" a partner's office while the partners are away at an annual retreat.

Nancy W. Anderson

Tom Kilbane



Michael K. Kirschner

This year, Wrenn returned from the retreat to find his office transformed into a tiki-hut bar. With shells and sand underfoot, staffers dressed in tropical attire were drinking from coconut shells and dancing to island music. Vacation, anyone?

Honors and Awards

Janine A. Lawless of The Lawless Partnership in Seattle has been selected as a Fellow in the National Academy of Elder Law Attorneys.

C. William Bailey, a partner in the Seattle law firm of Mills Meyers Swartling, was selected by the Washington Chapter of the American Board of Trial Advocates as Washington's Trial Lawyer of 2000.

Fillmore Buckner of Seattle has been selected president-elect of the American College of Legal Medicine.

Movers and Shakers

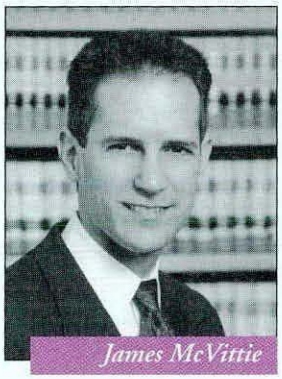
Lane Powell Spears Lubersky LLP in Seattle has elected **Nancy W. Anderson** partner in the Seattle office. She concentrates her practice in commercial litigation, including antitrust and class-action disputes, and employment litigation involving discrimination, discharges and wage and hour disputes.

Stanley D. Moore has established the firm of Stan Moore & Associates in Spokane, limiting his practice to mediation, arbitration and dispute resolution consulting services.

Ater Wynne LLP in Seattle has appointed **Tom Kilbane** as partner in charge. His practice focuses on corporate and regulatory issues for both established and emerging businesses.

Michael K. Kirschner has been promoted to vice president of intellectual property for Immunex Corporation in Seattle.

James McVittie has joined the Portland office of The Affiliates, a staffing service specializing in project attorneys and legal support personnel.



James McVittie

Laura L. Takasumi

Todd R. Startzel

Kathryn R. McKinley has become a partner in the law firm of Layman, Layman & McKinley in Spokane.

Clyde H. MacIver is the newest player with the Seattle Mariners Baseball Club, serving as executive vice president and general counsel.

Christine Weaver has become a principal in the Spokane firm of Miller, Devlin, McLean & Weaver, PS. Her civil litigation practice emphasizes employment law and insurance defense.

C. Anthony Davis has been hired as general counsel for the Harris Group Inc., where he will be responsible for all legal matters.

Tonkon Torp LLP has named **Jeanne M. Chamberlain** as chair of the Portland firm's litigation department.

Miller Nash LLP has welcomed **Laura L. Takasumi** to its Vancouver, Washington, office. Takasumi concentrates her practice on business law, taxation and estate planning.

Todd R. Startzel recently joined the law firm of Leveque & Kirkpatrick in Spokane. A civil litigator, his primary focus is in insurance defense and appellate practice.

Rebecca Erin Greene has become an associate at Betts, Patterson & Mines, PS in Seattle, where she will practice in the business transactions, taxation and estate planning areas.

Oseran, Hahn, Spring & Watts PS in Bellevue has added **Victor Van Valin** as of counsel and **Linda A. Cade** as an associate. Cade's practice emphasizes real estate, business and securities law.

Phillabaum, Ledlin, Matthews & Gaffney-Brown in Spokane has announced that **Mistee R. Verhulp** and **Suzie K. Weathermon** have joined the firm as associates. A civil litigator, Verhulp will practice in the insurance defense area. Weathermon's practice will focus on employment and discrimination law.

In Memoriam

Thomas C. McCarthy of Clyde Hill passed away April 10, 2000 at the age of 75. With a law practice in Bellevue, he also served as a Bellevue District Court Commissioner. An avid tennis player, he played in the USTA and Volvo national championship tournaments. He was active in politics, and attended the 1968 Democratic National Convention as minority chairman of the credentials committee.

Lawyer Discipline: 1999 Summary Report

by Barrie Althoff • *WSBA Chief Disciplinary Counsel*

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

This article summarizes what happened during 1999 in Washington's lawyer disciplinary system.

Grievants file with the WSBA Office of Disciplinary Counsel (ODC) allegations of unethical conduct by Washington lawyers. The ODC investigates, and either dismisses the grievance or prosecutes the lawyer. Prosecutions must first be authorized by order of a three-person review committee (two lawyers and one nonlawyer). Volunteer lawyers act as trial-court hearing officers. Collectively, all members of all four review committees sit as the WSBA Disciplinary Board, which serves as a disciplinary appellate court. The Supreme Court, which has exclusive authority to suspend or disbar lawyers, serves as the disciplinary court of last resort.

Number of Lawyers Disciplined

Last year, 48 Washington lawyers were the subject of 49 disciplinary sanctions or actions. Of these, 38 were formal disciplinary sanctions (permanent public records): 11 lawyers were disbarred, 15 were suspended from practice for disciplinary reasons, six were reprimanded, and six were censured. These include one lawyer who was both reprimanded and censured. In addition, 11 lawyers were formally admonished for their conduct (generally a public record for only three years). Another nine lawyers were suspended from practice on an interim basis (not a disciplinary sanction) pending disciplinary proceedings.

Of Washington's approximately 18,250 active in-state lawyers last year, one in every 493 (about one-fifth of one percent) was formally sanctioned (disbarred, suspended for discipline, reprimanded or censured). One in every 1,659 (less than one-tenth of one percent) was formally admonished. Or collectively, one in every 380 Washington lawyers (less than three-tenths of one percent) was either sanctioned or admonished. Alternatively, 379 out of 380 Washington lawyers (more than 99.7 percent) were *not* subject to any disciplinary action last year.

Nature and Number of Grievances

During 1999, the ODC opened files on 2,594 new matters including: 1,777 new written grievances (allegations of unethical conduct), 444 lawyer-client file disputes, and 373 lawyer-client non-communication matters. While some lawyers were subject to multiple grievances, grievances averaged about one for every seven lawyers (14 percent) — or alternatively, 86 percent of Washington's lawyers did *not* have any grievances filed against them. The number of grievances per lawyer does not, however, accurately reflect client satisfaction. If each of Washington's more than 18,250 active in-state lawyers represented only 20 clients in 1999 (an unrealistically low assumption), less than one percent of those 365,000 lawyer-client representations resulted in a grievance — or, more than 99 percent did *not* result in a grievance. This suggests that Washington lawyers continue to do a very good job in satisfying their clients.

Cases in Inventory

Although most grievances are closed out a short time after being opened, to the grievant and respondent they nearly always seem to take too long to resolve. Older cases often have been deferred pending resolution of criminal or civil litigation involving the same or similar issues (about 80 grievances were so deferred in 1999), or are usually more complex and likely to be ordered to a hearing. From 1996 to 1999, 92 percent (9,947 grievances) of the 10,793 grievances filed had been closed as of December 30, 1999, while eight percent (846 grievances) remained open. The open grievances consisted of 555 grievances filed in 1999 (66 percent), 191 grievances filed in 1998 (23 percent), 79 grievances filed in 1997 (nine percent), and 21 grievances filed before 1997 (two percent). As of April 28, 2000, only 376 of those 846 grievances remained open, so that with the addition of new grievances filed during 2000, the total open inventory of grievances as of that date was 758 cases. In addition to the open investigations, as of the same date the ODC had open 97 formal prosecutions representing 216 separate grievances against 93 lawyers. These prosecutions range from matters just ordered to hearing, to cases awaiting Supreme Court decisions.

Nature of Grievants

About 53 percent of all grievances were filed by clients (31 percent) or ex-clients (22 percent), while 17 percent were filed by opposing clients (15 percent) or opposing counsel (two percent). The WSBA itself filed 11 percent of grievances, mostly for trust account problems. The rest of the grievances were filed by other lawyers (three percent), court reporters and expert witnesses (two percent), judges (less than one percent) and others (13 percent).

Practice Areas Involved in Grievances

Most grievances were filed against lawyers practicing family law (29 percent), criminal law (26 percent), personal injury law (12 percent), real property law (six percent), and estates/probate law (five percent). Grievances were filed in lesser amounts against lawyers practicing in the areas of commercial law, labor/employment matters, bankruptcy, collections,

immigration and corporate/business matters. The areas in which most grievances were filed are generally the most common areas of practice with the most clients, and thus are most likely to receive grievances. In addition, clients in these areas often have not previously dealt with lawyers and often have unrealistic expectations of what their lawyer will or can do for them, or what the lawyer's services will cost.

Statistics are not available on the type of organization in which lawyers against whom grievances are filed practice. However, sole practitioners or lawyers in small partnerships appear to be more likely to receive grievances, reflecting merely that most lawyers are in such practices. In addition, however, such practices often deal with unsophisticated clients, handle more high-volume/low-profit cases, and may be struggling to implement the office management and quality control procedures more common in larger firms which might internally catch problems before they result in grievances.

Grievance Allegations

About 37 percent of grievances allege that the lawyer either did not perform promised legal services at all, unduly delayed performance beyond what the client expected, failed to adequately communicate with the client, or otherwise failed to perform required duties to the client. About 16 percent allege interference with justice by the lawyer (communicating with represented adversaries, making misrepresentations to a court, disobeying court orders, or filing harassing lawsuits, for example). Another 14 percent relate to the lawyer's personal conduct, including criminal convictions of the lawyer, misrepresentations by the lawyer to non-clients, failure to pay debts, practicing while suspended, use of offensive language, and so on. Another 12 percent allege the lawyer charged excessive fees, failed to return unearned fees, or made unauthorized withdrawal of disputed fees. About 10 percent allege failure by the lawyer to satisfy duties to the client, including making misrepresentations to the client, disregarding conflicts of interest, improperly withdrawing from representation, failing to turn over files to the client, or settling cases without authority. Another 10 percent allege trust account violations.

Reasons for File Closures

The ODC examines each submission it receives to determine if it alleges an ethical violation. About 11 percent of 1999 submissions failed to do so and were dismissed. If a submission alleges an ethical violation, the ODC considers its materiality and investigates as appropriate. In 1999, the ODC dismissed 29 percent of submissions after either a formal (18 percent) or informal (11 percent) investigation showed that, although a violation was alleged, there was either no evidence or insufficient evidence to establish a violation had occurred. Another seven percent were dismissed further into the disciplinary process by a Review Committee or the Disciplinary Board. File disputes (15 percent) and non-communication matters (13 percent) were generally closed and resolved informally outside of the grievance-discipline process. About six percent of closures were viewed as essentially fee disputes not appropriate for lawyer discipline, and were dismissed and referred to voluntary fee arbitration, while another one percent were referred to informal mediation. About three percent of grievances were deferred pending resolution of civil or criminal cases in which substantially similar issues were being raised. About three percent of closed files resulted in some form of discipline.

Late in 1999, the Court also agreed with the WSBA to the appointment of a Discipline 2000 Task Force to review disciplinary procedures with a view to improving the workings of the discipline system.

Supreme Court Decisions & Rules

In 1999, the Supreme Court issued two lawyer disciplinary decisions. In the first, *In re John C. Huddleston,* 137 Wn.2d 560 (1999), the Court disbarred a lawyer who defrauded a magazine publisher and subscribers, rejecting his contention that conduct "completely outside the practice of law" should mitigate discipline. In the same case, the Court held that in lawyer disciplinary proceedings a lawyer's alleged criminal misconduct need be proved only by the usual disciplinary proceedings standard of proof (clear preponderance of the evidence) rather than the higher criminal law standard (beyond a reasonable doubt).

In the second case, *In re Arthur Boelter*, 139 Wn.2d. 81 (1999), the Court suspended a lawyer for six months for threatening to disclose (in an effort to collect allegedly due legal fees) a client's confidential information, for falsely claiming to have recorded conversations with a client, and for excessive legal fees.

During 1999 the Court adopted new Admission to Practice Rule 17, under which the Court may suspend a lawyer from practice for failing to comply with child support orders. During 1999 the Court left pending two 1998 rule proposals which would be enforced through the lawyer disciplinary process: (1) a proposal to add a Rule 1.8(k) to the Rules of Professional Conduct that would generally prohibit lawyer-client sexual relationships as conflicts of interest; and (2) a proposal to add a Rule 8.4(g & h) to the RPCs that would prohibit certain discriminatory acts. In a 1998 decision, *In re James A. Heard*, 136 Wn.2d 405 (1998), the Court suspended a lawyer for financially and sexually exploiting a client, noting that it was not stating a general rule regarding lawyer-client sexual relationships, but was instead leaving that to the Court's normal rule-making and decision-making process. The Court cited that note in suspending a lawyer for one year in another recent sex-with-client case, *In re Lowell K. Halverson*, — Wn.2d – (2000).

Late in 1999, the Court also agreed with the WSBA to the appointment of a Discipline 2000 Task Force to review disciplinary procedures with a view to improving the workings of the discipline system.

Formal Ethics Opinion

The WSBA Board of Governors adopted Formal Ethics Opinion 195, relating to disclosure of client confidences and secrets

in detailed billing statements to persons other than the client, to consent of the client to an insurer's review of billing statements by an outside auditor, and to ethical compliance with "billing guidelines" of a person other than the client.

Ethics Presentations

Over the last several years, the ODC has sought to help Washington lawyers understand their ethical obligations by making ethics presentations and writings available to lawyers throughout the state. It continued that effort last year by making more than 70 ethics presentations and by writing monthly legal ethics articles for the *Washington State Bar News*.

Internal ODC Changes

During 1999, the WSBA executive director and the WSBA chief disciplinary counsel reviewed the ODC's structure to assure timely processing of investigations and prosecutions. As a result, they created a new case-management position in the ODC of associate director, and appointed Joy McLean, an ODC senior disciplinary counsel, to the position. They also consolidated several work teams and reorganized them on an interim basis into an investigation and a prosecution team to better address the work flow.

Further Information

The ODC publishes annually the *Washington Lawyer Discipline Manual*. The 2000 version reprints relevant disciplinary rules, guidelines and all discipline notices for 1999, and contains the 1999 annual discipline report. It is available for $15 from the ODC.

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

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

Disbarred

Irving Leroy Dane (WSBA No. 6587, admitted 1976), of Vancouver, has been disbarred by order of the Supreme Court effective March 27, 2000. This discipline is based on his committing a criminal act involving moral turpitude, failing to deal properly with client funds, and engaging in conduct involving dishonesty.

Matter 1: In 1991, Mr. Dane agreed to represent a client in a personal injury case against the other driver and the driver's insurance company. Mr. Dane accepted this case on a contingent fee basis, but did not provide a written fee agreement. In January, the client's own insurance company paid her $50,000 in under-insured motorist coverage. The client endorsed the check to Mr. Dane, who deposited it into his trust account on February 13, 1992. The client understood that the money would remain in Mr. Dane's trust account until the case against the driver and the insurance company was over. On April 15, 1992, Mr. Dane withdrew $10,000 of the client's funds from the trust account and deposited them into his business account. He used some of these funds to make the down payment on his home. On November 16, 1992, Mr. Dane withdrew an additional $15,000 of the client's money from the trust account. He used this money to make a payment on his house. The client settled her case on November 5, 1997 for $80,000. At this time, Mr. Dane told the client that her $50,000 was still deposited in his trust account and that he was negotiating with her medical providers to waive their liens. The client did not receive any of the $50,000 payment. On July 12, 1999, Mr. Dane pleaded guilty to a first-degree theft charge based on this matter.

Matter 2: In the fall of 1995, a client retained Mr. Dane to represent her son on second-degree murder charges. Mr. Dane required the mother to pay $15,000 in advance fees, plus $2,500 in costs. Mr. Dane did not provide the client a written fee agreement. The client believed she retained Mr. Dane on an hourly basis, but he believed that he was charging a set fee. Between November 27, 1995 and December 28, 1995, Mr. Dane withdrew $17,100 in attorney's fees on this matter — $2,100 more than was available.

Matter 3: Mr. Dane agreed to represent a client in a personal injury action against the estate of the intoxicated driver of a car that crossed the center line and seriously injured the client. Mr. Dane and the client agreed to a 33-1/3 percent contingent fee. The client received $2,276.89 from the Crime Victim Compensation Program. The Program also paid $2,479.13 of the client's medical bills. The Program had a statutory lien on any recovery by the client. The court ordered the estate to pay the client $22,650.92, plus interest. On February 6, 1991, Mr. Dane deposited the check from the estate into his trust account. He did not pay the Crime Victim Compensation Program's lien. Between April 19, 1991 and April 15, 1992, Mr. Dane withdrew $25,922.76 from his trust account, identified as this client's funds — approximately $3,000 more than was available. Mr. Dane did not pay any portion of the $22,000 to the client.

Mr. Dane's conduct violated RCW 9A.56.030; RPC 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustwor-

thiness or fitness as a lawyer in other respects; RPC 8.4(c), prohibiting engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; RPC 1.14, requiring lawyers to deposit client funds into a trust account, maintain complete records of all client funds in the lawyer's possession, and promptly pay to the client, upon request, funds which the client is entitled to receive; and RLD 1.1(a), subjecting a lawyer to disciplinary action for committing a crime involving moral turpitude.

Leslie Allen represented the Bar Association. Thomas Phelan represented Mr. Dane.

Suspended

Michael B. Markham (WSBA No. 11388, admitted 1980), of Seattle, has been suspended for one year, following a hearing, by order of the Supreme Court dated February 29, 2000. The discipline is based upon his felony conviction of attempting to evade income taxes and subsequent probation violations.

On May 9, 1997, Mr. Markham pleaded guilty to one count of attempting to evade income taxes, a felony. On July 25, 1997, the Court sentenced Mr. Markham to three years' probation with conditions, including mandatory drug testing. On September 9, 1997, the probation officer alleged that Mr. Markham violated his probation by using heroin. The Court adopted an agreed probation modification requiring Mr. Markham to reside at a community corrections center for up to 120 days. On December 23, 1997, the probation officer alleged that Mr. Markham had again violated his probation by using heroin and being terminated by the community corrections center. The Court revoked Mr. Markham's probation and sentenced him to four months' incarceration followed by two years of supervised release. On May 29, 1998, Mr. Markham was placed on home confinement with electronic monitoring, after admitting that he traveled outside the district without approval of his probation officer. On August 19, 1998, Mr. Markham admitted to consuming heroin on six dates in June 1998, failing to submit to required drug testing in June 1998, and being arrested on July 9, 1998 for driving under the influence of drugs or alcohol and possessing narcotics and narcotic paraphernalia. As a result of these violations, the Court revoked Mr. Markham's supervised release and sentenced him to 12 months and one day of imprisonment at the SeaTac Federal Detention Center. Mr. Markham completed his sentence and has been released.

Mr. Markham's conduct violated RPC 8.4 (b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; 8.4 (c), prohibiting engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; RLD 1.1(c), subjecting a lawyer to disciplinary sanctions for violating his or her duties as a lawyer; and RLD 1.1(p), subjecting a lawyer to disciplinary sanctions for conduct demonstrating unfitness to practice.

Leslie Allen represented the Bar Association. Kurt Bulmer represented Mr. Markham. The hearing officer was Kimberly Boyce.

Censured

Richard K. Clyne (WSBA No. 21556, admitted 1992), of Seattle, has been ordered censured pursuant to a Stipulation to Censure approved by the Disciplinary Board on March 15, 2000. This discipline is based on Mr. Clyne's failure to keep non-client funds separate from client funds in a lawyer trust account.

Mr. Clyne attended law school with Barbara Beatty. While in school, Mr. Clyne worked as a legal assistant for Ms. Beatty. After passing the bar exam, Mr. Clyne worked as an associate for Ms. Beatty. In the summer of 1992, Ms. Beatty began soliciting investors in a real estate project to build four single-family residences. Ms. Beatty had real estate experience and acted as the project developer. Mr. Clyne has some construction experience. Ms. Beatty asked Mr. Clyne to assist as site advisor. Some of the money from this investment project passed through the lawyer trust account that also contained client funds. Mr. Clyne suggested to Ms. Beatty that they open a separate account for the investment money, but no new account was ever opened. Both Ms. Beatty's and Mr. Clyne's signatures were required for trust account checks. Mr. Clyne wrote checks from the trust account for project expenses. In February 1999, Ms. Beatty was sentenced on one count of securities fraud for her role in this investment project. Mr. Clyne was not criminally charged.

Mr. Clyne's conduct violated RPC 1.14, requiring only client funds to be placed in a lawyer trust account.

Linda Eide represented the Bar Association. Mr. Clyne represented himself.

Censured

Jeffrey Thornton Haley (WSBA No. 9526, admitted 1979), of Bellevue, has been ordered censured pursuant to a Stipulation to Censure approved by the Disciplinary Board on January 12, 2000. This discipline is based on Mr. Haley's contacting a represented party.

Mr. Haley represented the plaintiff corporation in a trademark infringement suit in federal district court. During discovery, Mr. Haley determined that the president of the defendant corporation should be added to the lawsuit in his individual capacity. Mr. Haley wrote a letter to the defendant's lawyer asking if he would agree to amending the complaint. When Mr. Haley received no response from the defendant's lawyer, he contacted the president directly. Mr. Haley erroneously believed that the defendant corporation's lawyer did not represent the president individually. Mr. Haley did not take steps to determine whether the president was represented prior to contacting him directly.

Mr. Haley's conduct violated RPC 4.2, prohibiting a lawyer from communicating about the subject matter of a lawsuit with a person known to be represented by counsel.

Leslie Allen represented the Bar Association. Kurt Bulmer represented Mr. Haley.

NON-DISCIPLINARY NOTICES

Suspension

Mickie Jarvill (WSBA No. 14049, admitted 1984), of Stanwood, was ordered suspended from the practice of law pending the outcome of disciplinary proceedings by order of the Supreme Court entered April 6, 2000.

Notice of Deadline for Filing WSBA Resolutions

Pursuant to WSBA Bylaw Article VII, Section F — Resolutions, any 10 active members of the Washington State Bar Association may present a written resolution to the Board of Governors for consideration at the WSBA's Annual Business Meeting, which will be held Friday, September 15, 2000, at 11:45 a.m. at the Spokane Convention Center. Resolutions must be filed with the WSBA Executive Director at least 90 days before the Annual Meeting (by 5:00 p.m. on Monday, June 19, 2000), and must be accompanied by a written report explaining the resolution. The resolution and explanatory report together shall not exceed a total of 1,000 words. Resolutions may be submitted to the Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330.

The Board of Governors will refer any resolutions addressing issues within the purposes of the WSBA to the WSBA Resolutions Committee. Those purposes are set forth in Article I of the WSBA Bylaws and General Rule 12 of the Washington Court Rules.

The Resolutions Committee will hold a public hearing to consider the views of the proponents and opponents of resolutions on Thursday, September 7, 2000, at 1:30 p.m. at the WSBA office. Proponents and opponents of resolutions are urged to attend the hearing or to present their views in written form for consideration by the Resolutions Committee. Proposed resolutions will be published in the August 2000 issue of *Bar News*.

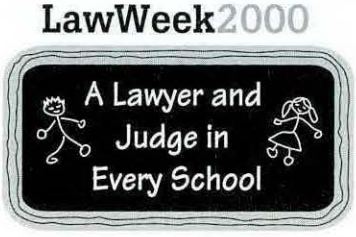
Members of the WSBA Resolutions Committee are John M. Riley (Chair), Julia Dooris, William Fleck, Lee Kraft, Thomas Loftus, Teresa Morris, Stephen Pfeifer, Edward Ratcliffe, John Schultz, Joan Sullivan, Michael Zeno and Bob Welden (WSBA Staff Liaison).

WSBA Annual Awards Lunch

The WSBA Annual Awards Lunch and Business Meeting will be held in conjunction with Celebration 2000, from 11:45 a.m. to 1:45 p.m. on Friday, September 15, 2000 at the Spokane Convention Center. Watch future issues of *Bar News* for more information.

Law Week

Many thanks to the lawyers and judges who helped to make Law Week 2000 a success. See story in the July issue of *Bar News*.



Upcoming BOG Meetings

The Board of Governors' meeting schedule is as follows:

June 23-24	Portland Hilton	Portland, Oregon
August 4-5	Doubletree	Port Angeles
Sept. 13	Cavanaugh's Inn at the Park	Spokane

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

ABA National Conference

All Washington attorneys planning to attend the ABA National Conference in New York City this July are cordially invited to attend a reception hosted by the Seattle University School of Law. Dean Jim Bond and Dean-designate Rudy Hasl would like to take this opportunity to meet and visit with Washington delegates, especially Seattle University law school alumni.

The reception will be held Friday, July 7 from 6:30 to 8:30 p.m. in the Majestic West Suite at the Rihga Royal Hotel, 154 W. 55th Street in Manhattan.

For additional details contact Alison Judd, Director of Alumni Programs, Seattle University School of Law at 206-398-4210 or ajudd@seattleu.edu, or call Lucy Isaki at 206-389-2598.

Statute Law Committee Seeks Input

The Code Reviser's Office, under the direction of the Statute Law Committee, is authorized to prepare legislation for submission to the Legislature for the correction or removal of deficiencies, conflicts or obsolete provisions of statutory law. The Committee limits itself to technical matters and leaves substantive issues to the political process. Anyone aware of such technical deficiencies, conflicts or obsolete provisions can submit a brief description of the problem to the Committee, citing the specific section of the RCW. Descriptions should be directed to Dennis W. Cooper, Office of the Code Reviser, Legislative Building, PO Box 40551, Olympia, WA 98504; e-mail CodeRev_WA@leg.wa.gov.

BOG Election Ballots Mailed

Election ballots for the 5th and 7th-west districts were mailed Wednesday, May 17, 2000, and are due by 5:00 p.m., Thursday, June 15, 2000. Ballots will be counted beginning at 1:30 p.m., June 19, 2000 in the Rainier Room at the WSBA office. If you are an active WSBA member in the 5th or 7th-west district and did not receive a ballot, please contact Lori Lee at 206-727-8244 or e-mail loril@wsba.org.

Franklin High School Wins National Competition

Congratulations to the eight members of Seattle's Franklin High School team who won the national mock-trial championship, held last month in South Carolina! Under the coaching of veteran teacher Rick Nagel and with assistance from King County Superior Court Judge William Downing and Charlie Williams, president-elect of the Washington Association of Criminal Defense Lawyers (and a former student of Nagel's), Franklin beat the other 40 teams competing in this annual event. This is the seventh year the Franklin team has made it to the finals.

Legal Events

Look to the WSBA website for information about what's going on in the legal community. Legal events from around the state are posted on the calendar at www.wsba.org/calendar. We are pleased to help publicize events of interest to the legal community; simply e-mail this information to Randy Winn, WSBA webmaster, at randyw@wsba.org, or fax it to 206-727-8319.

ATLA to Hold Annual Convention in Chicago

The Association of Trial Lawyers of America (ATLA) will hold its annual convention in Chicago, July 29-August 2, 2000. The five-day conference will feature more than 45 concurrent CLE programs. President Clinton is the invited speaker for the Town Hall meeting on July 30. The keynote speaker on August 1 will be Senator Max Cleland (D-GA). For more information, see the ATLA website at http://www.atla.org, or call 800-424-2725.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in May 2000 is 6.203% percent. The maximum allowable interest rate for June 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/.

GARVEY, SCHUBERT & BARER

is pleased to announce that

Michael O'Connor

has joined the firm in its Portland office as an associate. Mr. O'Connor has a BA from Yale and a JD from the University of Oregon School of Law. Recipient of the MBA Volunteer Lawyers Project Pro Bono Award in 2000, Mr. O'Connor's practice will continue to focus on business and commercial litigation, as a member of both the Oregon and Washington State Bar Associations.

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and

George M. Ahrend

have become associated with the firm.

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601 West Riverside Avenue
Spokane, WA 99201-0653
Telephone: 509-747-2052

The Law Offices of Joel T. Salmi

is pleased to announce that

Betsy A. Gillaspy

formerly with Williams, Kastner & Gibbs

has joined the firm.

For the past 10 years, Ms. Gillaspy has focused her practice on construction and employment law.

The firm will continue to emphasize insurance defense and coverage litigation. Ms. Gillaspy will concentrate her practice on construction defect litigation.

800 Bellevue Way, Suite 300
Bellevue, Washington 98004
Telephone: 425-646-2956
Facsimile: 425-646-2851

The Law Offices of

Schroeter Goldmark & Bender

is pleased to announce that

KATHY GOATER

has become Of Counsel to the firm.

Previously, Ms. Goater was Senior Deputy Prosecutor and Chair of the Special Assault Unit of the King County Prosecutor's Office, where she was highly regarded for her vigorous prosecution of perpetrators of sexual assaults and crimes against children.

At Schroeter Goldmark & Bender, Ms. Goater will participate in a wide range of personal injury and wage and hour litigation. She has a particular interest in cases involving sexual assault and medical malpractice.

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Soha & Lang, P.S.

is pleased to announce that

Michael R. O'Clair

has become a shareholder in the firm, and will continue to emphasize civil litigation, environmental law and insurance law.

The firm is also pleased to announce that

Suzanne K. Pierce

and

Guy M. Bowman

have joined the firm as associates.

SOHA & LANG, P.S.
1210 Norton Building
801 Second Avenue
Seattle, WA 98104
Telephone 206-624-1800
Facsimile 206-624-3585

The law firm of

VANDEBERG JOHNSON & GANDARA

is pleased to announce that

Dirk A. Bartram

(Formerly of Helsell Fetterman LLP)

has joined its Seattle office as Of Counsel

Mr. Bartram will continue his corporate and commercial practice with an emphasis in trademarks, copyrights and licensing.

Seattle	Tacoma
600 University Street	1201 Pacific Avenue
Suite 2424	Suite 1900
Seattle, WA 98101	Tacoma, WA 98401

Calendar

This information is submitted by providers. Please check with providers to verify approved CLE credits. To announce a seminar, please send information to:

WSBA *Bar News* Calendar
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330
fax: 206-727-8320
e-mail: comm@wsba.org

Information must be received by the 1st day of the month for placement in the following month's calendar.

BUSINESS LAW

2000 Business Law Section Midyear Meeting and Seminar: Current Developments
June 2-3 – Seattle. 10.25 CLE credits, including 1 ethics. By WSBA-CLE and Business and Tax Law Sections; 800-945-WSBA or 206-443-WSBA.

Electronic Commerce
July 27 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

COMPUTER LAW

17th Annual Pacific Rim Computer Law Institute
June 2 – Seattle. 7.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

DEBTOR/CREDITOR

Advanced Collection Law in Washington
June 30 – Seattle. 7 CLE credits, including 1 ethics. By Lorman; 715-833-3940.

EMPLOYMENT LAW

Employer Pitfalls
July 28 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

Advanced Probate
July 13 – Seattle; July 27 – Mt. Vernon. 7 CLE credits, including 1 ethics pending. By WSBA-CLE and RPPT Section; 800-945-WSBA or 206-443-WSBA.

ETHICS

Washington Legal Ethics
June 21 – Seattle. 6.25 CLE ethics credits. By Lorman; 715-833-3940.

FAMILY LAW

2000 Family Law Section Annual Meeting and Seminar
June 23-25 – Spokane. 10.75 CLE credits, including 2 ethics. By WSBA-CLE and Family Law Section; 800-945-WSBA or 206-443-WSBA.

Children and the Law: Representing and Protecting Children and Their Rights
June 15 – SeaTac. 6 CLE credits. By WSBA-CLE and YLD; 800-945-WSBA or 206-443-WSBA.

Handling Domestic Relations Cases
June 30 – Portland. 5 CLE credits, including 1 ethics pending. By Oregon State Bar; 503-684-7413.

GENERAL

Nuts and Bolts Series
June 1 (**Civil Litigation:** 3 CLE credits, including .5 ethics); June 15 (**Bankruptcy:** 3 CLE credits, including .5 ethics); June 22 (**Estate Planning and Probate Practice:** 2 CLE credits, including .25 ethics); June 29 (**Criminal Law:** 3 CLE credits, including 1 ethics); July 13 (**Family Law:** 2.5 CLE credits, including .25 ethics); July 20 (**Residential Real Estate:** 3 CLE credits, including .5 ethics); July 27 (**Business:** 3 CLE credits, including .5 ethics). All held in Seattle. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Trial Evidence
June 2 – Portland. 5.5 CLE credits, including .5 ethics pending. By Oregon State Bar; 503-684-7413.

Clearing the Mist: Building the Plaintiff's Minor Damage Case: The Challenges of Practicing in Two States
June 8 – Vancouver. 5.75 CLE credits pending. By WSTLA; 206-464-1011.

Handling Auto Accident Cases
June 9 – Portland. 7 CLE credits pending. By Oregon State Bar; 503-684-7413.

Legislative Update (TELE-CLE)
June 12 – Seattle. 1.5 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

How to Value a Closely Held Business
June 16 – Portland. 3 CLE credits pending. By Oregon State Bar; 503-684-7413.

Labor and Employment Issues in the Purchase and Sale of a Business
June 21 – Seattle. 1.5 CLE credits estimated. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Current Legal Techniques and Visions of the Future: Two Seminars for Legal Staff and the Sole Practitioner
June 28 – Seattle. 6 CLE credits. By WSTLA; 206-464-1011.

LITIGATION

Litigation Section Midyear: Mastering the Craft of Modern Trial Advocacy
June 23 – Seattle. 6.5 CLE credits. By WSBA-CLE and Litigation Section; 800-945-WSBA or 206-443-WSBA.

PUBLIC PROCUREMENT AND PRIVATE CONSTRUCTION LAW

Public Procurement and Private Construction Law Section Midyear: New Developments in Public Projects
June 15 – Seattle. 6.5 CLE credits, including .75 ethics. By WSBA-CLE and PP & PC Law Section; 800-945-WSBA or 206-443-WSBA.

REAL PROPERTY, PROBATE AND TRUST

Real Property, Probate and Trust Section Midyear
June 2-4 – Stevenson. 11.75 CLE credits, including up to 2 ethics. By WSBA-CLE and RPPT Section; 800-945-WSBA or 206-443-WSBA.

TAX

1st Annual Oregon Tax Institute
June 9-10 – Stevenson, WA. 9.5 CLE credits pending. By Oregon State Bar; 503-684-7413.

Nonprofit Business Organizations
June 29 – Seattle. 7.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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206-713-1287

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Gig Harbor, WA 98332
253-858-1400

Classifieds

Reply to WSBA *Bar News* Box Numbers at:
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Positions available are also posted by telephone at:
206-727-8261
and online at www.wsba.org

FOR SALE

Library/office furnishings for sale: Reporter, Appellate Reporter, Digest CJS, AM Jur Pleadings and more. All current, excellent condition, complete. Furnishings for four offices; all in excellent condition. Best offer. 509-452-5108.

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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.

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University (Laurelhurst) area: Professional office-sharing arrangement. Large executive office plus smaller office suitable for assistant available. Share receptionist, conference rooms, library and services with senior level attorney, CPA, insurance and eldercare professionals. Optional networking/joint marketing opportunities available. Estate planning or elder law world be a nice complement. Great location, attractive, pleasant environment. Please call 206-523-6470 or e-mail cjensen@nwlink.com for more information.

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

SEEKING SPACE

Office space needed: Two experienced litigation attorneys seeking space-sharing/subleasing arrangement in downtown Seattle offices, preferably near the courts. Call 206-624-7460.

POSITIONS AVAILABLE

The Hartford's Seattle staff legal office is growing! We are seeking an attorney with a minimum of three years' insurance defense litigation experience, including at least one jury trial to verdict. The ability to aggressively handle a large caseload with minimal supervision is critical. If you're interested in joining us, please send your résumé to: The Law Office of Sharon J. Bitcon, 720 Olive Way, Ste. 925, Seattle, WA 98101.

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

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

Davis Wright Tremaine LLP seeks a real estate/land use associate to join its Bellevue office real estate practice. The person hired will work on a variety of land use and commercial real estate matters, including matters related to telecommunications facilities. Candidates must have at least two years' experience, superior academic credentials and excellent writing skills. Send résumé, transcript and writing sample to: Dee Hayward, Recruiting Coordinator, Davis Wright Tremaine LLP, 10500 NE 8th St., Ste. 1800, Bellevue, WA 98004. Visit our website at http://www.dwt.com.

Tousley Brain PLLC is expanding its complex commercial and class-action litigation practice and is actively recruiting an entry-level associate for its sophisticated commercial litigation practice. Additionally, the company is recruiting for an associate with real estate (legal and/or real world) experience for its business department. Each position requires a solid academic record, as well as a demonstrated ability to excel in a fast-paced, client-focused environment. Tousley Brain PLLC provides extensive benefits and tremendous opportunities for professional growth. Please send cover letter, résumé and writing sample to: Julie Livengood, HR/Operations Manager, Tousley Brain PLLC, 700 5th Ave., Ste. 5600, Seattle, WA 98104 or e-mail jlivengood@tousley.com.

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., June 1 for the July 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.

Associate attorney: Enjoy life in a smaller city. Excellent academic credentials, as well as first-rate oral and written communication and interpersonal skills required for associate position with an Olympia firm emphasizing business law practice and litigation. Send cover letter and résumé to: David D. Cullen, Attorneys and Counselors, West Hills Office Park, Building 11, 1800 Cooper Point Rd. SW, Olympia, WA 98502.

Counsel II, Washington Mutual: Position will report to senior vice-president, associate general counsel, real estate and lending. Requires extensive background in real estate and lending with emphasis on commercial transaction. Responsibilities include: providing legal support for all aspects of the commercial real estate division of the bank including loan organizations, portfolio management and special credits; reviewing and revising policies and procedures, and form loan documents; supporting specific transactions both directly and through outside counsel; managing paralegal support; assisting with legal due diligence in connection with corporate and loan acquisitions; negotiating and documenting loan acquisitions and sales; and providing legal support for corporate property services (leases, subleases, purchases and sales of corporate-owned real estate). Membership in the California State Bar would be beneficial, although not essential. Washington Mutual offers an exciting and professional work environment with comprehensive benefits. Qualified candidates may obtain an application from any Washington Mutual location or call 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 #145457.

Assistant General Counsel (805VH): A Seattle-based public company has retained Houser Martin Morris to find an AGC. The AGC will facilitate the structuring and completion of major corporate transactions and other strategic projects; ensure full compliance with federal securities laws; manage litigation; ensure the company's interests are protected in regulatory and legislative processes; and provide general legal counsel to management and operations personnel. Must have at least four years' experience in a major law firm or corporation, and the ability to manage complex debt and equity financing and other corporate transactions such as reorganizations, mergers and acquisitions. Good base salary and bonus with excellent benefits and stock incentive plan. Please contact: Victoria Harris, HMM, PO Box 90015, Bellevue, WA 98009; vharris@houser.com.

Davis Wright Tremaine enjoys a national leasing practice, particularly in the retail and telecommunication industries. Our Seattle office, which is the hub of our leasing practice, desires to hire one or more leasing lawyers with a minimum of three years' experience in reviewing and negotiating leases. Tenant leasing, especially in the retail, office and telecommunications contexts, is preferred. Candidates should be motivated, possess excellent negotiating and communication skills, and have strong substantive and client relations skills. Please mail responses to Debbie Barker at Davis Wright Tremaine LLP, 1501 4th Ave., Ste. 2600, Seattle, WA 98101-1688.

Looking for attorney in Snohomish County with estate planning experience to work with existing client base. $75-100K potential. Part-time, flexible hours. Send résumé, income history and phone number to: Personnel Dept., 2623 Summit Rd., Copley, OH 44321.

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

Prominent South King County firm with 12 lawyers would like to hire an attorney with a minimum of one year's experience in the areas of employment and education law; seeking an attorney with a strong academic background and writing skills. Position offers growth and a challenging practice in a friendly, supportive workplace. Send résumé in confidence to: Curran Mendoza PS, Box 140, Kent, WA 98035-0410, Attn: Pearl Emery.

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.

In-house legal counsel: St. Luke's Regional Medical Center (SLRMC) is recruiting for an attorney to provide in-house counsel on a wide variety of legal matters. SLRMC is the largest tertiary care hospital in Idaho with consistently high standards of quality that have earned the organization national recognition for centers of excellence in cardiac, oncology, women's and children's, and medical surgical services. SLRMC is growing rapidly and is currently building two new community hospitals. This position will be a member of the executive team and provide legal input for the direction and planning of the medical center and system. SLRMC offers an excellent work environment, competitive compensation and benefit package. Requirements include a J.D., admission to the Idaho State Bar, a minimum of five years' experience as in-house counsel for a hospital or health system, and extensive knowledge of general health care law. For consideration please send your résumé to: Lisa Gibson, Human Resources, 190 E. Bannock, Boise, ID 83712; 208-381-2470.

Affordable housing/real estate attorney: Kantor Taylor McCarthy and Britzmann PC, a local four-person firm, seeks an attorney with at least two years' experience for its affordable housing and economic development practice. The firm emphasizes complex and government-assisted financing, including HUD and USDA multifamily programs, the historic rehabilitation tax credit, the low-income housing tax credit, tax-exempt and taxable bond financing, sale leasebacks, joint ventures and partnerships. A background in affordable housing and/or economic development is a plus but not necessary. Salary based on experience. Send résumé to: Mark Kantor, Kantor Taylor McCarthy & Britzmann, PC, 1501 4th Ave., Ste. 1610, Seattle, WA 98101-1622.

Snohomish firm seeks experienced attorney with established clientele for horizontal move to historic Snohomish to profit-center environment. Thirty-year-old firm with strong reputation and deep local roots. Firm focuses on municipal, banking, real estate and estate planning. Strong academic and practice credentials. Municipal law background a plus. Send résumé to: Bruce Keithly, 21 Ave. A, Snohomish, WA 98290; bruce@snohomishlaw.com.

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

The nation's premier labor and employment law firm, Littler Mendelson, PC, is seeking attorneys with experience in employment and/or labor law. Qualified candidates should possess excellent oral, written and research skills. Littler Mendelson offers a competitive salary and benefits package. Send résumés, along with writing samples to: Personnel, Littler Mendelson, PC, 999 3rd Ave., Ste. 3900, Seattle, WA 98104. See http://www.littler.com for more information.

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

Monterey-Seattle: Patent attorney/agent wanted. Growing, AV-rated intellectual property firm based in beautiful Monterey in northern California seeks patent attorney/patent agent with experience in prosecution in the electrical, computer science and telecommunications arts. Firm has a Seattle office as well, but work would initially be in California office. Litigation/PCT experience, California Bar membership and/or B.S.E.E. helpful but not required. Must have keen intellect, alert sense of humor and willingness to live and work in world-class resort area amid stunning beauty. Fax résumé to: Karen Rachelle at 831-649-8835; krachelle@lgpatlaw. com.

Real estate attorney: Idaho's largest law firm seeks real estate attorney(s) to join our established and growing real estate practice group in Boise. At least two years' sophisticated real estate experience required. Direct confidential inquiries to: Hawley Troxell Ennis & Hawley LLP, Attn: Hiring Partner, PO Box 1617, Boise, ID 83701-1617; fax 208-342-3829, ear@hteh.com.

Small, progressive, AV-rated litigation and business firm seeks associate. Strong demonstrated research, writing and analytical skills required. Enthusiastic, self-motivated individual with strong communication and interpersonal skills, willing to assist in a variety of civil legal matters; will find a home in our congenial work environment. Call 206-340-2008 for more information.

Wealth-management specialist position: Wells Fargo's commitment to providing the best financial service to our clients continues to create opportunities for top-notch strategists and sales professionals. Positions are available in the Washington region for wealth-management specialists. The core objective for the wealth-management specialists is to grow fee-based trust and investment-management revenue from new product sales within the region. The goal is to create "trained advocates" among the Wells Fargo distribution system for marketing investment management and trust services. In an effort to accomplish this goal, the wealth-management specialist will work very closely with the financial consultants, trust officers, portfolio managers, and private bankers in their region to promote the identification and utilization of investment management and trust products and services. He/she will be responsible for direct client sales interaction, local training, local investment management and trust marketing initiatives, and facilitation of working relationships between sales professionals and specialists. Job requirements: significant trust and investment management business development experience; demonstrated sales with a successful track record of achieving goals; broad-based, technical knowledge of trusts, estate planning and investment management; an advanced degree such as a CPA, CFP or JD is suggested; motivational ability; public speaking experience and marketing experience; excellent verbal and written communication skills. Send résumé to: Nicole Mathews via fax at 415-543-5026 or nmathews@wellsfargo.com.

Associate position: Civil litigation firm seeks attorney with at least one year's civil trial/discovery experience. Salary DOE plus benefits. Send résumé to: WSBA *Bar News* Box 587, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

Attorney position available: Experienced health law attorney to join a five-attorney legal department at large academic health center. Position will report to the general counsel and will be responsible for legal matters related to third-party payer reimbursement (including both federal health-care programs and commercial insurance payers); negotiation and drafting of health-care contracts; and other health-care-related legal matters. Also responsible for providing advice, negotiating and drafting miscellaneous university contracts. Send résumé to: Human Resources Department (HR), Oregon Health Sciences University, 3181 SW Sam Jackson Park Rd., Portland, OR 97201. Competitive salary and benefits will be offered.

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

Practice on the Southwestern Washington coast. Includes small office building, furniture and library. Send inquiries including résumé and financial statement to: WSBA *Bar News* Box 600, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330.

ERISA attorney: Part-time or full-time. Employee Benefits Institute of America LLC, Shoreline, WA (http://www.ebia.com). Legal research, writing, editing, speaking at seminars, etc. At least five years' current law firm experience as an ERISA attorney representing employers is required. Must have extensive cafeteria plan experience, and superior writing and presentation skills. Law review and top academic credentials desired. Wear blue jeans to work, as do our other ERISA

attorneys. Experience life without billable hours. Send e-mail with résumé to: tmccormick @ebia.com.

Personal injury law firm seeking an associate attorney. Candidate must have a minimum of two years' law office experience. Strong communication, interpersonal and writing skills required. Medical background and/or litigation experience a plus. Salary commensurate with experience. Must be a current member of WSBA. Fax or mail résumé to: Arthur D. Miller, 1220 Main St., Ste. 355, Vancouver, WA 98660; fax 360-694-5919.

Family law associate sought for small, thriving Tacoma firm. Minimum one year's experience and WSBA membership necessary. Competitive salary and benefits. Reply to: Office Manger, PO Box 182, Puyallup, WA 98371.

Associate general counsel patents: Amazon.com is seeking an associate general counsel to manage all aspects of its patent portfolio. Responsibilities include working with the information technology department to determine which inventions to patent, developing proactive and defensive strategies to protect such assets, licensing patents, working with and advising the executive team and litigation dept. on patent strategy, and managing a patent team. At least 10 years' legal experience in both a law firm and corporate legal dept. required. At least five of these years should be as a patent prosecution attorney, with a strong understanding of software/ Internet patents. Compensation based on experience; includes stock options. Send résumé and cover letter, indicating job code AGC Patents in the subject line to: jobs@amazon.com or fax c/o Joanna Haught at 206-266-7010.

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WILL SEARCH

Looking for the attorney who prepared a will for Donald C. Thompson of Kent, WA. Please contact Kurt Olson at 206-583-0155 or kolson@faolaw.com.

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

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