

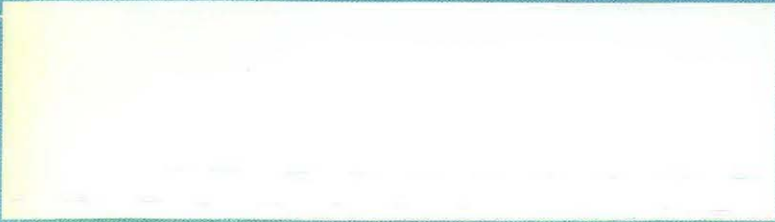
Washington State
BAR NEWS

The Official Publication of the Washington State Bar ■ JULY 2000



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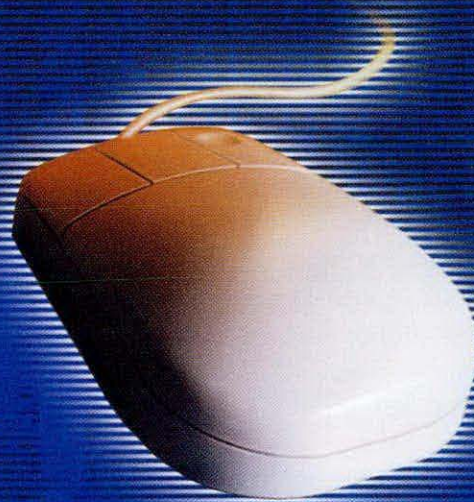


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Letters

"Winner Take All" Child Support Breeds Bitterness and Resentment

Editor:

Re: John Mills' March 2000 *Bar News* article entitled *Calculating Child Support Transfer Payments: A New Approach*.

I agree wholeheartedly that the child support transfer payment calculation system is flawed. I have long believed that the economic table and worksheets wrongly ignore two important factors in determining the basic transfer payment: 1) The total family income on the table assumes that only one household is being supported, not two households, as is the case after divorce. The combined dollar contribution toward the children's expenses totally ignores the fact that after divorce, the same two parents' incomes must now support two households and cannot afford the same standard of living that one household enjoyed. 2) Absolutely no credit is given for the non-majority parent's contribution to the children's expenses during his or her residential time. Even a parent who has the base level 25 percent of residential time must pay for housing, utilities, insurance, food, gas, clothing and incidental expenses for his/her children. Unless the parent has substantial residential time, he or she is given no credit for paying directly for some of the children's costs. Even in 50/50 parenting plans it is often a struggle to get a court to proportionally reduce the presumptive transfer payment for the presumed support-paying parent (i.e., the father).

It is time that we take a serious look at our parenting and support laws, and be realistic about modern family life pre- and post-divorce. As long as we have a "winner take all" system we will continue to breed bitterness and resentment between divorcing parents, guaranteeing no end in sight for expensive custody battles.

*Lisa D. Scott
Bellevue*

Jurisdictional Statute Amended

Editor:

The May issue of *Bar News* includes a letter from David A. Thorner on page 14. Mr. Thorner wrote to inform attorneys of a change to RCW 36.01.050 that was made in 1997. Since he pointed it out, I wanted to also let practitioners know that the legislature amended the statute again this year,

effective June 8, 2000. It provides that actions against counties now be brought in the superior court of the two nearest judicial districts, not counties, as was previously the case. OAC retains its authority to designate which two judicial districts those will be.

*Gail Stone, Legislative Liaison
Washington State Bar Association*

Free CLE CD

Editor:

I recently had the good fortune to discover "free CLE" through the efforts of the Wash-

ington Digital Law Library and its director, Ed Hiskes. Its CD is free upon request. The subjects and instructors on the disk are well-chosen, and the production is of the highest professional quality.

This project is worthy of the Bar's support. It has demonstrated to me that CLE can be done both effectively and cheaply. I urge the Bar to utilize the technology that is readily available to us and to authorize us to fulfill our entire CLE requirement through the use of proven technology, rather than limiting our use of technology to 15 hours of CLE. While such limita-




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tion may perhaps have been valid years ago, it is not valid today and it should be repealed.

*Ralph Stemp
Seattle*

Voter "Turnout" for Governors' Races Slim

Editor:

J. A. Vander Stoep's thoughtful letter expressing concern over practice imbalances on the Board of Governors, as well as Yvonne Ward's and Harold Federow's comments were considerably well expressed in the May 2000 issue. I was struck by Mr. Federow's, "For better or worse, we have an elected Board of Governors."

Yeah, well, maybe. I ran for the 8th District position last year which had about 2,500 members. I was astonished to find that the votes for my respected and successful opposing candidate, as well as my vote totals, came to about 20 percent of the eligible voting members!

*Don M. Guilford
Bellevue*

Audio Streaming CLEs

Editor:

I have recently seen several advertisements for telephone-delivered CLE programs. These programs are great because they allow for "live credit" CLE to be delivered directly to law offices without wasted time and travel expense. Unfortunately, tuition fees for this form of CLE often exceed \$50 per hour.

However, RealNetworks, Inc. (a Seattle company) has developed an Internet-based alternative to telephone delivery — the RealAudio system. Currently, hundreds of radio stations are using RealAudio to provide Internet users with live access to programming. There is no reason this technology cannot be used for Internet broadcasts of live CLE programs.

The technology is easy to use. A computer with a microphone and an Internet connection is placed at the location of a CLE speaker. A free program from RealNetworks, called "RealProducer," captures audio from the microphone and transmits it to a server computer on the Internet. The server computer then re-transmits to listening computers in law offices, where the audio is reproduced using the free "Real-

Player" program. Thousands of computers can listen simultaneously to an audio program, with real-time feedback provided to the CLE speaker via chat and e-mail. The best thing about this system is its low cost — less than \$2 per hour, per listener. I hope that WSBA management will look into this technology as a possible means to provide inexpensive "live" CLE credit to WSBA members.

*Edward V. Hiskes
Richland*

Future Disciplinary Fodder?

Editor:

In re Halverson tells us that an attorney may be suspended for a long time for having a sexual relationship with a client. Some lawyer and judge friends of mine have asked for my opinion on the following questions:

1. Does the ruling apply only to dissolution clients, or does it apply to clients seeking help on a real estate project?
2. Does the ruling apply if the lawyer has not written a book on the subject?
3. Is there any statute of limitations?

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"I went from dead broke and drowning in debt to earning \$300,000 a year, practically overnight."

Ward says that while most lawyers depend on referrals, not one in 100 has a referral system. "Without a system, referrals are unpredictable. You may get new business this month, you may not," he says.

A referral system, however, can bring in a steady stream of new clients, month after month, year after year, he says.

"It feels great to come to the office every day knowing the

phone will ring and new business will be on the line."

Ward, who has taught his referral system to over 2,500 lawyers worldwide, has written a new report, "How To Get More Clients In A Month Than You Now Get All Year!" The report shows how any lawyer can use this system to get more clients and increase their income.

Washington lawyers can get a FREE copy of this report by calling 1-800-562-4627 (a 24-hour free recorded message), or by visiting Ward's web site at <http://www.davidward.com>

Guidance from any lawyers claiming expertise in this area would be appreciated.

*Ted Zylstra
Oak Harbor*

Case for Sealing Divorce Files

Editor:

Others more articulate than I are making the case for restricting access to court files in family law cases, especially when the alternative is online availability to the entire Internet. May I add my two cents' worth?

When the judges get divorced, their files

are routinely sealed. Shouldn't the courtesy the judges grant each other be available to ordinary folks, too?

*Joshua Foreman
Seattle*

Washington Dissolution Statutes Violate Federal Privacy Rights

Editor:

Justice Talmadge states in *The Privacy of Court Records: Striking a Delicate Balance*, "The courts must also carefully consider whether certain kinds of information now

demanded of litigants, particularly in the family law context, must become part of the court file at all."

In the family law context, Justice Talmadge was no doubt referencing the requirement in the petition that all litigants divulge their full address, social security number, birth date and driver's license number. Additionally, if the matter includes a temporary or permanent child support order, litigants are required (with very limited exceptions) to divulge under oath employer addresses and phone numbers, and detailed financial information including income, assets, long- and short-term debts, disabilities and medical conditions, various benefits received, work history, etc. into the public court record.

The divulging requirements increased as a result of the federal Welfare Reform Act and the state law passed in order to comply with the federal law. For example, the federal welfare reform law requires that states pass laws which require that the social security number of any individual who is subject to a divorce decree, support order or paternity determination be placed in the records related to the matter. This portion of the federal law was obviously for the purpose of making child support more uniform and improving child support collections. The federal law was overkill in that it required disclosure of social security numbers of divorce litigants without children. Nonetheless the requirement is the law. Washington would have risked cut-off of federal funds, and maybe worse, if it refused to pass laws including this requirement.

Washington complied with the social security requirement by amending RCW 26.09.020 to require that the social security number be stated in the petition regardless of whether there are children for whom support is sought. Similarly, the Washington petition statute was also amended to require divulging each litigant's last known address regardless of whether support is sought. (Prior to this change the practice was to allege only residence in the county so as to state a basis for jurisdiction and venue.) Note that the social security number and addresses are also required in the Department of Health form, which I believe is a less publicly available document that could have sufficiently met the federal



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law requirements and protected privacy. Washington's statute is overkill in that this information is required to be placed in publicly available pleadings, but nonetheless this is the law also.

Under the federal statute, divulging a driver's license number is only required in or after a child support order is entered. Washington's amendment to RCW 26.09.020 did not require divulging the driver's license number in all petitions. Nonetheless, in the aftermath of the state and federal welfare reform acts, the forms committee revised the mandatory petition

form to require divulging a driver's license number. Similarly, for the first time the mandatory forms committee is requiring each litigant's birth date in the petition.

There is no rational purpose whatsoever for collection of divorce litigants' driver's license numbers or birth dates into a publicly available pleading where no children are involved. Neither the driver's license nor the specific birth date (as distinguished from the litigant's age range stage of life) are used in determining the divorce issues. The potential exists for improper use of the information. In cases where children are

involved, collection of the information arguably serves a legitimate purpose in enforcement of child support post-decree, but the information will be restated on the child support order so it is duplicative on the petition. Attorneys should simply refuse to provide this information on the petition.

The federal Welfare Reform Act requires each state to "have in effect safeguards, applicable to all confidential information handled by the state agency, that are designed to protect the privacy rights of the parties, including (A) safeguards against unauthorized use or disclosure of information relating to proceedings or actions to establish paternity, or to establish or enforce support. . . ." However, Washington has not complied with the federal statute by safeguarding the extensive private information required to be put into the court records in child support orders and financial declarations. To the contrary, by requiring disclosure of all this information in public court records but not requiring safeguards, the Washington legislature facilitates identity theft and other casual abuse of private information.

A new wrinkle is that the conversion of paper court records to electronic records mentioned by Justice Talmadge could make electronic access to such private information cheaper, easier and more anonymous, and could facilitate the aggregation of this information from many cases. Those with an interest in such improved access and aggregation include not only identity thieves, scam artists and other criminals, but also legitimate businesses who value the information for marketing and for use in a host of decisions related to employment, insurability, credit, etc. Additionally, the easy access to such information could tempt government to use the information for purposes not initially contemplated.

Contrary to Justice Talmadge's considerations, both federal and state laws require that most of this very personal information be included in child support orders, worksheets and financial declarations. Absent a finding that these statutes are unconstitutional, the courts cannot unilaterally choose to delete the information from the court record. The court's only choice is to seal the records or portions with the private information. By unnecessarily duplicating the number of places the sensitive

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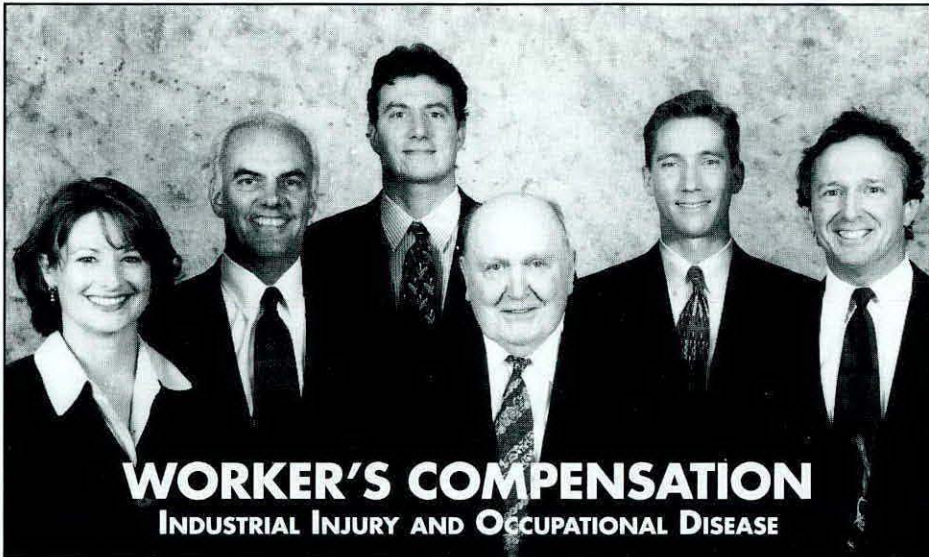
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information appears in the record, the court increases the number of pleadings that need to be sealed. In that respect it might be helpful if the court could require the forms committee to reduce the number of instances that sensitive information is required in the record. Even with reduced numbers of pleadings to be sealed, the prospect of routinely sealing would be a nightmare for the judicial system, and I doubt it is under serious consideration.

However the more fundamental point is that it will most likely take changes in statutes from the legislature before litigants' privacy is better protected. Until then courts would be exacerbating the existing casual invasion of privacy visited on citizens by the government if the courts made pleadings electronically available.

*Ron Steingold
 Lynnwood*

Bar's Website Worth a Bookmark

Editor:

Great job on the Bar's website! I had not looked at it in a long time, as I suppose quite a few other lawyers have not, because frankly, it used to be of very marginal utility. I always wondered why the Bar's own website did not contain a directory of Washington lawyers or links to free web resources for legal research. Now it contains that and lots more. Now it's worth a bookmark. Lawyers who have not visited it in a while should definitely check it out.

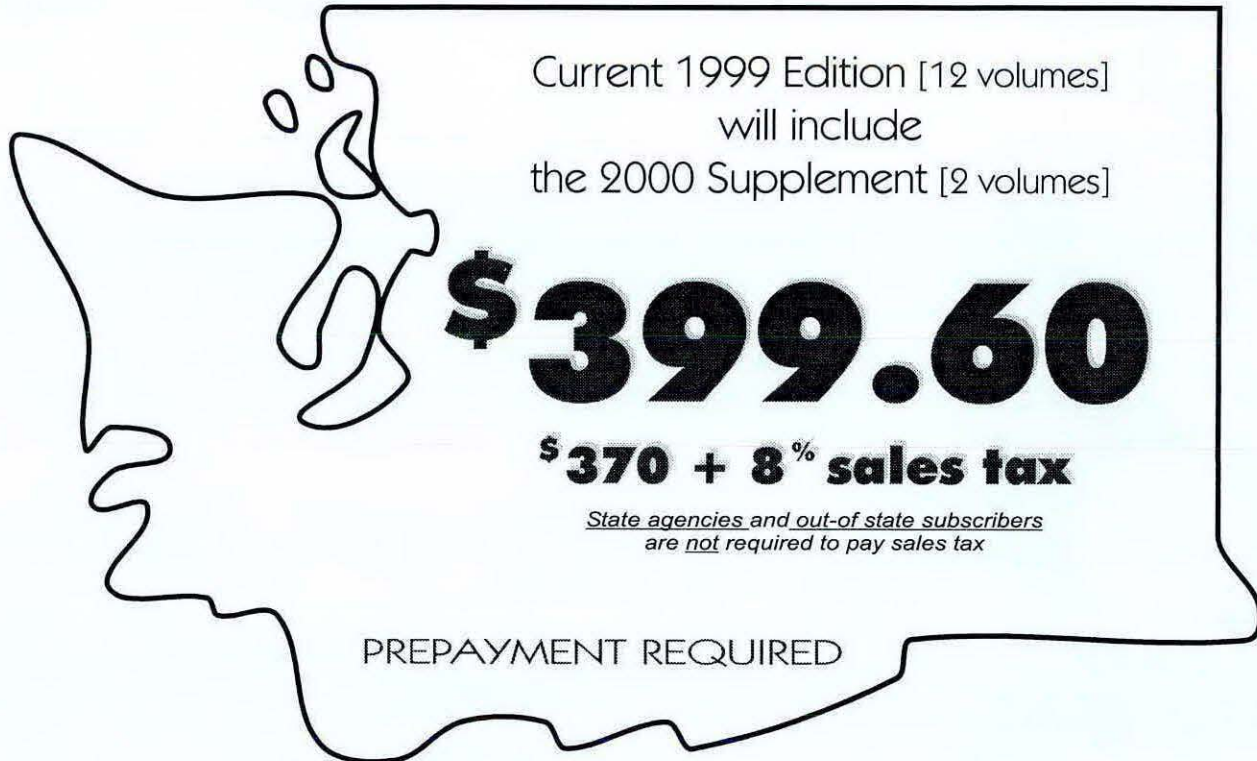
*Patrick Anderson
 Snoqualmie*

Editor's Note: The WSBA website can be found at <http://www.wsba.org>.

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



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Aspiring To Be a Lawyer-Mensch

by Peter R. Jarvis

Guest Editor

In *The Lost Lawyer*, Dean Anthony Kronman of Yale Law School bemoans the passing of the lawyer-statesman as a role model.¹ According to Dean Kronman, the loss of these larger-than-life figures has deprived the present generation of working lawyers of what we need to set and meet high standards.

In my 23 years as a lawyer, I have met and worked with a great many lawyers, including some who might be called lawyer-statesmen. There is no necessary connection, however, between the level at which lawyers practice, the clients whom they represent, the kind of work that they do and their qualities as human beings. As Huckleberry Finn observed years ago, “[A]ll kings is mostly rapscallions, as fur as I can make out.”²

You can find good lawyers and good people almost anywhere you look, just as you can find bad ones. Similarly, some people with the best of reputations cannot be trusted at all, while others with supposedly poor reputations can be both reliable and fun to work with, if treated with respect rather than contempt.

Most of us who work as lawyers have never been or wanted to be lawyer-statesmen. In fact, there would not be room for most of us at that exalted level if we did want to be there. This does not mean, however, that what we do does not matter. As working lawyers, we know that the opposite is true: What we do and how we do it matters a lot. What this does mean is that we would be better advised to look for a more realistic and accessible model than that of the lawyer-statesman — one that is closer to home.

I submit that the appropriate model on most occasions is the lawyer-mensch. “Mensch” is a Yiddish word that refers to a person who, among other things, knows right from wrong, knows enough to treat others with dignity whether or not they deserve it and tries to act accordingly.³ A mensch tries to suppress feelings of snobbery and superiority. A mensch tries to avoid cheap shots and unnecessary aggravation. A mensch must also be an optimist, because in many cases only an optimist can see the tangible and intangible benefits from taking the better or higher road.

“Mensch” is a Yiddish word that refers to a person who, among other things, knows right from wrong, knows enough to treat others with dignity whether or not they deserve it and tries to act accordingly.

The concepts behind the word “mensch” are by no means exclusive to the Yiddish language. Quakers, for example, speak of “respect for the light in every person” and of “a divine presence in each person which . . . commands our highest respect.”⁴ The Dalai Lama has observed that “all the world’s major religions stress the importance of cultivating love and compassion.”⁵ In one way or another, most groups and cultures have similar concepts.

Quite apart from the potential benefits to others, there is also another benefit to being a mensch, even if it is sometimes not apparent. It is good for the soul. In fact, it is also good for the mind and the body. There certainly is a time for righteous anger, just as there is a time for war, but not all anger is righteous

and not all wars are holy. If we are honest about it, few of us benefit in the long run from unnecessary or self-imposed stress. Why, then, should we push or help others push things to the limit when there may be another way to achieve the same results with less wear and tear? Fighting fire with fire is dramatic, but fighting fire with a fire extinguisher — or, better still, with fire prevention techniques — usually makes more sense. As working lawyers, we also know that every now and then, careful and respectful listening to even the most ungrateful clients or disrespectful opponents will prompt a solution to a problem that benefits everyone. Nothing ventured, nothing gained.

Being a mensch is not the same thing as being a patsy. To borrow from Justice Douglas’ famous remarks about prosecutors, a lawyer-mensch “may prosecute with earnestness and vigor — indeed, he should do so. But, while he may strike hard blows, he is not at liberty to strike foul ones.”⁶ And as Monroe Freedman, one of the nation’s foremost legal ethics experts, has observed, it is always acceptable to reason morally with one’s clients.⁷ It is equally acceptable to seek to act and reason morally with others.

When all is said and done, most of us are likely to have our biggest effect on the people and institutions with whom we come into immediate and daily contact, not on the state or

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country or world at large. Similarly, the biggest effect we are likely to have on our own lives will, in all probability, come from how we regularly and repeatedly conduct ourselves toward others, and not from an occasional and ostensibly heroic moment. In this sense, we can aim the highest and achieve the most by setting our sights the lowest. Our clients, our opponents, the system that we serve and our own lives will all be the better for it. *✍*

Peter Jarvis is a frequent writer and speaker on legal ethics issues. His practice includes advising attorneys with legal ethics questions and defending attorneys accused of legal ethics violations. He is a former member of the WSBA Rules of Professional Conduct Committee and the Oregon State Bar Legal Ethics Committee. He is also this year's chair of the ABA Center for Professional Responsibility Conference Planning Committee. He can be reached at prjarvis@stael.com.

NOTES

- 1 Anthony T. Kronman, *The Lost Lawyer: Failing Ideals of the Legal Profession* (1993).
- 2 Mark Twain, *The Adventures of Huckleberry Finn*, 99 (Buccaneer Books ed. 1976).
- 3 Leo Rosten, *The Joys of Yiddish*, 234 (1968).
- 4 Paul A. Lacey, *Growing Into Goodness, Essays on Quaker Education*, 19 (1998).
- 5 The Dalai Lama, *Ethics for the New Millennium*, 123 (1999).
- 6 *Donnelly v. DeChristoforo*, 416 U.S. 637, 649, 94 S.Ct. 1868, 40 L.ed. 2d 431 (1974) (Douglas, J., dissenting).
- 7 Monroe Freedman, *Understanding Lawyers' Ethics*, 50-52 (1990).

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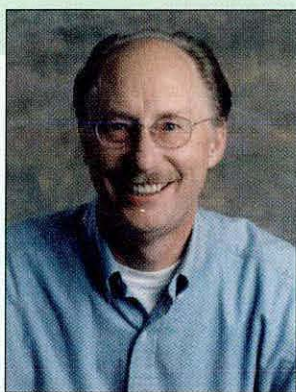
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On the Road to Being a WSBA Past-President ... with the Finish Line in Sight

by **Richard C. Eymann**
WSBA President

Recently, my three-year-old son, Houston, came to me while I was packing for an early flight the next morning. The conversation went something like this:

Houston: Where are you going, Dad?

Me: To Olympia.

Houston: Why Dad?

Me: I have a meeting there and then one in Seattle.

Houston: Why Dad?

Me: Well, because I am president of the Washington State Bar Association and I need to go to these meetings.

Houston: Why are you president, Dad?

[I am now beginning to wilt under this intense cross-examination]

Me: I wonder sometimes.

Houston: Why Dad?

Me: Well Houston, because I don't get to see you as much and my office misses me too.

Houston: [walking away, Houston concludes] I know, Dad.

Thoughts about that conversation do not fade quickly. My daily reminders are the beleaguered looks of my secretary and my paralegal, who remind me that over 60 percent of my work week is wrapped up in Bar-related activities. My wife, Sue, is extraordinarily understanding and supportive, but I get hints that she will be relieved when my term as president ends.

I know that a great percentage of my friends and colleagues are supportive of the effort that goes into the commitments and goals I set out for myself and the Bar Association this year. An incredible amount of communication arrives through my e-mail and fax machine. I try to respond as best I can, but there are days when I get over 30 Bar Association e-mails, not to mention at least that many more that are unrelated to Bar activities (for me, e-law has definitely arrived). Fortunately, most of what I receive is positive feedback, and it keeps me going.

Throughout the year, I have been blessed with a wonderful Board of Governors and Bar staff, and with only three months to go, I know that with them working as tirelessly as they do, we will all survive. Looking back over the past nine months, the quantity and importance of the various issues that con-

front your leadership are amazing. While lawyers across the state are divided on some key issues, everyone has one objective in common — the preservation of our profession and the freedoms it protects.

They tell you at the National Association of Bar Presidents workshop, while you are president-elect, that the absolute peak of your presidency will be the day you take office and that everything thereafter is downhill. Well, in some respects that is true and in other ways it is not. A lot of what hits your plate as president has its genesis months or even years before you actually take office, while some of what you face is brand new or self-generated. For example, did you know that in 1933 the Board of Governors tried to define the practice of law? Sixty-six years later, after many attempts and an extraordinary amount of hard work during the past three years, a definition of the practice of law was passed and forwarded to the Supreme Court.

Meanwhile, huge accounting firms, and some lawyers, would like us to approve a multidisciplinary practice rule that allows accounting firms to share fees with lawyers, among other cross-discipline practices. What is to be our position on this? What is to be the official position of the Washington State Bar Association on the death penalty, now that we know DNA proof has taken no less than 87 innocent Americans off death row? No matter what you believe is right, the question must be asked: How many innocent men and women have died? Should the Bar Association take over the responsibility of licensing, servicing and disciplining limited practice officers? To what extent is the Bar Association responsible for finding additional funding to help address the immediate crisis and availability of legal services for low-income individuals in our state? How do we deal with waning professionalism and civility? What is the appropriate level of responsibility of the Bar Association in recommending its members for the judiciary? How should the Bar Association cope with dishonesty and downright deception in discovery and similar injustices when we cannot get lawyers to file grievances against violating lawyers? How do we convince the legislature and various county commissioners to fund much needed courthouse equipment, courtrooms and staff? What is the most effective way to deal with diversity and sensitivity issues, problems and long overdue changes?

These are but a few of the questions that keep me awake at

night. But when I think back to the difficult question my son asked me about why I do this, I know one of the reasons is because I am one of those people who earnestly wants to improve the public perception of our profession, and make this world a place where our children can have a more positive outlook and equal chance to safely survive; I dream of a place where each child has the opportunity to be the best he can be, where domestic violence ceases, where there is equal access to justice, where these goals and many more are achieved. Fortunately, from the smallest county bar to the committees and sections of the Washing-

ton State Bar Association, specialty bars, our judiciary, the Access to Justice Network, and such organizations as Inns of Court, American Judicature Society, etc., there are thousands in our profession who give their time, resources and talent to meet some of these seemingly insurmountable needs and problems.


As a soon-to-be past-president of the WSBA, I know I will always feel that I did not do enough. However, I want to be able to say, as Teddy Roosevelt said in 1899, "It's far better to dare mighty things, to win glorious triumphs, even though checkered by failure, than to take rank with those poor

spirits who neither enjoy much nor suffer much, because they live in the great twilight that knows not victory, nor defeat."

Among potentially "mighty things," we are going to have a heck of a Bar convention called Celebration 2000. The extraordinary planning that has gone into Celebration 2000 dictates that it could not happen every year, or even every two or three years. This undertaking was certainly a "mighty" risk, given our recent history. But hotels are filling up fast, everybody is talking about Celebration 2000, and most agree that it's time to celebrate our past achievements and set a focus for the future.

Some say that I dared to upset the apple cart by proposing the addition of new minority and young lawyer positions to our Board of Governors. Perhaps, but I know this to be true: Lawyers are talking, they are writing letters and e-mails, and we have already been substantially educated from the experience of considering this change. Proponents, critics and pessimists have come out of the woodwork, and the resulting dialogue is positive.

There are sharp and contrasting views on tackling the definition of the practice of law and the unauthorized practice of law, as well. It will be debated long after I leave office, but I might as well wade in — I haven't drowned yet. Here is my view: Given all of the considerations, I think the Bar Association should take over the administration and discipline of limited practice officers, as well as providing the basis for implementing our definition of the practice of law. That means providing a mechanism to weed out the unscrupulous nonlawyer practitioners who rip off the public and consumers, separating them from the worthy courthouse facilitators, access-to-justice paralegals, and other competent individuals who can and will enhance our profession and its delivery of legal services. I am sure your governors would like to hear from you on this. Please share your thoughts.

I still have three months to go as I write this message — only three months to take even more crucial activism toward a new, vibrant Bar Association and respected legal profession in Washington. Encourage me, criticize me, but whatever you do, speak up. Like my hobby of running, I like to give it my all when the finish line comes into sight. Better yet, join me for this final sprint. 

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Failure to Thrive

by Jan Michels

WSBA Executive Director

The Board has adopted Strategic Goal No. 10: To promote diversity and equality in the courts, legal profession and the Bar. The goal is not just to be politically correct. At the Loren Miller Bar Association's "Stand Up and Be Counted" annual award dinner, keynoter King County Executive Ron Sims captured the essence of the goal as "halls of justice which reflect the diversity in the streets."

Take a picture of the composition of many law schools in the mid-1990s and you'll see over 40 percent women and over 25 percent persons of color. To everyone's credit and benefit, there is evidence that at the entry level to firms this percentage holds. But an ABA Women's Commission study found that five years later, the ratio for women and persons of color in law firms has fallen to 15 percent women and three percent persons of color.

Why do non-majorities leave law firms? What's wrong here? In a King County Bar Association/Washington Women Lawyers/Washington Women Defenders-sponsored CLE panel about this phenomenon, we heard studies, anecdotes and personal stories about what it's like to be "different." It seems politically correct to quip, "skin color doesn't matter," or "women are welcome here," or "this firm has a policy against all forms of discrimination." While these are probably true beliefs and statements, the lack of prejudice or discrimination is not enough to assure diversity in the workplace. Prima facie evidence is that most non-majority persons do not thrive in law firm culture and leave in disproportionate numbers.

It's Hard to Be Different

If you have any characteristics which make you a non-majority in a particular setting, you know the special effort it takes to stay there, to interact, to participate and to feel "part of" the gathering. Law firms that aim beyond the elimination of prejudice must consider what it takes for non-majorities (whether gender, color, physical disability) to thrive.

What are those who are leaving saying?

- "The constant fighting for legitimacy wears me down; I want to be around people like me."
- "Women in my firm seem to get stuck in certain ruts and can't cross to others (i.e., glass walls)."

- "People who are non-majorities have special pressures and expectations; why should I put myself through it for a firm."
- "While active racism and sexism may be isolated, the constant innuendo, insinuation and subtle exclusion remain rampant."
- "The firm doesn't really support me; I'm there for the numbers and for show. This is a painful reminder that it is still hard to be 'different!'"

Possible Directions/Answers

1. Flexibility/tolerance/familiarity

Now that work can be done anywhere, results are more important than raw hours, and clients of diversity expect the same flexibility and diversity of their legal partners. The incentive should be to understand and support the culture and life experiences of women and lawyers of color, and accommodate their needs and requests. Take the time to understand their experience.

2. Self-assessing and internal reporting

What is counted and measured cements values and goals. Thus, misrepresenting the number and status of women and minorities in the firm undercuts the value, and does not teach the firm what it needs to know. It hides the true fact that firms and the profession may not really be achieving diversity goals.

3. Teaching and training

Working to change the culture should be the goal. Many women and minorities were not taught marketing rain-making and/or firm "politics." These are skills that can and need to be taught so everyone can thrive equally.

Progress in reaching the goal of diversity must start with a willingness to know where we are doing well, breaking the glass ceiling of entering law practice and determining where we need to go, and helping women and minorities thrive in the practice. Diversity in the halls of justice that matches the diversity in the streets is vital to all citizens' trust and confidence in our justice system, and a goal worth pursuing. ♣

Litigating Department of Health Disciplinary Cases in Washington:

An Assistant Attorney General's Insider's Guide

by Edward Newcomer, Jr.

There are many worlds of law practice that few of us know about or have experience with. I recently left the Washington State Attorney General's Office, where I spent five years as a prosecutor on disciplinary cases related to licensed health care professionals, an area of law I knew nothing about before joining the Attorney General's Office.

This article focuses on professions regulated by the Department of Health and will provide you with information on how these cases are handled, how the various state boards and commissions operate, and how you can work as an effective advocate in the disciplinary process.

There are thousands of licensees in Washington who are potentially subject to discipline by a state regulatory agency. Within the nursing and medical professions alone, there are over 73,000 licensed nurses and over 17,000 licensed medical doctors in Washington. The list of licensed professions regulated by the Department of Health includes doctors, nurses, veterinarians, chiropractors, dentists, physical therapists, psychologists and others.

Although this article focuses on the professions regulated by boards and commissions of the Department of Health, you may encounter licensees regulated by the Secretary of the Department of Health. These are commonly referred to as "secretary programs" and include nursing assistants, massage therapists and similar professions. These professions do not have their own boards or commissions. You may also encounter professionals, such as real

estate agents, security guards and funeral home operators, who are subject to discipline through the Department of Licensing. While the disciplinary processes of all these professions is conducted pursuant to the Administrative Procedures Act (APA), the professional boards and commissions of the Department of Health present some of the biggest litigation challenges.

The Department of Health's boards and commissions (such as the Veterinary Board or the Nursing Commission) are made up of professionals licensed in that particular profession, but also include one or more public members. All board and commission members are appointed by the governor and serve for fixed, but renewable, terms.

By statute, the Department of Health's boards and commissions are all charged with protecting the public. If you plan to represent a client in a disciplinary proceeding before a board or commission, you must, above all else, remember this fact.

The Uniform Disciplinary Act (UDA) and Professional Rules

Each of the professions regulated by the Department of Health's boards and commissions is subject to the Washington Uniform Disciplinary Act (UDA). The UDA lists a number of prohibited activities and can be found under RCW 18.130.180.

Each board and commission has also adopted rules that further define prohibited acts. Those rules are unique to each profession and can generally be found under WAC 246. If your client is a licensed health care provider and has been charged with professional misconduct, it will be under the UDA and their professional rules.

The Department of Health's boards and commissions have many functions, only one of which is disciplinary. Within their disciplinary function, they serve as both the investigatory and adjudicatory arm of the Department. The investigative functions are discussed in more detail below. The adjudicative function is conducted pursuant to the APA (RCW 34.05). For those who have previous experience with the APA, be prepared for some unique applications in the Department of Health setting.

In most states, and in many APA hearings in Washington, cases are litigated before an administrative law judge (ALJ). The ALJ's initial decision is reviewed by the agency, which then either issues a different final decision or adopts the ALJ's decision as its own. Examples of this process include

claims for benefits before the Department of Employment Security and many cases litigated before the Department of Social and Health Services. This process is not used in disciplinary cases before the Department of Health's boards and commissions.

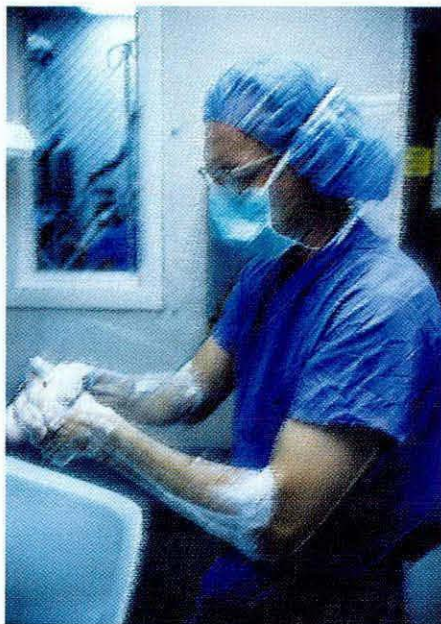
Although the APA governs disciplinary cases before the Department of Health boards and commissions, the cases are tried directly to the board or commission members, who are your client's professional peers. The board or commission members in many cases have extensive expertise in the subject matter. To make matters more stressful, each panel member is entitled to ask questions of each witness who testifies, including your client.

Although the case is tried to the board or commission, a health law judge is present. Within the Department of Health there is an independent division known as the Office of Professional Standards (OPS). This division employs neutral health law judges who serve as presiding officers in cases before boards and commissions. Health law judges rule on objections and evidentiary matters, issue all pre- and post-hearing procedural rulings, and are present during the hearing. Although they prepare the final order in accordance with the commission's decision, they do not participate in the board's or commission's deliberations.

The Department of Health has adopted procedural rules that govern disciplinary hearings conducted under the APA and the UDA. These are in addition to the general APA rules applying to administrative hearings. They relate to motions, timelines and other important procedural matters, and can be found under WAC 246-11.

The Investigative and Charging Process

Prior to being charged with misconduct, your client will have been investigated by one of the Department of Health's investigative units. The investigation will commence after a complaint has been filed with the board or commission staff. Just as a police officer would do if a crime was reported, the investigator will contact witnesses, collect statements and evidence, and contact your client for a statement. You may or may not be involved at this time. If your client is proactive, he or she will have contacted you when they first became aware



of the fact that they were being investigated. In my experience, however, most licensees contact a lawyer after they have been formally charged.

If your client retains you during the investigation, don't be surprised to find out that you have little or no access to investigative information. While the investigation is underway, and before your client is charged, you will have limited opportunities to act as a representative. The investigative materials will not be released to you,

Health law judges rule on objections and evidentiary matters, issue all pre- and post-hearing procedural rulings, and are present during the hearing. Although they prepare the final order in accordance with the commission's decision, they do not participate in the board or commission's deliberations.

and you will not be notified of what avenues the investigator is pursuing. You will, however, have an opportunity to help your client prepare a written response and be present when your client is interviewed. You should also know that under the UDA, your client may be charged with an additional violation if he fails to cooperate with the investigation. (RCW 18.130.180(8)).

To Charge or Not to Charge, That is the Question

At the conclusion of the Department's investigation, the investigator's report, statements and documentary evidence are reviewed by a reviewing board or commission member. This member reviews the materials, and using his professional experience,

determines whether additional investigation should occur, whether the case should be closed with no action, or whether the case should proceed on a disciplinary track.

After the initial review, if the reviewing member determines that the case should go forward, it is generally referred to the board or commission for a final review. The process for that review varies depending upon the size of the board or commission. Obviously, since the board or commission members might ultimately sit as the final adjudicators in the case, some steps must be taken to shield the members from forming an opinion about the case that could later create bias at a formal hearing. This is generally accomplished at the Department of Health in one of two ways.

Larger boards and commissions, like the Medical Commission, have special flexibility in avoiding the possibility that a member will be tainted after reviewing an investigation. Larger boards and commissions can be split into two panels, one for reviewing investigations and the other to actually sit as adjudicators.

Because smaller boards and commissions don't have as many members, they can't effectively utilize the two-panel system. Most of the smaller boards and commissions have their investigatory reports

presented to them in a very general format, without revealing the identity of the licensee involved. In these situations, the board or commission relies heavily on the reviewing member's recommendation regarding either charging or closing the file. Reviewing members are always recused from adjudicatory panels.

The Attorney General's Office

If your client's case is reviewed by his licensing board and the board has determined that charges should be filed, the investigative file will be forwarded to the Attorney General's Office for legal review and charging. Generally, an assistant attorney general (AAG) will be assigned to handle one or more specific client agen-

cies. Accordingly, assume that the assistant attorney general prosecutor working on your client's case is very knowledgeable about the UDA, APA, litigation in general, and the intricacies of working with the Department of Health's boards and commissions.

The AAG will review the investigative file, including your client's initial response to the allegations, to determine whether the evidence in the file supports the issuance of a Statement of Charges. As with all civil cases, the burden of proof is preponderance of the evidence. Accordingly, if the AAG sees that a majority of the evidence indicates misconduct, your client is prob-

ably going to be charged. (It is important to note that this is particularly true in sexual contact cases where the entire determination comes down to your client's word against a patient's. As long as there is no indication that the patient's credibility is in question, the AAG will probably charge the case and let the board or commission determine the issue of credibility.) Once the Statement of Charges is prepared, it is signed by the AAG and served on your client along with a number of other pleadings, including an answer form. Washington is a general pleading state and the charges need only place your client on notice of the basic allegations.

Settlement - Do It Early and Often

In almost every case, especially with the larger boards and commissions, your client will be served with a Findings of Fact, Conclusions of Law, and Agreed Order at the same time he or she is served with the Statement of Charges. Do not ignore this document. This Agreed Order is developed with input from the reviewing member. It tells you two things: what your client is expected to admit to if the case is going to be settled, and what kind of disciplinary outcome the reviewing member and AAG believe is necessary to protect the public from unreasonable risk of future harm. In your approach to settlement, you need to address these two aspects of the Agreed Order. The rest of the proposal is standardized language adopted by the Department of Health in consultation with the Attorney General's Office. In all but the most egregious cases, the Department's settlement proposals allow the licensee to continue working under some sort of probationary conditions.

The full board or commission must approve all settlements before they become final. Remember that the settlement was developed by the reviewing member and not the board or commission. However, it is rare for the board or commission to reject settlement agreements that are developed and supported by the reviewing member.

Staff Attorney v. Assistant Attorney General

Although all state agencies must be represented in litigation by the Attorney General's Office and only this office can provide legal advice, most of the state's agencies have their own attorneys. Many are known as staff attorneys, while others are given titles that do not reflect their legal persona. As with other state agencies, this is true for the Department of Health. How AAGs and staff attorneys work together may be a little confusing at first.

Several years ago, the Department of Health decided to create legal units within the Department, staffed with its own attorneys and legal staff. In the years since the development of the legal units, the Department's staff attorneys have played a very important and valuable role in the disciplinary process. They do not, however, prosecute the cases and do not provide legal advice to the boards, commissions or

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reviewing members regarding the merits of a case.

Staff attorneys are deeply involved with each case beginning with its earliest stages. They are often involved in the investigative process through consultation with investigators. As a result of their detailed knowledge of each case, they provide valuable assistance to AAG prosecutors. Many of the licensing programs at the Department use staff attorneys to develop and draft the initial settlement proposals that are forwarded to the AAG to include with the charges. For most of the boards and commissions, staff attorneys are also involved in the initial settlement negotiations conducted on a case. This is where it can get confusing.

After your client is charged and you begin to engage in settlement negotiations, your primary contact may be a Department of Health staff attorney. He may be involved in any settlement conferences that occur, and you may be able to resolve the case without ever speaking to the AAG prosecutor assigned to the case. However, there will be occasions when you work with both the AAG and the staff attorney — or with just the AAG — on settlement.

Once a case is actively involved in litigation, the AAG may step forward and take the primary lead in negotiating settlements and consulting with the reviewing member on those settlements. To a large extent, who takes the lead in settlement will be worked out between the AAG and the staff attorney. Both the AAG and staff attorney will react very strongly (in a negative way) if it appears that you are trying to play one against the other. So, if you're negotiating with the staff attorney and you have not been contacted by the AAG, do not contact the AAG regarding settlement unless you are immediately up front with him about the status of your discussions with the staff attorney. The reverse of this is also true; do not contact the staff attorney just because you do not like the result you're getting with the AAG.

There may be a time, however, when you conclude that the attorney you're negotiating with is being unreasonable. By unreasonable I mean that you believe the attorney is personally involved and failing to correctly represent your position to the reviewing member. If this is true, be very clear about your concern when you contact either the AAG prosecutor or staff at-

torney about the other. Mere disagreement is not reason enough to go "negotiator shopping."

Details of the Settlement

When you are negotiating a settlement proposal with a staff attorney or AAG, remember that the stipulated facts are usually more negotiable than the conditions outlined in the Agreed Order. If you are engaging in negotiation over the conditions, beware of the fact that the settlement must speak for itself as an instrument that protects the public. The reviewing member, through the Agreed Order, has already told you what minimum conditions are necessary to protect the public from further risk or harm. If you want to change those conditions, you must convince the reviewing member that your proposed change will still accomplish the protection goal. Without his or her support, the Agreed Order is unlikely to be approved by the full board or commission.

Over the five years that I worked at the Attorney General's Office, the behavior that most frequently torpedoed settlement negotiations was when an attorney arrived with binders and boxes full of documents announcing that they would "exonerate" their client. Your job at a settlement conference is to discuss the proposed Agreed Order and any alternative proposals you have. As you discuss those alternatives, you should present rational arguments as to how your proposals still allow the board or commission to accomplish its mission. Documents such as an independent evaluation may play a role, but settlement is not your opportunity to prove that the reviewing member is wrong.

If you have evidence that exonerates your client, it should be submitted during the investigative process or to the staff attorney or AAG before a settlement conference occurs. Exculpatory information must be submitted in advance with a detailed explanation of how it excuses the charges against your client.

Effective Representation Before the Board or Commission

If you have been unable to reach settlement or secure dismissal of the charges, you will find yourself in a hearing before the appropriate board or commission and facing an AAG. For the most part, the hearing will challenge your general litigation skills.

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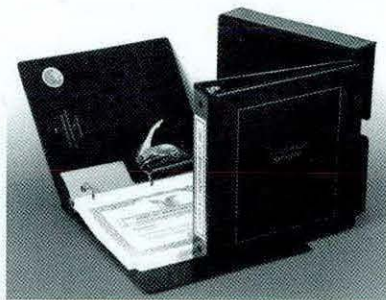
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Essentially, you are trying your case to a jury of your client's professional peers, who are highly educated about the technicalities and realities of the profession. As in all APA cases, the Rules of Evidence are generally followed, but you should be sure to fully understand the flexibility allowed under the APA and WAC procedural rules. The state's burden of proof is by a preponderance.

Because the state has the burden of proving misconduct in these cases, the Assistant Attorney General will present the state's case first. After each witness has been examined by the state, cross-examined and

questioned under redirect, each board or commission member will have an opportunity to ask additional questions of the witness. Both parties will then have the opportunity to ask additional questions based on the members' questions.

Keep in mind that your client can be subpoenaed by the prosecution and required to testify. Further, boards or commissions may take a negative inference from the invocation of Fifth Amendment rights. See, *State Farm v. Huynh*, 92 Wash. App. 454, 962 P.2d 854 (1988) and *Ikeda v. Curtis*, 43 Wn.2d 449, 261 P.2d 684 (1953).

Unlike cases tried to ALJs, expert witnesses are not routinely necessary in cases tried to boards or commissions. Many of the violations in the UDA are self-explanatory; they either did or did not happen. Experts are mainly used where there is a debate within the profession as to whether a given treatment or activity is appropriate. Boards and commissions may utilize their own expertise in evaluating witnesses and other evidence.

Closing Thoughts and Advice

Hopefully, this has given you some insight into the subtleties of defending a disciplinary case against a licensed health professional. If you find yourself in this position, I strongly encourage you to build a friendly and nonconfrontational relationship with the AAG assigned to prosecute the case. He can be of invaluable assistance to you if you have any questions regarding process.

I also strongly discourage you from doing anything that might appear to board or commission members as an attempt to "pull the wool over their eyes." As professionals in the same field as your client, they will react negatively to any attempt to minimize serious deficiencies or to hide misconduct. If you know your client made a mistake, you are much better off trying to help him figure out conditions under which he can still practice and assure the board or commission that adequate safeguards are in place to protect the public. Even if you ultimately have to take the case to hearing, I've frequently seen licensees escape relatively unscathed simply because they've explained the behavior and offered reasonable alternatives to the state's recommended sanctions.

With these thoughts in mind, and with the "insider" information contained in this article, you should now have a better understanding of a unique area of legal practice in Washington. ☞

Edward Newcomer, Jr. served as an assistant attorney general for the Washington Attorney General's Office from 1994 to 1999. During that time, he was lead prosecutor for the Nursing Commission's Prosecution Unit and served as a prosecutor for the Medical Commission Veterinary, Podiatry, Physical Therapy and Occupational Therapy Boards. He is currently an assistant attorney general with the Colorado Attorney General's Office in Denver.

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Review *of the* 1999 Parenting Act Study

by Diane N. Lye, Ph.D.
and
Mary Wechsler

In 1998, the Washington State Supreme Court Gender and Justice Commission and the Domestic Relations Commission contracted with Diane Lye, Ph.D., a researcher with extensive experience in the field of family and gender studies, to study the results of the Parenting Act which went into effect January 1, 1988 and is enacted into RCW 26.09. The Parenting Act was a major revision of our state's laws relating to the parenting of children after divorce or separation. Although its provisions were substantially different than the laws of other states when it went into effect, other states have subsequently enacted or are enacting similar laws based on the Washington Parenting Act.

The approximately 200-page study had four different components. One component consisted of 10 focus groups of parents throughout the state who had court-approved parenting plans.

The second study component consisted of in-depth, open-ended interviews with 47 professionals working with the Parenting Act, including judges, court commissioners, attorneys, family law facilitators, mental health professionals, parenting evaluators, guardians ad litem and activists. The major findings were strong sup-



port of the policy goals of the Parenting Act, and beliefs that the process of obtaining parenting plans is extremely difficult for parents, that few plans are individually tailored, and that joint decision-making doesn't work well.

The third component was a standardized analysis of a representative sampling of recent final parenting plans from eight counties selected to represent social and economic diversity. Forty-five percent of the plans provided for a primary residential parent and an every-other-weekend schedule for the other parent. Three-quarters of first-plan, primary residential par-

ents were mothers. Just a handful of plans provided for more alternative residential time than every other weekend, including 50/50 schedules. One-fifth of the plans included restrictions on one parent's residential time, yet one-third of these plans

Child development and post-divorce parenting experts also agree that the best interests of most children are served by the continued involvement of both parents, and the Parenting Act provides for ongoing involvement by both parents.

had every-other-weekend schedules. Nearly one in every five plans had no specified residential schedule, leaving it to be agreed between parents or between the parents and the child. Three-quarters of plans specified joint decision-making.

The fourth study component was a critical review of scholarly research on post-divorce parenting and child well-being. Findings include the following: 1) No single post-divorce residential schedule has been demonstrated to be the most beneficial for children; 2) Absent high levels of parental conflict, there are no significant disadvantages or advantages to children of shared or 50/50 residential schedules; 3) Parental conflict is a major source of reduced well-being among children of divorce; 4) Shared or 50/50 residential schedules have adverse consequences for children in high conflict situations and do not promote parental cooperation; and 5) Increased non-residential parents' involvement in their children's lives may enhance well-being by improving the economic support of the children. Dr. Lye concluded that the three most important findings of her study are the following:

The Parenting Act works well for most Washington families.

The findings indicate that most divorcing parents are able to develop a workable parenting plan and reach a working day-to-day relationship. These parents who are designated as "successful" use their parenting plans as a fall-back arrangement; their day-to-day parenting arrangements are flexible and responsive to their own and their children's changing needs. Typically, both parents have ongoing involvement in their children's lives.

There is widespread, strong support for the policy goals of the Parenting Act.

Dr. Lye's interviews with Washington parents and professionals who have worked with the Parenting Act expressed strong support for the stated goal of the Parenting

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Act: Post-dissolution parenting arrangements should be based on the best interests of the children. These groups also strongly endorse the goal of involvement by both parents after a dissolution of marriage, as well as the goal of clearly defined, specific post-dissolution parenting arrangements that are tailored to the needs of the individual child and family.

The provisions of the Parenting Act are consistent with the findings of scholarly research about post-divorce parenting and well-being.

The study found that child development and post-divorce parenting experts agree that different families and children have different needs for post-dissolution parenting, and the Parenting Act provides for an individualized approach. Child development and post-divorce parenting experts also agree that the best interests of most children are served by the continued involvement of both parents, and the Parenting Act provides for ongoing involvement by both parents. Experts conclude that 50/50 or approximately 50/50 parenting arrangements are only appropriate where parents have good relations, but can harm children where parental relations are conflicted. The Parenting Act (at least theoretically) limits these arrangements to families where parental cooperation is high.

Dr. Lye recommends that despite these strong, positive findings, additional steps be taken to better serve Washington families. These include the following:

- Parents should be provided with more information about court procedures, the purpose and goals of the Parenting Act, suggested language for parenting plans and language to avoid, creative residential schedules, joint decision-making provisions, and dispute resolution processes.

Dr. Lye suggested information could be disseminated in a variety of ways, including parenting classes with practical information; workshops for divorcing parents; helpful pages on the website of the Office of the Administrator for the Courts, including frequently asked questions; extended instructions distributed with parenting plan forms; and helpful telephone or e-mail lines.

- More creativity and individualizing of parenting plans should be encouraged. The study concluded that too many Washing-

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Ms. Pagel formerly served for two terms as the director of Oregon's Water Resources Department. She will work primarily with Douglas MacDougal, Jim Hanken in our Seattle office, and the other members of the Energy, Environment and Natural Resources section of the firm on water rights, regulatory and endangered species issues. In addition, she will assist the firm's clients in Salem as an experienced liaison with the legislature.



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ton parents have "cookie cutter" parenting plans that are primarily every-other-weekend residential schedules, which does not meet the needs of all families. Dr. Lye suggested encouraging individualizing parenting plans by disseminating information about diverse residential schedules to attorneys, judges, court commissioners, guardians ad litem, court facilitators, and other professionals involved in the formulation of parenting plans.

Dr. Lye concluded that encouraging individualization of parenting plans is consistent with the Parenting Act's goal of encouraging approaches that serve the best

interest of each individual child.

- Protections should be strengthened and services improved for survivors of domestic violence. The research showed that survivors of domestic violence reported a particularly difficult time accessing the court system and securing parenting plans that adequately protected their safety. Dr. Lye concluded that these problems were most likely related to the way the Parenting Act is implemented, rather than to shortcomings in the Act itself.

Suggested improvements include developing special packets of information tailored to the needs of domestic violence vic-

tims; informing them of their right not to participate in programs that may be dangerous to them (such as parenting classes and mediation with both parents present), and explaining how to opt out of these programs; improving awareness of issues relating to domestic violence among professionals working in the civil justice system; and encouraging courts to clarify policies regarding domestic violence.

Suggestions also included improving security for parents working to develop a parenting plan, not permitting "as agreed," 50/50 residential schedules and joint decision-making in families with a history of domestic violence, and clarifying which agencies and individuals are appropriate as supervisors of alternate residential time and exchanges of children. The study concludes that when domestic violence is alleged or suspected, an immediate investigation of the charges should be ordered, including a risk assessment of the potential danger and an early comprehensive parenting evaluation by a single outside evaluator.

- The mandatory parenting plan forms should be improved. Dr. Lye discovered that several different versions of these forms are in circulation and use, and concluded that all are difficult to use. Her recommendations included enhancing the layout and graphic design of the form; improving standardization; providing comprehensive directions for completing the form on the form itself; and including information about whether this is a first or modified plan, the place of residence of the parents, and whether the parents were pro se litigants.

- Restrictions on shared or 50/50 residential schedules should be maintained and clarified. The report recommends that since child development and post-divorce parenting experts agree that 50/50, or approximately 50/50, residential schedules can harm children when parental relations are conflicted, this information (together with the information about the limits the Parenting Act places on shared or 50/50 residential schedules) should be disseminated to parents and professionals working in the civil justice system. Dr. Lye concluded that, while these schedules should be supported for families where they are agreed to and are practical, they should not be permitted in families where parental relations are conflicted.

- "As agreed" plans should be discouraged.

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Dr. Lye concluded that plans that do not specify a residential schedule, but leave arrangements to be agreed between parents or between the child and the parents, were contrary to both the spirit and the letter of the Parenting Act, should be discouraged, and should never be approved for families with a history of domestic violence or conflicted parental relations.

- The routine use of joint decision-making in parenting plans should be reconsidered. The study found that most parents do not adhere to the joint decision-making provisions in their plans, and most professionals believe these provisions can promote conflict. She recommended that parents be provided with more information about joint decision-making and encouraged to formulate individualized plans, rather than routinely adopting joint decision-making.

- The report recommended that dispute resolution provisions should be enhanced by providing detailed, step-by-step directions for invoking the dispute resolution mechanism.

- Monitoring and enforcement of parenting plan provisions should be strengthened. The report recommended that the authority of the court to deal with enforcement be clarified, and that parents be provided with clear information on how to report violations of the parenting plan and how to seek enforcement.

- Efforts to improve the standard of practice for professionals working with the Parenting Act should be supported. The report recommended enhancing professional standards of practice through state, national and international professional organizations that provide training, accreditation and codes of conduct for mediators, guardians ad litem, parenting evaluators and parenting class instructors.

- The situation with regard to relocation of the primary residential parent should be clarified. This recommendation appears to have been implemented with the recent passage of HB2884.

- Parenting classes should be enhanced. Dr. Lye found these classes to be quite valuable and recommended holding classes in locations and at times that are more easily accessible.

This report is a comprehensive and much needed summary of what is right and what needs improvement with Washington's laws regarding the parenting of chil-

dren after a divorce or separation. It is also a good source of information on how parenting plans are actually working, and a survey of the latest professional assessments on provisions for children after a divorce or separation. The report has been provided to Superior Court judges and commissioners. The entire report can be obtained from the Office of the Administrator for the Courts (OAC) by e-mailing Gender.justice@courts.wa.gov or calling 360-705-5290. The website for the OAC is <http://www.courts.wa.gov>. ♣

Diane N. Lye is the author of the 1999 Washington State Parenting Act Study. She has over 15 years' experience in the field of family research and is the author of numerous scholarly articles. She was educated at the London School of Economics and the University of Pennsylvania, where she earned her Ph.D. in 1989.

Mary Wechsler is a partner in the firm of Wechsler, Becker, Erickson, Ross, Roubik, and Edwards LLP, where she practices family law. She is a member of the Supreme Court Domestic Relations Commission and a former chair of the Family Law Section.

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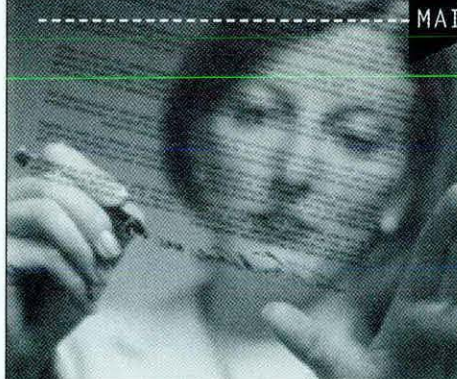
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Law Clerking Your Way Into the Law

About a year ago, I did my first closing argument. The trial involved a young man who'd been badly burned when the dump truck he was driving tipped, spilled fuel and burned. We thought we had a good product liability case against the truck manufacturer, but it was complicated by lots of potentially confusing issues. Among other things, the accident happened the first time our client drove the truck, and the defense argued that he had contributed to his own harm by agreeing to drive without formal training. So at some point in the closing I said, "You've watched me learn a lot on this job. That's the way we do it here — people learn by doing stuff."

What the jury didn't know (and what I longed to tell them) was that I'd started on the case as a paralegal. I'd learned to be a lawyer on the job, spending my days working on big product liability cases, and my nights and weekends struggling with the rule against perpetuities, the *Palsgraf* case and *Marbury v. Madison*. I did this as a participant in the Washington State Bar Association's Rule 6 Law Clerk Program, a program that allows full-time legal workers to study for the bar exam without going to law school.

When I began the program, I was the primary wage earner in our family. I had a wife, two kids and a mortgage. I had no inclination to go into debt to study law. (I saved the going-into-debt part for later, after I became a partner.) The Law Clerk Program allowed me to keep a job I liked and earn a good living while learning the law.

Washington is one of about a half dozen states that still offer people an opportunity to take the bar exam without going to law

school. The program is a highly structured four-year course of study that covers every subject on Washington's bar exam, from torts and contracts to criminal law and community property. You study constitutional law. You study business law. You study real property, wills and trusts, and administrative law. It's grueling and a little relentless, but it works. In fact, the Bar reports a slightly better historical success rate on the bar exam for law clerks than for law school graduates.

The truth is I never had any particular ambition to practice law. I started down the path by accident after returning from a three-year stint in the Peace Corps. I was a newlywed with a new, albeit small, mortgage. My brother was a Seattle lawyer. He gave me a two-week project at his firm handling some administrative chores. Ten years later, someone delivered a bunch of roses to mark my 10th anniversary with the company. That's when I decided I had to do something.

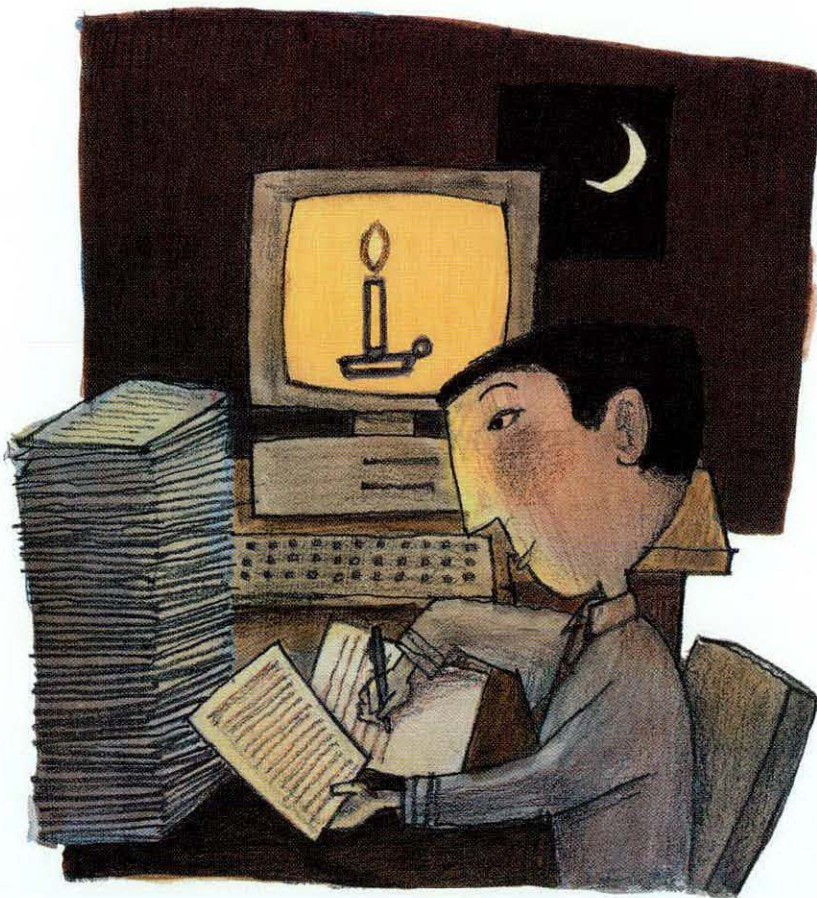
By then, I was one of the more senior paralegals. I'd become something of a quiet rumor working with Paul Whelan on product liability cases, most recently a case involving a major truck fire. I enjoyed discovery. I had an instinct for finding needles in the hay and enjoyed sticking those needles into the sides of corporations that I thought were hurting people needlessly.

The one thing that I never entirely enjoyed was telling people what I did for a living. When you tell people you are a legal assistant or paralegal, they wrongly assume that you spend your days setting up appointments or doing mundane research. The truth is you only do those things about half the day. The rest of the time, I got to

use and develop an exciting variety of skills. I wrote, researched, interviewed clients and witnesses, and located people. I helped make demonstrative exhibits, did investigations and organized stuff. I helped with document production, traveled, and took videos and photographs. (I once saw one of my videos on the local news. I was mortified to see the disclaimer "amateur footage" superimposed on my work.) I kicked around at accident scenes, inspected crashed cars and trucks, and talked with experts. I wrote scripts for depositions, interrogatories, requests for production and motions to compel. I did all sorts of things. But when I told someone what I did for a living, they always looked sort of bored and said, "So you do research for the attorneys?"

Then I had kids. When I applied to participate in the program I wrote the following: "Daughters can be powerful motivators. My second was born a few days ago. She weighs eight pounds something. Of course I want to feed her and clothe her and help send her to college. I want to be there for her as much as possible. And I want my daughters to know they can achieve their goals. My daughters are a big reason why I'm writing this."

I knew I could be a sharper thorn in the side of those corporations if I became a lawyer. So finally I called the Bar Association and got some information about the Law Clerk Program. I'd heard about it for years, and had been encouraged to apply, but I hadn't thought too seriously about it. (I always thought of my legal career as temporary.) When the packet came, it all began to seem real. Six courses a year, most of them two months long. The courses were



briefly described in the syllabus. I read the material and got sort of excited. I read it again. In the course of a few days I fell in love with the idea. I would study law the old fashioned way, joining Lincoln, Marshall and Oliver Wendell Holmes as a home-schooled lawyer. It didn't matter if I passed or failed. It didn't matter if I ever worked as a lawyer. It was enough that I would somehow make sense of what I'd been doing all those years as a paralegal.

That's what I thought at the time, anyway. So I went to Paul Whelan, the attorney I'd worked with for most of a decade, and asked if he would tutor me. I had an unfair advantage. I knew he'd say yes. We had worked together for a long time and he had generously allowed me to take a major role in many of our cases. A sort of pained expression passed over his face. He hadn't yet read the material from the Bar Association, but he probably had a notion how much time and work he would have to put into the project.

Every month for four years he or an "assistant tutor" would have to prepare a course outline, talk with me about the law, and then write and grade an exam. Al-

though the program provides some structure and a few guidelines, the tutor is responsible for preparation of the courses and examinations and grading of the work. In other words, it's a huge commitment.

Paul was lucky in one respect. For much of the time I was studying, we were at a large plaintiff firm. At least seven different lawyers there offered to help me with courses, and it was a pretty impressive faculty. Paul Whelan taught me torts and evidence. I had a private course in constitutional law from Leonard Schroeter. Bill Rutzick taught me civil procedure, and former King County Prosecutor Becky Roe taught me criminal law. At our new firm, Paul Stritmatter helped with the trial advocacy course.

Friends and family also chipped in. A Bellevue attorney, Rosemarie Warren LeMoine, taught me family law, and my brother (now a law professor in New York) took on the courses that no one in our circle of personal injury attorneys knew what to do with, like tax law and corporations.

But for the most part it was Whelan, and he took the job seriously. There would be lists of cases and statutes to read. He

grabbed opportunities to talk on case-related drives to Portland and Bend, Oregon. Examination questions were handled in great secrecy and handed to me in sealed envelopes like Academy Award results.

The Law Clerk Program is incredibly well conceived. The first year is composed of six two-month courses, including first-year standards such as torts, contracts and real property. For three years, the proscribed courses come relentlessly: criminal law, constitutional law, U.C.C., corporations, agency, administrative law, one right after the other, with no break for the holidays or spring or summer. Electives are only available during the final year, and by then I didn't want anything fancy or unique — I just wanted whatever would help me pass the bar exam.

My study halls were Metro buses, exercise bikes, and Starbucks coffee houses. Most Wednesdays, I'd hit the law library for as long as I could stand it. I tended to study on the go, moving from spot to spot to ease the monotony.

All the while, the rest of my life kept moving. My younger daughter didn't get to see me as much as my first daughter had, at least during the first two years of my program. My wife took an extra load because I would have to disappear a couple of evenings a week to read.

I was never completely at ease. One of the things that bothered me about the program was that I had trouble judging my own progress. I occasionally envied traditional students who were able to see how their grades stacked up against others. My tutors gave me good marks most of the time, but I didn't quite believe them because they were friends and co-workers who had no curve by which to grade me. I was always at the top and bottom of my class at the same time. Looking back, I think that the ambiguity helped. It forced me to work harder, just in case.

And, although it sounds funny, I think in a strange way that it also helped not to have a regular professor. No one spoonfed me anything. I sometimes spent hours struggling to understand a concept, and then reading cases to make sure I really understood it. Bill Rutzick told me at the start of the course to read 10 or 15 cases a week. I took it to heart and probably destroyed a small forest making photocopies. When I finally did have "real" professors at the bar

review course, I knew that the struggle had paid off and that I'd actually worked my way to some sort of an understanding.

Christopher Otorowski was the attorney assigned by the Bar Association to review my progress. He answered our questions and reviewed our monthly submissions. But most of the time he, like the Bar Association, was ominously silent. I remained vaguely paranoid throughout. I kept expecting to receive a letter telling me that I had it completely wrong, that my work was not even in the ballpark, and that I had no chance of passing the bar exam. But instead, I got silence.

In the meantime, I was taking a growing role on our cases. I gained a new feel for legal research, a subject that had always seemed a little frightening to me. I wrote a motion for certification to the Washington State Supreme Court. It was denied. I wrote most of the opening brief that got a major product liability case raised from the dead. (It had been dismissed with prejudice years before by stipulation. Unfortunately, the plaintiff attorney had not bothered to tell his clients.) That same case ended the day before a major sanctions hearing for which I wrote most of the briefs. We did some great discovery during the

years that I was studying, and I played a major role in that.

Once an attorney for General Motors saw me whispering a suggestion to Whelan during a deposition and sneered, "Why don't you just let O'Neil ask the questions?" "He'll be doing just that next year!" said Whelan. I was mortified. I was trying to keep things very quiet, afraid the whole effort was in vain.

I tried to keep my own expectations low, but it wasn't easy. For six weeks prior to the bar exam, I stopped working to concentrate on the bar review course. My wife took the kids on an extended visit with her parents. I lived a monkish life of study, exercise and extremely drab cafeteria food. I administered almost a hundred practice tests to myself, writing each response in longhand and timing the response.

When it came time for the exam, I got myself a hotel room in Bellevue, spent the morning studying, then went for a long jog. I went to bed early. And I lay there, never sleeping a wink, an insomniac for the first time in my life. I had thought I was less than fully invested in the process. I had pretended that was my secret weapon: I would pass because I did not care. I had not spent a dime on law school. It didn't matter if I passed or failed.

As my daughter says, "Yeah, right."

My handwriting that first day looked like a three-year-old's, except vaguely psychotic, with dark, shaky lettering. I lived through the day on shots of espresso. I was so exhausted that night that I actually did sleep. After the first 24 hours of caffeine and exhaustion, the second day of the exam felt like a vacation.

It was raining in October when the results were due. Our mailman parked at the corner and started on the other side of the street. I watched him go from house to house. I had absolutely no notion what the results would say. I heard our mailbox bang shut. I grabbed the envelope and sat down. It didn't matter if I passed or failed. Yeah, right. ☺

For more information on the Law Clerk Program, see www.wsba.org/lic/faq/rule6.htm.

Peter O'Neil is a partner at the Seattle-Hoquiam law firm of Stritmatter Kessler Whelan Withey Coluccio. Before that, he was a legal assistant for 15 years.

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The Board's Work

by **Sherrie Bennett**

In-Depth Diversity Discussions Continue

With increasing intensity, the Board of Governors is seeking ways to add diversity of several types to WSBA leadership. Heeding the call of Governor **Jenny Durkan** to "diversify or die," the Board actively sought direction from a variety of resources at its May 19-20 meeting in Yakima. Grappling with the problem of how to inject more diversity into WSBA representation, Governor **Dale Carlisle** suggested that the Board take a long-range approach to the issue by basing any decisions on a broader base in the future.

The Board zeroed in on the process for selecting its own, with Governor Durkan pointing out that, because the bulk of demographic diversity is centered in the Seattle area, women and minorities are effectively statistically excluded from running for WSBA president two out of three times. She pointed out that in emphasizing geographic diversity, the Board has inadvertently downplayed other types of diversity when engineering the governor and officer selection process. ABA Representative **Kathleen Hopkins** echoed these sentiments, insisting that board representation by congressional district doesn't work. Hopkins also pondered aloud the difficulties of defining diversity: Do you include disabilities and sexual orientation along with what most would consider more standard diversity groups?

Governor **Vicky Vreeland** saw change as coming from within the Board itself, pointing out that the women members of the Board were sought out and encouraged to run for a Board position by those already in WSBA leadership roles. **Lisa Castilleja**, president of the Young Lawyers Division, suggested that recruitment should be broader, and done by the whole group rather than just a few members. Governor **Dick Manning** directed the Board's attention to the fact that in the past 15 years, minority WSBA members have run for Board positions only twice, and offered the possibility of a leadership skills conference as a recruitment outreach tool. **Kevin Diaz** suggested that everyday mentoring is much more powerful than one-time training. **Sherri Jefferson**, presi-

dent of the Loren Miller Bar Association, emphasized that many minority lawyers are already tapped out with commitments to their communities and do not have the time that is necessary to actively participate in Bar activities.

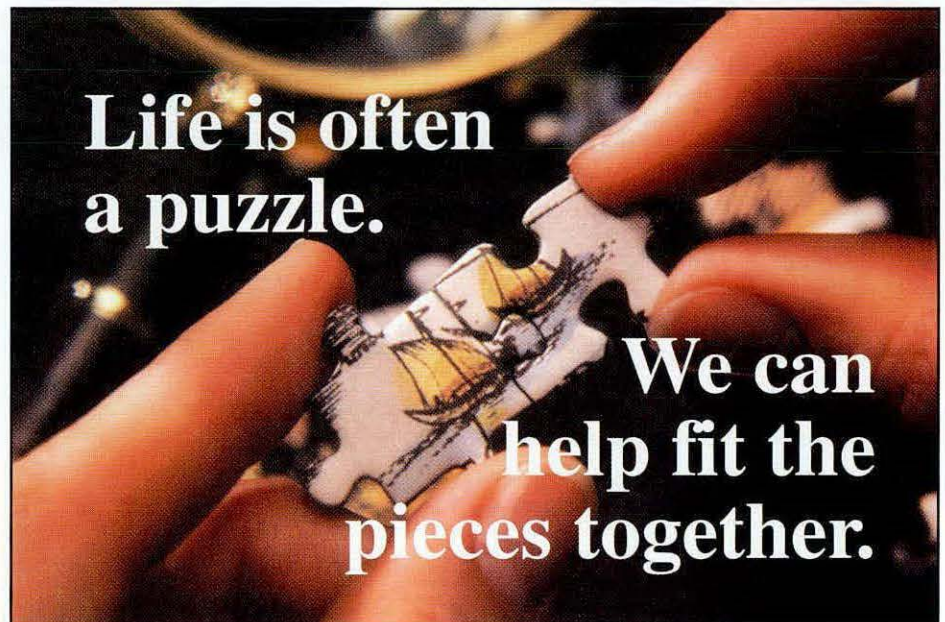
President-elect **Jan Eric Peterson** described the makeup of the WSBA membership at large to be approximately eight percent ethnic minorities and 30 percent women. He was hopeful that "diversity is doable," but told the Board that there must be a commitment in order for real change to happen. Executive Director **Jan Michels** stressed that a commitment to diversity would mean that minority Board members would have full legitimacy as equal members of the Board.

Governor **Walt Krueger** acknowledged that he was initially ambivalent about the possibility of a minority slot on the Board of Governors, because he thought that if a minority member wanted to be on the Board, he could simply run for the position like anyone else. But he subsequently realized that historically that hadn't happened, so perhaps it was time to engineer

it into the process. He went on to suggest that, as "the devil is in the details," the Board should take care in determining how a minority member would be elected and consider including a sunset provision after a specific length of time had passed.

Tom Quinlan, president-elect of the Young Lawyers Division, cited several reasons to include a young lawyer slot on the Board: 1) It would enhance the relationship between the YLD and the Board of Governors; 2) It would decrease the perception that the Bar at large is not connected with its younger members; and 3) It would increase the likelihood that more women and minorities would sit on the Board (since the YLD is more diverse than the Board). He suggested that, because of the time commitment required and the necessity of being familiar with YLD programs and staffing issues, any Board of Governors' YLD slot should be filled for a one-year term with the immediate past-president of YLD.

In answer to Governor **Steve Henderson's** question on how to continue to maintain geographic diversity, Quinlan sug-



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gested that the YLD choose a president by the same process as the Board of Governors. Quinlan said young lawyers sometimes haven't run for Board seats because they feel they can't compete with the name familiarity of those who are more established, and that, if elected, they would have to devote their time to all their lawyer constituents rather than just young lawyers. Quinlan stressed that the practice of law has changed tremendously in the past few years, and young lawyers face staggering student loans and the issues of balancing family life with the practice of law. Kathleen Hopkins pointed out that 30 states already have young lawyer seats on their governing boards, and it would increase the Board's visibility with young lawyers.

Governor Jim Deno and Yvonne Terrell Powell, a diversity facilitator who conducted diversity town meetings for the WSBA, reported back to the Board on the town meetings. Powell encouraged the Board to continue to look at diversity as a broad concept that includes more than just ethnicity and gender. She urged the Board to ask, "Where do we want to go from here?" and come up with specific recommendations to put into action.

Governor Durkan echoed the sentiment that it is important to come up with concrete actions that the Board can take at this time.

The Board will continue to discuss this unwieldy but progressive issue in future meetings.

Feedback on the WSBA's Proposed Definition of the Practice of Law Continues

Former governor Steve Crossland reported that the state Supreme Court has forwarded comments received in response to the WSBA's proposed rule defining the practice of law, to see if the proposed rule should be revised based on the comments. It appears that the Supreme Court does not want to be a regulator for enforcing unauthorized practice of law violations, which would leave the task up to the WSBA or a group specifically set up for that purpose. WSBA representatives met with members of the Washington Association of Prosecuting Attorneys (WAPA) to discuss WAPA's potential support in the form of prosecutorial resources.

Scott Smith reported that the Access to Justice (ATJ) Board met with the Supreme Court in March to discuss the criteria for determining whether specific practices are unauthorized. From an ATJ viewpoint, the concern is that, if you are too restrictive in trying to prevent harm, you may also prevent some access to justice for those who need it. Jan Eric Peterson pointed out that the underlying construct of the rule is one of protecting the public, while pondering where that leaves the unauthorized practice of law that is in fact positive and ATJ-oriented. He suggested that this realm of activities could possibly be licensed and regulated.

General Counsel Bob Welden reported on the possibility of including rules providing immunity for WSBA officers, staff and volunteers carrying out enforcement functions that the Supreme Court might adopt by court rule in the regulation of the practice of law.

The discussion was tabled until the Definition of the Practice of Law Committee can sift through the comments received by the Supreme Court.

Wicked Witch of Disciplinary Backlog Is Dead

WSBA Chief Disciplinary Counsel Barrie Althoff gave the annual disciplinary report, beginning with the joyous announcement that the "wicked witch" of backlogged disciplinary cases is dead or, at the very least, on her deathbed, with only 671 pending cases. Althoff reported on a reorganization of the Office of Disciplinary Counsel (ODC), focusing on intake, investigation and prosecution as three distinct functions. He also mentioned that the ODC is recruiting more lawyers as volunteer prosecutors. Althoff received a standing ovation for the ODC's determination and hard work over the past year.

Jan Eric Peterson dreamed aloud of the possibility of getting more positive media coverage for the Bar's disciplinary system.

Death Penalty Status Report

The Board reviewed the status report on death penalty cases in Washington state written by Chief Justice Richard Guy, which outlined how death penalty laws have worked over the past 19 years, how much they have cost, and how much time

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they take to resolve. The WSBA Civil Rights Committee has asked the Board to recommend that Governor Locke implement the ABA's moratorium on the death penalty. Governor **Walt Krueger** noted that his research on this matter has convinced him that competent representation in potential death penalty cases must be put in place before a crime is charged, as competent early representation saves appellate costs later on. He believes that there is not a sufficient quantity of qualified counsel to represent all those charged in death penalty cases, as the pay is low and there is a heavy toll on one's practice because of the time that must be devoted to such a case. This issue will be discussed further at the Board's August 4-5 meeting in Port Angeles.

Filling the Access to Justice Gap

The Greater Access and Assistance Program (GAAP) steering committee is implementing two regional "modest means" panels that will take referrals from the CLEAR hotline to assist persons of modest means in obtaining legal assistance. The program infrastructure is being developed and will be tailored to each pilot.

Multidisciplinary Committee Is Born

The Board authorized President **Dick Eymann** and President-elect Jan Eric Peterson to appoint a committee to study multidisciplinary practice issues, after **Tim Carlson** of the Business Law Section assured the Board that business lawyers are already struggling with this issue, especially in the accounting area. Governor Krueger urged the Board not to be "ostriches with our heads in the sand" when dealing with the issue, as it was not going to go away. This issue may be addressed by the ABA as early as this summer, and Governor Vreeland encouraged the ABA delegates to vote as individuals, rather than follow any specific WSBA directive. (For additional information about this issue, see the WSBA website at www.wsba.org/mdp.)

Celebration 2000 Update

Dick Eymann reported that Celebration 2000 is gaining momentum. Martindale Hubbell has made a generous contribution and the program continues to expand, with up to 17.5 CLE credits available. Celebra-

tion 2000 will be held September 13-16 in Spokane.

Long-Range Planning Operational Strategies Materialize

In an effort to make implementation of long-range planning efforts more concrete, the Board has put together a 2000-2001 operational plan that includes some of the following goals:

- Make services more directly helpful and accessible to members;
- Support the work of the Council on Public Legal Education;
- Improve the WSBA's message to the public about the good lawyers do;
- Work in collaboration with YLD and law schools to develop programs that provide education in professionalism, client service and business management to prepare students for successful legal careers before they are admitted to the WSBA;
- Explore options for modifying the bar exam to address professionalism and practical skills;
- Develop programs specifically designed to fulfill the educational and support needs of new lawyers once they have become WSBA members;
- Create civility and professionalism "best practices," and implement a program to promote civility in the legal profession;
- Follow adopted board process and direction on actions relating to multi-disciplinary practice and the unlicensed practice of law;
- Maintain a forum for monitoring future trends regarding external influences and market pressures that impact the delivery of legal services;
- Improve license renewal and MCLE reporting processes;
- Assure that all regulatory services are efficient;
- Secure adequate funding for civil legal services;
- Facilitate electronic interchanges with members for communicating, meeting participation, core functions and e-commerce;
- Become a "hub" of legal Internet resources;
- Actively work for court improvements and funding;
- Encourage meaningful participation of minorities in WSBA leadership;

- Maximize efficiency, effectiveness, accuracy, and customer satisfaction related to all accounting processes with particular emphasis on improvements in license revenue tracking;
- Research options for increasing non-license revenue.

Appointments

The Board appointed **Keith G. Baldwin** as chair of the 2000-2001 Legislative Committee. **Michele Radosevich** will serve as vice-chair, and Committee members will include **Roy Atwood, J. Patrick Aylward, Daniel Peter Brink, Nicholas Corning, Kathleen Kim Coghlan, William Eller, Harold Federow, Peter David Francis, Michael Hanbey, Vernon Harkins, Peter Harris, Herman H. Hayner, Scott Holte, Don Law, Douglas C. Lawrence, Erika Lim, Paula Littlewood, Marta Lowy, John Matthews, Richard E. Mitchell, Arthur Colby Parks, Geoffrey Revelle, John Riley, Terry Colin Schmalz, Mychal Schwartz, Klaus Otto Snyder and R. Brent Walton.** Incumbents **Kathleen Hopkins** and **Scott Miller** were reappointed as ABA delegates, with **Rosemary Daszkiewicz** remaining as an alternate delegate. Incumbent **Margo T. Keller** was reappointed to the Commission on Judicial Conduct, with **Lorraine Lee** remaining as an alternate appointee.

Out-of-State Travel Reimbursement

The Board adopted the following policy:

Reimbursement of travel expenses to out-of-state, funded committee members to attend committee meetings is limited to the approximate costs of in-state travel. Participation in meetings by telephone conference call is encouraged because it saves significant travel time and expense.

Court Revenue Distribution Examined

In a beginning effort to understand the complex intricacies of court funding, the Board examined the Office of the Administrator for the Court's May 2000 overview of Washington's state operating budget and court revenue distribution. Governor Krueger reported that brown-bag lunches with discussions on court funding will continue. ☞

Celebration 2000

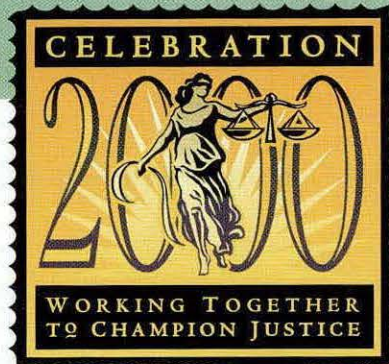
We invite you to join us at Celebration 2000 — it will be a wonderful time to meet with your colleagues from around the state to share ideas and memories, hear inspiring speakers, engage in thoughtful and stimulating conversation, renew old friendships, and make new friends. Under the theme of “Working Together to Champion Justice,” we will dedicate ourselves to maintaining a healthy and vibrant system of law and justice accessible to all, seize the opportunity to reflect on our rich heritage, and share our visions for the future.

With more than 80 seminars, discussion groups, meetings and events, Celebration 2000 will have something for everyone. Plus, it will be an excellent way to earn CLE credits. (Attendees may earn up to approximately 17.5 credits; 9.5 credits covered in the registration fee, and eight through separately ticketed section-sponsored CLEs.)

Regular registration is only \$245 — an exceptional bargain! The \$245 fee expires July 31 (it increases to \$295 on August 1), so register now and save. Registration forms are available on the WSBA website (www.wsba.org), in the February and March issues of *Bar News*, or by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. You may pay by check, Visa or MasterCard.

Here's just a sampling of what Celebration 2000 offers...

- Mock jury trial produced by WSTLA
- WSBA Awards Luncheon featuring Emmy award-winning journalist Catherine Crier
- Opening “Back to the Future” seminar, sponsored by the Washington State Judiciary, with Clay Jenkinson as Thomas Jefferson, and two futurists
- Strategies for Developing Strong Volunteers and Committees with Janet Boguch
- Closing Ceremony featuring Northeastern University Provost David Hall
- Multidisciplinary Practice
- Ethics, Professionalism and Civility: The Hard Questions
- 9th Circuit Court of Appeals Sitting of the Court
- Diversity Town Meeting



- Cyberspace and the Quill Pen: How Must the Law Adapt?
- Updating Public Legal Education in Washington
- Making the Courtroom Accessible to All
- When Bias Compounds: Women of Color in the Courts
- Making the Courthouse Work for Pro Ses
- Access to Justice in the 21st Century
- Some Contemporary Issues of Children and the Law
- The Digital Divide and Digital Justice
- Paralegal Utilization in Access to Justice
- Future of the Law and the Legal Profession
- Current Issues Affecting the Bar
- 15 section-sponsored CLE seminars
- Exhibitor Fair

And we haven't forgotten the social events. There will be a host of parties and receptions...

- All-conference welcoming reception, with keynote speech by Legal Services Corporation President John McKay, the Access to Justice skit with folks you'll all recognize, entertainment by two live bands, and dancing
- Gonzaga Law School opening ceremony and reception
- Fun Run fundraiser
- Family barbecue at Riverfront Park
- Golf tournaments
- Cruise on Lake Coeur d'Alene

WSBA 3rd Annual LAP/LaSD Statewide Conference Is a Smash Hit!

by J. Richard Manning • WSBA Governor, King County

The LAP/LaSD 3rd Annual Statewide Conference was held this year from April 7-9 at the Inn at Semi-Ah-Moo. In the jewel-like setting of Boundary Bay, conference attendees learned things about lawyering that you don't learn in law school. In fact, lawyers with many years of experience loaded up on new ideas from A to Z.

One of the highlights of the conference was a Saturday afternoon with Larry Rice, a nationally known small-firm lawyer from Memphis, Tennessee, who entertained his audience for over four hours with practical tips on law office management. Rice, who concentrates on family law and personal injury litigation, lectures throughout the country. He handed out usable forms (including letters and pleadings) on hiring, firing, employment agreements, staff checklists of daily and weekly duties, deposition checklists, marketing letters (to past and present clients), and offered a potpourri of other valuable suggestions. Rice's publications may be obtained by e-mail request at lrice@ricelaw.com.

Valuable information was offered for those who may be concerned about potential suicidal tendencies in a client or colleague. Heather Fiske, a clinical psychologist from Toronto, presented practical advice on how to spot at-risk people, and of-

fered suggestions on how to help them.

Barbara Harper, Lawyer Services Department director, brought out her staff en masse as presenters and organizers of the weekend conference. Included were Zella Ozretich (LaSD coordinator), Rebecca Nerison (LAP psychologist), Jean Johnson (LAP psychotherapist), Marty Potter (LOMAP advisor), Chris Sutton (professional responsibility counsel), Kaitlin Mee (LOMAP coordinator) and Veronica Nations (ADR coordinator). They provided a menu of something of interest for just about every lawyer.

— City of Seattle attorney Dan Grant and Stokes Lawrence employment law attorney Lisa Herb presented an employment law program.

Ethical tips in client fee and billing arrangements, and issues related to the unauthorized practice of law were anecdotally discussed by Chris Sutton and Bob Welden, WSBA general counsel.

Adrian Hill, a founder of the Canadian Bar Association's Legal Profession Assistant's Conference (similar to the ABA Commission on Lawyer Assistance) presented *Laughter in Living*. Hill delighted his dinner audience by talking about sleep, furry friends, exercise, sex, food, health, and managing stress to lead a balanced life in the legal profession.



LAP psychologists Barbara Harper and Rebecca Nerison wrapped up the weekend conference by suggesting that the best way to enhance professional and personal life is by changing attitudes. As one speaker said, "We cannot change our past...we cannot change the fact that people will act in a certain way...we cannot change the inevitable. The only thing we can do is play on the one string we have, and that is our attitude."

Adrian Hill brought the presentation to a conclusion with a stirring, soul-searching account of a past crisis in his life. He told how he dealt with opposing counsel who daily accused him of dishonesty during the course of a several-month trial in a high-profile case. Consistently and persistently, through his own attitude, Hill refused to permit opposing counsel to draw him into a gutter fight. In the end, his professionalism and civility prevailed while his opponent brought on himself the loss of peer respect and his client's case.

One participant was heard to say as he was leaving the conference, "This is probably the most inspiring, practical and entertaining weekend conference I've ever attended." And it was. ☞

Provide Training and Get CLE Credit

The Law Office Management Assistance Program (LOMAP) component of the WSBA Lawyer Services Department (LaSD) is once again going on the road this summer, taking CLEs to small communities around the state. The focus of this year's CLE is Law Office Technology. We are seeking attorneys proficient in Internet legal research to help us present some of the material in exchange for CLE credit. The training session will include one hour of instruction (we provide the materials, handouts and equipment), and an additional 30-minute period for questions. Attorneys will use the provided materials in conjunction with an Internet connection to teach CLE participants how to do legal research using Genie Tyburski's teaching website at <http://www.virtualchase.com>. If you are interested in participating, please contact Joyce Raby at 206-733-5930 or e-mail joycer@wsba.org.

The WSBA Lawyer Services Department offers:

- The Lawyers' Assistance Program (LAP): **206-727-8268**
- The Law Office Management Assistance Program (LOMAP): **206-727-8237**
- The Professional Responsibility/Ethics Program: **206-727-8284**
- The Alternative Dispute Resolution Program (ADR): **206-733-5923**

Changing Venues

Full Court

The Johnson & Associates team has reclaimed the Lawyers Basketball League Championship. Team members include **James H. Clark**, **Anthony C. Johnson**, **Joshua M. Lipsky**, **Dean E. Martin**, **Eric S. Nelson**, **Charles Paglialunga**, **Shannon P. Smith** and **William R. Spurr**.

Honors and Awards

The Washington State Supreme Court signed a resolution honoring **Bob Pittman** for his commitment to public legal education. He is a sole practitioner and the host of KIRO Newsradio's *Legal Line*. For the past nine years, Pittman has been educating the public on the legal system via the

weekly, four-hour radio show.

John T. Hammarlund was recently appointed deputy regional administrator of the Health Care Financing Administration, the federal agency that admin-



John T. Hammarlund

isters the Medicare and Medicaid programs. Hammarlund is a member of the Washington, Pennsylvania and District of Columbia Bars.

New officers of the King County Bar Association include President **Frederick L. Noland**, First Vice President **Ralph Maimon**, Second Vice President **Caroline D. Davis** and Secretary/Trustee **Susan K. McIntosh**. **Ronald J. Knox** and **Eugene D. Seligmann** were elected to three-year terms as Central District trustees.



Nancy Day

Ada Shen-Jaffe, director of Columbia Legal Services, has been named Girl Scouts' 2000 Woman of Distinction. Shen-Jaffe received the award for her noteworthy success within her profession, her tireless role in enhancing the quality of life for women and girls, and her selfless contributions to the community. Seattle attorney **Nancy Day** was appointed secretary of the Girl Scouts' board of directors, who also added

Mimi Warner and The Honorable **Patricia Clark** as board members. **Betsy Hollingsworth**, **Marilyn Sherron** and **Dianne Turk** became members of the Girl Scouts' Board of directors nominating committee.

Timothy Blake recently received a "Friend of Phoenix" award from the city of Phoenix, Arizona, for his dedication and commitment to improving mass transit.

Seattle attorney **James F. Whitehead** has been elected to a three-year term on the board of directors of the Maritime Law Association of the United States. The organization has more than 3,600 members, consisting of prominent maritime lawyers, judges and nonlawyer leaders of the maritime industry.



Craig Wright



Shalini Gujavarty

Movers and Shakers

Helen Boyer and **David Wilner** have become partners at the Seattle office of Cozen and O'Connor.

New additions to Graham & Dunn in Seattle include partner **Craig Wright** and associate **Shalini Gujavarty** (member of the



Mimi Warner



Hon. Patricia Clark



Betsy Hollingsworth



Marilyn Sherron

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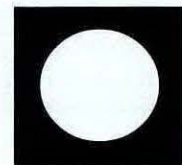
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Alaska and New York state bars).

Anne W. Glazer has been elected partner at the Portland office of Lane Powell Spears Lubersky LLP. Her practice focuses in the areas of trademarks, copyrights, licensing, privacy and the Internet.

Bradley P. Thoreson has joined the Seattle firm of Short Cressman & Burgess PLLC as a partner. His practice is concentrated in the areas of litigated real estate and construction matters. **John J. Houlihan, Jr.** (member of the Illinois and California state bars) has become of counsel to the firm and will continue with his environmental litigation practice. New associate **William L. Dixon** will have a commercial litigation practice. New associate **Karen L. Kendrick's** practice will expand and complement the firm's real estate practice group.

Paul A. Swegle is the new vice president and general counsel at Netstock Direct Corporation in Bellevue. He will be responsible for managing all of Netstock's legal issues and will serve as a member of the company's executive management committee.

Howard Hall has joined Wolfstone, Panchot & Bloch, PS, Inc. as of counsel, where he will continue his litigation practice emphasizing defense of toxic tort, products liability and employment cases on a local and regional basis.

Rocco N. Treppiedi will practice municipal, civil rights, employment and general commercial litigation as of counsel in the Spokane office of Perkins Coie LLP.

Richard J. Busch is new of counsel at Miller Nash LLP. He will focus his telecommunications practice in the administrative law and government relations department of the firm.

Steven N. Zwerin is a new associate at Northwest Law Center LLC, where he will practice family, criminal defense and employment law.

Dorsey & Whitney LLP continues to expand its presence in Seattle with the addition of three new associates. **Jared Black** brings to the firm's corporate group a background in securities and corporate law, tax and Internet law, with a focus on emerging companies. **Lisa Guterson**, whose practice centers on employment law including discrimination, harassment, disability rights, and FMLA and union issues, joins



Maria C. Fox



Stephen J. LaForte

the labor and employment group. **Elizabeth Fiattarone**, with substantial experience in estate planning, federal taxation, nonprofit organizations and elder law, joins the firm's individual, estate and trust services group.

Townsend and Townsend and Crew LLP has announced the addition of patent attorney **Mark G. Sandbaken** to its Seattle office. Sandbaken, who has a Ph.D. in molecular biology, will focus his practice on patent prosecution.

Robert J. Burke recently joined the Se-

attle office of Holmes Weddle & Barcott as an associate, where he concentrates his practice in maritime law and Longshore and Harborworkers' Compensation Act defense.

Maria C. Fox is a new associate at MacDonald, Hoague & Bayless in Seattle. Fox focuses her litigation practice in employment discrimination and civil rights law.

Stephen J. LaForte, whose practice centers on corporate and business transactions, has joined Groff & Murphy PLLC in Seattle as an associate.

In Memoriam

Judith W. Constans passed away April 23, 2000 at the age of 58. She practiced at the Seattle firm of Merrick Hofstedt & Lindsey, and was a poet and short story writer.

Gladys Phillips, of Aberdeen, passed away in April at the age of 87. A former state legislator, she practiced law for more than 60 years and helped found the Grays Harbor Community Foundation. ☞



Former WSBA president **Richard H. (Dick) Riddell** passed away May 29, 2000 at the age of 83. After graduating from Stanford University in 1938, he earned his law degree at Harvard Law School and was admitted to the Washington State Bar in 1941. He joined his father's law practice, which led to the formation of the law firm now known as Riddell Williams PS. During World War II, Mr. Riddell served for four years with the 8th Air Force, achieving the rank of Major.

In addition to serving as WSBA president from 1976 to 1977, Mr. Riddell was president of the Seattle-King County Bar Association from 1963 to 1964, and served on the WSBA Board of Governors from 1973 to 1976. He was a fellow of the American College of Trial Lawyers and the American Bar Association.

Upcoming BOG Meetings

The Board of Governors' meeting schedule is as follows:

August 4-5	Doubletree	Port Angeles
September 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.

Changing Fee Agreements

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

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

This article looks at some ethical issues arising when, after entering into an initial fee agreement with a client, the lawyer seeks to change that agreement. It first identifies the applicable ethical principles, and then briefly looks at the contractual remedy of accord and satisfaction. It then applies these, raising more questions than it answers, to the thorny situation of attorney fees being recovered from a personal injury protection insurer long after complete resolution with the tortfeasor of the underlying litigation and distribution of all recovered funds. The primary ethical obligations of the lawyer under the Rules of Professional Conduct addressed here are the lawyer's duty as a fiduciary to assure that the lawyer's fee is reasonable and to avoid conflicts of interest.

Setting the Fee

Although a lawyer must deal honestly and fairly with a prospective client, the lawyer does not have a fiduciary relationship until the lawyer-client relationship is established. Until then, a lawyer has the opportunity to look out for and protect his or her own interests without regard to whether it is in the interests of the prospective client, and to bargain at arm's length about the terms and conditions of the lawyer rendering legal services, provided only that the resultant fee is not unreasonable under the RPCs. Once the lawyer-client relationship is established, however, the lawyer becomes a fiduciary and loses that bargaining position.

The basic ethical rule on lawyer fees, set out in RPC 1.5(a), is easy to state: "A lawyer's fee shall be reasonable." Applying it is far more difficult. RPC 1.5(a) sets out

eight non-exclusive factors to be considered in determining the reasonableness of a fee. Among them are "the terms of the fee agreement between the lawyer and the client" (RPC 1.5(a)(1)), and "whether the fee agreement or confirming writing demonstrates that the client... received a reasonable and fair disclosure of material elements of the fee agreement and of the lawyer's billing practices" (RPC 1.5(a)(8)). Quite aside from the fact that it is poor business practice not to communicate such

For every buy-sell transaction, whether for widgets, pigs or legal services, price and terms of payment are material terms. Unless they are communicated to the client, however, the client is being asked to buy the proverbial "pig in a poke."

information to a client, the lawyer also has an ethical duty under RPC 1.4 to explain a matter to the client so that the client can make informed decisions regarding the representation. For every buy-sell transaction, whether for widgets, pigs or legal services, price and terms of payment are material terms. Unless they are communicated to the client, however, the client is being asked to buy the proverbial "pig in a poke."

RPC 1.5(b) requires a lawyer who has not regularly represented a client, or whose fee agreement is substantially different from that previously used with the client, to take the pig out of the poke. Specifically, RPC 1.5(b) requires the lawyer to communicate to the client, preferably in writing, before or within a reasonable time after commencing the representation, "the basis or rate of the fee or factors involved in determining the charges for legal services and the lawyer's billing practices." Although the rule only requires disclosure of the basis or rate of the fee to be in writing when requested by

the client, the lawyer would be wise to always provide that disclosure in writing. If the lawyer has not made the disclosures required under RPC 1.5(b), or the client has not agreed to the stated basis, factors or practices for the representation, the lawyer as a fiduciary has a heavy burden to prove he or she is entitled to a fee.

RPC 1.5(c) generally permits a lawyer's fee to be contingent on the outcome of the matter for which the service is being rendered. RPC 1.5(c)(1) requires a contingent fee agreement to be in writing and to state "the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated." The bed-

rock principle, of course, is that the entire recovery belongs to the client; only to the extent that the client explicitly consents, based on full information of all material facts, is the lawyer entitled to any of it. RPC 1.5(c)(1) also requires the lawyer to provide the client, upon conclusion of the contingent fee matter, "with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination." The purpose of the written statement is to provide the client with a full accounting of how the lawyer has handled the client's recovery so the client can make an informed decision, based on all material facts, on whether the lawyer has served the client as agreed.

In drafting and explaining to the client any fee agreement, the lawyer should recognize that in any dispute with the client, any ambiguity in the agreement will be interpreted against the lawyer. For example, if the lawyer has not explained to the client

alternatives to contingent fees, or has not clearly explained the difference between the lawyer taking a contingent fee on the gross recovery as opposed to the net recovery, the lawyer is likely to have a dissatisfied client, particularly where the recovery is small. Clear examples in the fee agreement showing each category of likely material expense, showing modest or even token recovery amounts, and demonstrating the difference between gross and net recoveries, will help the client understand the agreement and the lawyer defend it.

In determining a contingent fee, the lawyer should weigh the degree of risk of nonrecovery, the amount of recovery reasonably likely, the estimated effort needed for recovery, and the estimated liability, so that the fee is not viewed as unreasonable. The lawyer is far better served by willingly surrendering on his or her own initiative some of the fee which the fee agreement says the lawyer is entitled to, rather than having the fee reduced or nullified as unreasonable after litigation. Although *Formal Opinion 94-389* (1994) of the ABA Committee on Ethics and Professional Responsibility permits a lawyer to charge a contingent fee even when liability is clear and recovery certain, with the amount of recovery being the only real issue, it also advises that a fee agreement should provide for a smaller percentage fee when recovery is early than when the case goes through discovery, trial and appeal. *WSBA Formal Ethics Opinion 191* (1994), rejecting sub silentio a portion of the ABA opinion, concludes, however, that Washington's RPCs prohibit a lawyer from basing a contingent fee on the larger of the recovery obtained at trial or in arbitration or the amount offered in settlement. Likewise, a number of commentators and courts have rejected the notion that contingent fees are reasonable where there is in fact no material contingency. See, for example, Brickman, *ABA Regulation of Contingency Fees: Money Talks, Ethics Walks*, 65 *Fordham L. Rev.* 247 (1996), and Brickman, *Contingent Fees Without Contingencies: Hamlet without the Prince of Denmark?*, 37 *UCLA L. Rev.* 29 (1989). See also, ABA *Annotated Model Rules of Professional Conduct* (4th Ed., 1999), 57-58.

Changing the Fee Agreement

In most cases, initial fee agreements serve lawyers and clients well. The legal representation is usually completed, and the lawyer is paid in accordance with the terms of the agreement, without any material changes to the fee agreement being made or being necessary.

Where there is a fee dispute after the agreement is entered, it is usually the client, now freed from the legal quandary that first brought the client to the lawyer, or

The lawyer reduces his or her fees not because the lawyer is not in fact legally and ethically entitled to the full agreed fee, but rather because the lawyer's primary professional goal is to serve the client well, and payment is only a very secondary consideration.

now first facing the reality of having to pay an outstanding bill for services already rendered, who is contending in retrospect that the previously agreed amount of legal fees was too much. In some cases, of course, a fee adjustment is made simply to reflect the fact that things did not work out the way both lawyer and client expected them to. The lawyer and client usually resolve such disputes by informally "amending" their fee agreement by the lawyer simply reducing his fee, perhaps refunding some of the already paid fees, or by writing off all or part of any outstanding fee balance.

The lawyer reduces his or her fees not because the lawyer is not in fact legally and ethically entitled to the full agreed fee, but rather because the lawyer's primary professional goal is to serve the client well, and payment is only a very secondary consideration. Substantially all lawyers have been cheated of their fairly earned fees by a number of unscrupulous clients — it is simply one of the unpleasant facts of practicing law. Such informal amendments to fee agreements also, of course, reduce the likelihood of the client making malpractice or disciplinary claims against the lawyer, and thus allow both lawyer and client to get on with their lives. Overwhelmingly, these informal day-to-day "amendments" to fee agreements work well for both lawyer and client and completely resolve any fee dispute.

In a small minority of cases, the lawyer seeks not to reduce his or her pre-agreed legal fees, but rather to increase them or to obtain more security that the fees will in fact be paid by the client. These cases raise troublesome ethical issues.

Where the lawyer has made the disclosures required under RPC 1.5(b) but later seeks to change the fee agreement, the lawyer has a very heavy burden to justify any change that would benefit the lawyer. The lawyer must be able to justify placing the lawyer's personal interests above the lawyer's fiduciary duty of loyalty to the client. In doing so the lawyer must overcome the presumption that any ambiguity or uncertainty in the fee agreement written by the lawyer should be read against the lawyer as the drafter of the agreement. The lawyer must also overcome the presumption that the lawyer's fiduciary duty of loyalty to

the client should prevail over the lawyer's personal interests. Finally, the lawyer must overcome the presumption that any lawyer-client business transaction that benefits the lawyer is fraudulent. See, for example, *In re McGlothlen*, 99 Wn.2d 515, 663 P.2d 1330 (1983), and *In re McMullen*, 127 Wn.2d 150, 896 P.2d 1281 (1995).

Accord and Satisfaction: Where Contracts and Ethics Meet

The Washington Supreme Court has made clear the primacy of a lawyer's fiduciary obligations to a client where a lawyer's contractual rights and ethical duties intersect. *Perez v. Pappas*, 98 Wn.2d 835 (1983). Although the case arose under the ethical rules applicable before adoption in 1985 of the RPCs, the Court's analysis applies equally well under the RPCs.

In *Perez*, the client's third lawyer (the client had fired the first two) agreed to represent the client in a personal injury action for a 35 percent contingent fee. After the lawyer negotiated a structured settlement accepted by the client, both the lawyer and client agreed the lawyer would instead take a fixed cash amount. The lawyer and client differed as to the intent of the amendment and whether it was based on the present value of the structured settlement. Six months thereafter, the client complained about the amended fixed fee to the

lawyer, who agreed to and did repay the portion of the fee (\$37,500) exceeding the initial 35 percent, plus interest thereon. The client accepted the repayment. Neither the initial 35 percent agreement, the amended fixed amount agreement, nor the excess repayment agreement were in writing, nor did the lawyer ever provide the client with a final written accounting of the settlement. Thereafter, the client, through his fourth lawyer, sued the third lawyer, charging breach of fiduciary duty and seeking alternatively complete forfeiture of all attorney fees, or forfeiture of all fees in excess of quantum meruit fees, or repayment of fees to result in the client obtaining a specified fixed recovery.

The trial court found that the parties had agreed to a 35 percent fee, and that the lawyer breached his fiduciary duty by renegotiating his fee upward and by failing to give the client an accounting, but that the breach was cured by the subsequent agreement and payment. The trial court rejected the theory that the repayment represented an accord and satisfaction, because in its view there was no dispute as to what the fee should be, but only as to the cash value of the settlement. The client appealed. The Supreme Court affirmed (at 839-840) the result reached by the trial court, but on different grounds:

We hold that although respondent did a commendable job in negotiating a settlement for appellants, he did in fact breach his fiduciary duties in renegotiating the fee for his services without full disclosure and in failing to give a written accounting. We disagree with the trial court that a breach of fiduciary duty can be [839/840] "cured." It is well settled that restitution is no defense to an attorney's violation of the Code of Professional Responsibility, *In re Pennington*, 73 Wn.2d 601, 440 P.2d 175 (1968), and this appears to us to be an analogous situation. However, this is not an attorney discipline case and we can see no legal or public policy reasons which prevent an attorney and client from availing themselves of the contract remedy of accord and satisfaction. There was a genuine dispute in the instant case as to the fees and the basis of calculating those fees. We hold that the

parties resolved the dispute regarding the fees to which respondent was entitled by agreement. Therefore respondent's payment of \$37,500 constituted an effective accord and satisfaction.

While agreeing that the lawyer breached his fiduciary duty by increasing his fee from the 35 percent contingent amount to the higher fixed amount, the court also concluded that the breach had been resolved through the contractual remedy of accord and satisfaction. It stated (at 840-841):

...[A]n attorney must continually be aware that the [840/841] attorney-client relationship is a fiduciary one as a matter of law and thus the attorney owes the highest duty to the client.... [citations omitted] We agree with a well recognized principle that:

Once the attorney-client relationship is established, any modification of the fee arrangement becomes subject to the fiduciary obligations and the well-established presumptions. The courts have generally given particular attention and scrutiny to fee contracts made or altered during the attorney-client relationship. ...Additionally, if the renegotiation results in greater compensation than counsel was entitled to under the original agreement, courts may refuse to enforce the renegotiation unless it is supported by new consideration.

Accordingly, respondent's renegotiation of his fee after settlement must be carefully scrutinized....

Since close scrutiny reveals that all the contingencies cited by respondent as justifications for renegotiating his fee upward were essentially nonexistent, we agree with the trial court's conclusion that a breach of fiduciary duty occurred.

The Court found that the contractual remedy of accord and satisfaction was applicable, observing that it consists of a bona fide dispute, an agreement to settle the dispute and performance of the agreement. It also concluded that the new contract must rest on consideration, which exists when the agreement compromises the parties' differences in a dispute. The Court rejected the client's contention, based on *Gleason v. Metropolitan Mortgage Co.*, 15 Wn.App.

481, 551 P.2d 147 (1976), that there can never be an accord and satisfaction between a fiduciary and a principal. In doing so, it quoted that case as holding merely that "[i]n the absence of an express agreement, made upon full revelation, no accord and satisfaction will arise" in a fiduciary relationship case, but that in *Perez* there was both an express agreement and full revelation.

The importance of "full revelation," that is, of the lawyer fully informing the client of all material facts when seeking to resolve a dispute with the client, is shown in a recent Court of Appeals decision, *Simburg, Ketter v. Olshan*, 97 Wn.App. 901 (Div.I, 1999). After completing representation of a client in commercial litigation on an hourly basis, during which the client had paid about \$200,000 in fees and \$50,000 in costs on interim bills, the law firm sent a final billing for about \$164,000. After considerable discussions about the bill, the law firm agreed with the client to further reduce its fees and accept interest-free monthly installment payments of \$2,000 or more on approximately \$154,000 in principal. After paying for 18 months, the client demanded a further reduction in fees to, it appears, approximately the amount the client had already paid. The client declined the law firm's offer to further reduce the balance by 15 percent if paid off within a specified time period, and neither side further compromised. The law firm then sued for its outstanding fees. The trial court granted the law firm summary judgment. The Court of Appeals reversed and remanded, holding that there was a material issue of fact and accordingly summary judgment had not been appropriate.

After discussing *Perez*, the Court focused on the client's contention that the law firm had not made a full revelation to the client of its billing practices before it entered into an accord on unpaid fees. Specifically, the client argued that the law firm's billing statements failed to disclose the hourly billing rates for each attorney and staff person, any changes to those rates, the minimum billing increment allegedly charged, excessive billings, the specific attorneys and staff persons who performed services and a particular attorney's participation in the litigation and certain decisions he made.

After reviewing the record on the bill-

ing statements, the Court concluded that the law firm violated RPC 1.5(b) by not communicating the basis of its fee in writing when the client requested a review of its billings before entering into the accord. The Court thus concluded (at 910) that for purposes of review of the trial court's summary judgment in favor of the law firm, "a reasonable person could conclude that the ... firm did not make a full revelation of its billing practices before entering into an accord for unpaid fees" with the client. Accordingly, it reversed and remanded the case.

Conflicts of Interest

In changing a fee arrangement to increase the amount or likelihood of payment of legal fees, the lawyer has a material conflict between the lawyer's own interests and those of the client. RPC 1.7 and 1.8 set out the applicable conflict of interest rules.

Under RPC 1.7(b), if there is any possibility that the lawyer's representation of a client may be materially limited by the lawyer's own interests, the lawyer may not represent or continue to represent the client unless: 1) the lawyer reasonably believes the representation will not be adversely affected, and 2) the client consents in writing after consultation and a full disclosure of the material facts. The rule is intended to assure the lawyer's loyalty to the client and that the lawyer's own interests do not adversely affect the representation. Comment 6 to Rule 1.7(b) of the ABA Model Rules of Professional Conduct. As a practical matter, this means the lawyer has the choice of living with the existing fee agreement, withdrawing from the representation, or complying with the belief-disclosure-consent requirements of RPC 1.7(b).

Even if the lawyer concludes that the representation will not be materially limited by the lawyer's own interests, if a lawyer enters a business transaction with the client, the lawyer must also comply with the RPC 1.8(a). Amendment of an existing fee agreement is subject to this rule. The rule prohibits a lawyer who is representing a client from entering into a business transaction with a client unless: 1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client, and are fully disclosed and transmitted in writing to the client in a manner which can be reasonably understood by the

client; 2) the client is given a reasonable opportunity to seek the advice of independent counsel in the transaction; and 3) the client consents thereto. Again, the lawyer in effect has the same choices as under RPC 1.7(b).

While the conditions of RPC 1.7(b) and 1.8(a) are not always easy (and in some cases may even be impossible) to meet, compliance is essential if the lawyer is to meet the lawyer's fiduciary duties to the client. Failure to do so may lead to malpractice, disciplinary and breach of fiduciary duty charges. For a more detailed discussion of ethical issues arising under RPC 1.7(b) and 1.8(a), see Althoff, "Investing in Your Clients' Business," *Washington State Bar News*, March 2000, p. 45.

The financial terms of a legal representation agreement are "entrepreneurial aspects of the practice of law" which *Short v. Demopolis*, 103 Wn.2d 52 (1984), held to be subject to the Washington Consumer Protection Statute. Any material change in the terms of a fee agreement which is adverse to the client's interest is subject to the requirements of RPC 1.8(a). In the context of changes to a fee agreement, the rule is intended to prevent a lawyer from taking unfair advantage of a client, by demanding, for example, more fees or additional security for those fees on the eve of litigation. See, for example, *In re Hatch*, *Bar News*, January 1999, p. 47 (lawyer censured for seeking security for legal fees immediately prior to a settlement conference, thus depriving the client of the opportunity required under RPC 1.8(a) to seek independent counsel).

Really Now, Whose Money Is It?

A 1998 Supreme Court decision, *Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632 (1998), raises interesting ethical issues relating to attorney fees even though the decision itself is based on contractual, subrogation and common-fund analysis and not on the RPCs.

When insureds resolve claims against tortfeasors, they usually collect and set aside amounts as reimbursements of the personal injury protection benefits paid by the insurers. Before *Mahler*, insureds often claimed, and insurers denied, a right to offset from those amounts a proportionate share of the insured's attorney fees incurred

to recover amounts (including the amounts of PIP benefit payments) from the tortfeasors (referred to in this article as "disputed fees"). As a practical matter, lawyers, while believing they were entitled to the disputed fees, often waived or surrendered their right to them simply to serve their clients and make a settlement possible. Facing conflicting results in the lower courts on the obligation of insurers to pay the disputed fees, the Supreme Court consolidated several cases. In *Mahler* it held that the insurers were required to pay the disputed fees.

In reaching its decision, the Court rejected various contentions of the insurers, including claims based on ethics that the attorneys' dual representation created potential conflicts of interest, and that it was "unethical for an attorney to calculate a contingent fee based on PIP payments the client received without any effort by the attorney." Holding that PIP insurers must pay the disputed fees, the Court approvingly quoted (at 425, n. 17) an insurance treatise:

It is grossly inequitable to expect an insured ... in the process of protecting his own interest, to protect those of the [insurer] as well and still pay counsel for his labors out of his own pocket, or out of the proceeds of the remaining funds. And this is precisely the view taken by the overwhelming majority of decisions, in that a proportionate share of fees and expenses must be paid by the insurer or may be withheld from its share.

The Court also rejected (at 428-9) the insurers' claims that the insured's lawyer would receive a "second, unmerited attorney fee," observing that to the extent the lawyer "pursues a recovery for the insured, counsel is entitled to a single fee *from the insured* for the work performed" (at p. 428-9). The Court stated that it is of no concern to the insurer whether any fee agreement between the insured and the insured's attorney provides for additional attorney fees; that the insurer had no standing to complain about fee agreements it is not a party to; and that the effort to secure a personal injury recovery, which involves both the insurer's PIP payments and the insured's other damages, "must inure to the benefit

of the insured, not the insured's lawyers." (footnote omitted) (p. 429).

The Court's conclusion about the insured's lawyer receiving only a single fee, and that the insured's lawyer's recovery efforts must inure to the benefit of the insured and not the insured's lawyer, is correct. It does not reflect the reality, however, that prior to *Mabler* the insured's lawyer usually did not receive the complete "single" fee the lawyer was entitled to on the entire amount of recovered damages, because the lawyer usually informally "surrendered" his right to the disputed fees in order to effect a settlement for the client. As a practical result of *Mabler*, the insured's lawyer should not have to do so any longer, and thus the lawyer's recovery efforts will now in fact more directly inure to the benefit of both the insured and the lawyer.

A number of Court of Appeals decisions have since applied *Mabler* to require insurers to pay the disputed fees, including *DeTurk v. State Farm Mut. Auto Ins.*, 94 Wn.App. 364 (Div. II, 1998), *Peterson v. Safeco Ins. Co.*, 95 Wn.App. 254 (Div. III, 1999), and *Winters v. State Farm Mut. Auto Ins.*, — Wn. App. — (Div. II, 2/29/2000). In *DeTurk*, the Court rejected (at 371) the insurer's claim that the insureds and their lawyer had either waived their rights to seek recovery of the disputed fees or should be estopped from pursuing their claim by reimbursing the insurer without demanding legal fees. The rejection was principally on the basis that the insurer's obligation to pay the disputed fees was not determined until the *Mabler* decision.

So Now, Who Really Gets the Money?

Mabler determined that between the PIP insurer and the insured, the insurer is obligated to pay the disputed fees. Litigation is now underway by insureds, directly and through class actions, to recover retroactively from insurers the disputed fees which insurers retained or never paid. Since *Mabler* addressed the dispute between insured and insurer, it did not address or directly answer the question of who is *really* entitled to keep such recovered disputed fees. By implication, the case can be read to mean that the fees belong to the client. But, between the lawyer and the insured

client, who should be entitled to the recovered fees?

The answer to the question requires a tripartite analysis of the contractual fee agreement between the client and the lawyer, of what the attorney and client understood and agreed to as to the disputed fees, and of the attorney-client relationship in light of the ethical principles outlined above. Although there is no one answer for every factual situation, it appears likely that, due to the lawyer's fiduciary relationship

Facing conflicting results in the lower courts on the obligation of insurers to pay the disputed fees, the Supreme Court consolidated several cases. In *Mabler* it held that the insurers were required to pay the disputed fees.

with the insured client, only rarely will the attorney be entitled to any of such recovered amounts.

The question of who is entitled to recovered disputed fees likely will arise in several scenarios. In each case it is assumed that before the Court decided the *Mabler* case, the attorney and client entered, at the inception of the attorney-client relationship, a written contingent fee agreement.

In some pre-*Mabler* cases, initial fee agreements may have called for the lawyer to receive, and the lawyer in fact charged, a percentage contingent fee on the gross recovery (before repayment of PIP benefits to the PIP insurer), and the lawyer in fact collected that gross fee, either because the PIP insurer paid its proportional share of the disputed fees, or because the client paid them. In these cases, likely relatively few in number, the lawyer has been paid in full and the client is clearly entitled to any disputed fees recovered from the PIP insurer. If the client is now represented by another lawyer in seeking recovery of those disputed fees (for example, as part of a class-action suit), then the client has presumably entered with that new lawyer a new fee agreement governing rights to any recovered fees.

In other pre-*Mabler* cases, initial fee agreements may have called for the lawyer to receive, and the lawyer in fact charged and collected, a percentage contingent fee

on the *net* recovery (that is, what remains after repayment of costs and PIP benefits to the PIP insurer). In these cases, also likely to be relatively few in number, the lawyer has again been paid in full pursuant to the agreement, and there are no disputed fees to be recovered.

In most pre-*Mabler* cases, however, the initial fee agreement likely called for the lawyer to receive a percentage contingent fee based on the gross recovery (before repayment of PIP benefits to the PIP insurer), but the lawyer did not in fact receive the full agreed percentage. Instead, when the PIP insurer disputed its duty to pay its share of the attorney fees, the attorney probably accepted the reality that no settlement was likely going to be possible unless the attorney reduced his agreed gross recovery to a net recovery. In short, the lawyer, in the best tradition of the profession, put

aside his own legal right for the disputed fees so that his client's matter could be resolved. Of course, the lawyer also benefits by reducing his fees, because by bringing resolution to the matter the lawyer is finally entitled to take his contingent fee in the case and likely discontinue future efforts on the case.

Questions, Questions — Are There No Answers?

What happens when, long after recovered funds (less disputed fees) have been distributed and the lawyer has concluded the representation, and long after lawyer and client have each gone on with their lives, the law is clarified to the effect that PIP insurers owe those disputed fees and the fees become retroactively recoverable?

Few of the initial fee agreements in these cases likely recognized the possibility that the lawyer might in effect unilaterally amend the agreement by reducing his fee as to the PIP recoveries to make settlement possible, or specified whether in such a case the lawyer would have some continuing or residual right to receive the full gross fee if the disputed fees were subsequently recovered from the PIP insurer. Accordingly, it was unlikely that any agreement on this issue was negotiated between the lawyer and the client before the lawyer became a fiduciary as to the client by entering into

the lawyer-client relationship. Thus, any agreement made as to who would be entitled to any recovered disputed fees would likely have been made in the lawyer's capacity as a fiduciary and would be subject to the RPCs' requirements and general fiduciary principles. Few such agreements likely met those requirements and principles.

The ethical issue that arises, of course, is not from the lawyer's reduction of his fee, even a unilateral reduction of the fee without client consent, since such reduction of itself presents no conflict of interest, benefits the client, and is not a breach of a fiduciary duty. The ethical problem arises instead where the lawyer thereafter seeks to recover those lost amounts without the client having been provided the full disclosure/revelation needed to make an informed decision, required of the lawyer as a fiduciary, and called for under RPC 1.7 and 1.8 and for a contractual accord. It is not a simple matter of the client having agreed to pay the specified contingency percentage on the gross recovery, but not having done so, the lawyer is still entitled to the percentage, and if the client were to receive it, the result would be an unjustified windfall to the client. This simplistic view disregards the lawyer's fiduciary and ethical duties to fully inform the client and abide by the client's decision, and disregards the difference between a pre-fiduciary stage fee agreement and a fiduciary stage change in that agreement. Rather, where a lawyer and client have already entered into a fee agreement, and then the lawyer seeks to change the agreement, they are in effect entering into a new agreement, but they are doing so at a time when the lawyer has a heightened ethical duty to the client as a fiduciary.

These cases raise difficult ethical and contractual issues of fairness and equity, of the lawyer's compliance with the ethics conflicts of interest rules, of a lawyer's fiduciary duties, of the application of the contractual remedy of accord and satisfaction, and perhaps of unwarranted, even windfall, recoveries to the client. Resolution of these issues is necessarily dependent on the specific facts of each case, but will in all cases be subject to the ethical and contractual principles outlined above.

In resolving these issues, some of the relevant questions include: What did the ini-

tial fee agreement say? Did the lawyer unilaterally make the decision to reduce his fee? Was the reduction unconditional, or was it contingent on the lawyer's right to seek recovery of the disputed fees from the PIP insurer? Did the lawyer specifically retain a right to recover the disputed fees? Did the client assign to the lawyer that right, and if so, was there consideration? Did the lawyer in effect surrender his or her right to the disputed fees in exchange for a prompt payment of a lesser amount? Does the client have any obligation to assist the lawyer? Did the lawyer discuss with the client the lawyer's decision to reduce his or her fees? Did the client agree? Did the lawyer provide the type of detailed "revelation" of material facts needed under *Perez* and *Simburg, Ketter* for an accord with the client? Was the disclosure sufficient to satisfy the requirements of RPC 1.7(b) and RPC 1.8(a) for entering into a "revised" business arrangement with the client? Did the lawyer disclose, for example, that the lawyer had a personal interest in reducing his fees just to close the case, get the fee, and go on to another client's work? Did the lawyer document the disclosure to, discussions with and agreement by the client? Were changes in the agreement between client and lawyer material modifications under RPC 1.7 and 1.8? Did the client have an opportunity to consult independent counsel before making a decision as to who was entitled to receive any such recoverable disputed fees?

What's a Poor Lawyer to Do?

Assuming that the lawyer and the client did not foresee the possibility of retroactively recovering the disputed fees and did not document their agreement thereon, the lawyer who previously gave up his right to those fees has several choices: 1) rejoice at the client's good fortune knowing that the legal profession has well served the client, or 2) seek to claim all of, or share in, that good fortune. The first alternative is simple, altruistic, ethical, and probably financially painful, but allows the lawyer to get on with his life without regard to the past, and recognizes that the lawyer likely had already resigned himself to not having received the disputed fees. The second alternative is far more complex, fraught with ethical perils, and likely to lead to client and public ill

will and a public perception of lawyers as greedy.

If a lawyer seeks to claim or share in the client's retroactive recovery, the lawyer must fully comply with the lawyer's ethical duties under RPC 1.5, 1.7(b), and 1.8(a). If the initial fee agreement is to survive, the lawyer must also satisfy, as a fiduciary, the contractual requirements for an accord. These require at the least that the lawyer fully disclose to the client in writing, in a manner which can be reasonably understood by the client, all material facts and issues regarding the terms of the original fee agreement under which the client agreed to pay the lawyer a percentage fee based on the gross recovery, which included a percentage of PIP recoveries. It should explain that at the time of the resolution of the client's case, Washington law was not clear that the insurer was obligated to pay those disputed fees, and that the lawyer in effect forgave his or her right to receive those disputed fees in order to effectuate a resolution of the client's case.

The document should explain that after the client's case was resolved, the Washington Supreme Court ruled in *Mahler* that the insurers should have paid the disputed fees. The document should explain that class actions are now pending against various insurers seeking retroactively to recover those disputed fees, and that the client, as an insured who was denied recovery of the disputed fees, may as a class member now recover all or a portion of those disputed fees.

Then comes the tough part of explaining why the lawyer believes he is in fact entitled to the money that the client will be recovering. The disclosure document should clearly and objectively explain not only the lawyer's rationale of why the lawyer is entitled to the recovery, but also opposing rationales that conclude that the client and not the lawyer is entitled to the recovery. It should explain that the client has the choice of keeping the recovery if and when the client receives it from the class actions, paying it to the lawyer, or some combination of these. It should explain that the client can, if the client chooses, do absolutely nothing vis-à-vis the lawyer's claimed interest in the recovered fees and need not respond to the lawyer's request to share in the recovery.

Disciplinary Notices

While the lawyer may want to offer to discuss the matter with the client, the document should clearly explain that the lawyer's interest is adverse to the client's and that the client should not rely on the lawyer to be objective. It should encourage the client to seek independent legal advice on what to do. Finally, to avoid any semblance of coercion or undue influence, it should clearly state that the lawyer will accept the client's decision and will not bring any legal action against the client if the client decides to keep any recovery of disputed fees rather than pay them over to the lawyer. When writing to the client, the lawyer may want to enclose a copy of this article as an explanation of some of the principal issues.

Conclusion

Once the lawyer has undertaken a representation, the lawyer becomes a fiduciary as to the client and must give the client's interests priority over the lawyer's interests. The lawyer must fully disclose the basis and rate of the lawyer's fee, the factors involved in determining the charges for the legal services, and the lawyer's billing practices. When seeking to make any change in a fee agreement that may benefit the lawyer, the lawyer must overcome various presumptions against the validity of the change, including the presumption that any transaction between the lawyer and the client which benefits the lawyer is fraudulent.

Lawyers pondering how to handle possible recovered disputed fees from PIP insurers need to analyze their ethical duties very carefully. If they conclude they are in fact ethically and contractually entitled to the fees, they should be prepared to make full disclosure to their client, to likely engender considerable client and public ill will, and then to walk the very perilous ethical path of fully complying with their duties as a fiduciary and under the RPCs.

When a lawyer is in doubt as to who should benefit from any changed arrangement with the client, the answer is simple and obvious, although sometimes painful: The client's interest must take priority and the client must benefit from any uncertainty or ambiguity in a fee agreement. By so responding, the lawyer will maintain the highest traditions of the Bar and consistently put professionalism above commerce. *LD*

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

Brad A. Plumb (WSBA No. 20337, admitted 1991), of Spokane, has been disbarred by order of the Supreme Court effective March 27, 2000, following a hearing. The discipline is based on providing false, misleading and fraudulent information to the Employment Security Department (ESD) to obtain unemployment benefits, and making misleading statements to the court.

Matter 1: In February 1991, the City of Spokane Public Defender's Office hired Mr. Plumb as a lawyer. In November 1991, the Public Defender's Office terminated Mr. Plumb's employment for violating an office policy prohibiting representing private clients. In the same month, Mr. Plumb applied for unemployment benefits, stating that his supervisor gave no reason for terminating his employment. Mr. Plumb also told the ESD that he did not violate a company rule and that there was no final incident or reason for terminating his employment. Mr. Plumb told the ESD that he was self-employed on a commission basis. Mr. Plumb began receiving unemployment benefits the week ending November 16, 1991. On November 19, 1991, the City of Spokane protested Mr. Plumb's benefits, claiming he was ineligible because he was engaged in private practice. Mr. Plumb told the ESD that he did pro bono work only and did not receive compensation. On May 5, 1992, the ESD reinstated Mr. Plumb's benefits, based on his statements to them. Mr. Plumb received unemployment benefits until November 1992.

In June 1992, Mr. Plumb met with an ESD adjudicator. Mr. Plumb did not mention his self-employment. Between October 11, 1991 and November 4, 1991, \$10,400 was deposited into Mr. Plumb's

IOLTA account. Between November 5, 1991 and December 21, 1992, \$50,294 was deposited into another bank account in Mr. Plumb's name. Mr. Plumb also had a TFB account, which stood for The Family Business Account. Between August 11, 1992 and December 8, 1992, \$7,408.65 was deposited into this account. The hearing officer found that the source of these deposits was legal fees and that this income was not reported to ESD. The hearing officer also found that Mr. Plumb's statements that he performed pro bono work only and earned no income were false and misleading. On June 4, 1992, Mr. Plumb opened an IOLTA account at a different bank. Between June 4, 1992 and February 25, 1993, \$92,217.72 was deposited into this account. The hearing officer found that the deposits made between June 1992 and November 1992, the time Mr. Plumb was receiving benefits, were not reported to the ESD. The officer found that the non-reporting constituted fraud. Mr. Plumb also opened a business for his law practice on June 4, 1992. Between June 4, 1992 and March 19, 1993, \$90,019.25 was deposited into this account. The hearing officer found that the deposits made into this account were not reported to the ESD, and constituted fraud. Mr. Plumb had two other accounts into which approximately \$42,000 was deposited between February and May 1992. None of these deposits was reported to the ESD. Additionally, an employee of Plumb and Associates filed a tax report indicating \$5,280 in income for the third quarter of 1992. Mr. Plumb did not report to the ESD that he had a full-time employee.

On January 16, 1992, Mr. Plumb ordered a yellow pages tab ad for Brad Plumb, attorney at law, to run August 1992 through August 1993. On the application for credit, Mr. Plumb indicated that he paid \$3,000 per month rent. Mr. Plumb filed suit when he was denied credit for the cost of his ad. On March 9, 1992, Mr. Plumb filed an affidavit in the lawsuit stating that the tab would be used to advertise his new law firm, and that if that did not work out, it would be used to advertise his solo practice. His affidavit also indicated that he had turned down several business opportunities, and had acquired a building, a new practice, bank accounts, phones,

business cards and letterhead. Mr. Plumb did not disclose any of this information to the ESD. In September 1992, Mr. Plumb applied for a job at Spokane Community College. His application stated that he owned and managed a three-lawyer firm and worked 70 hours per week.

In December 1994, January 1995 and March 1995, Mr. Plumb had a hearing before the Employment Security Department Office of Administrative Hearings. The administrative law judge found by clear, cogent and convincing evidence that Mr. Plumb was not eligible for benefits, and had willfully and intentionally withheld information from the ESD necessary to determine his eligibility. Mr. Plumb was ordered to repay \$9,600. The hearing officer found that Mr. Plumb was self-employed and earning income as a lawyer during the time he received unemployment benefits. Mr. Plumb's failure to report his self-employment status was a misrepresentation of fact.

Matter 2: On May 27, 1993, Mr. Plumb appeared at a sentencing hearing in Spokane Superior Court. The judge continued the hearing until Friday morning and asked Mr. Plumb if he was available. Mr. Plumb told the judge that he was participating in a golf tournament on Friday, Saturday and Sunday, and would not be available. The golf tournament was only on Saturday and Sunday. Mr. Plumb wanted to participate in a "skins" golf game on Friday. This was not part of the tournament.

Mr. Plumb's conduct violated RPC 8.4(c), prohibiting a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 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; RLD 1.1(a), prohibiting acts involving moral turpitude and acts reflecting disregard for the rule of law; RPC 3.3 (a)(1), prohibiting knowingly making a false statement of material fact or law to a tribunal; RLD 1.1(c), the requirement in the Oath of Attorney that a lawyer maintain the respect due to the courts of justice and judicial officers; and RLD 1.1(p), prohibiting conduct demonstrating unfitness to practice law.

Marsha Matsumoto and Linda Eide

represented the Bar Association. Mr. Plumb represented himself. The hearing officer was Charles T. Conrad.

Suspended

Leslie Clay Terry, III (WSBA No. 8593, admitted 1978), of Bellevue, has been suspended for 18 months, following a stipulation, by order of the Supreme Court dated March 24, 2000. The discipline is based upon his continuing to practice law while his license was suspended, failing to notify the courts his clients and opposing counsel of his suspensions, and failing to diligently represent a client.

On June 6, 1997, the Supreme Court suspended Mr. Terry's license to practice law for failure to pay his Bar Association dues. The court reinstated Mr. Terry on August 22, 1997. On September 4, 1997, the Supreme Court again suspended Mr. Terry's license to practice law for failure to submit evidence that he satisfied the required continuing legal education hours. The Supreme Court reinstated Mr. Terry's license on March 31, 1998.

Matter 1: On October 3, 1997, Mr. Terry filed a Notice of Appearance in Bainbridge Island Municipal Court. The court administrator discovered that Mr. Terry's license was suspended and contacted his office. Mr. Terry's office told the court that Mr. Terry had been reinstated, and provided a letter from the U.S. District Court verifying his status. This letter pertained to his resolved nonpayment of dues suspension, not the ongoing CLE suspension. On October 7, 1997, Mr. Terry filed an amended Notice of Appearance signed by another lawyer, naming both himself and the other lawyer as "attorneys for defendant."

Matter 2: In August 1994, Mr. Terry settled a client's personal injury suit. However, he continued to represent her in a claim for underinsured motorist benefits from her insurer. Mr. Terry did not withdraw from this matter, notify his client of either of his suspensions, or return her client file to her. Mr. Terry also failed to return the client's phone calls. The client learned in February 1998 that Mr. Terry's license was suspended. In July 1999, when the case remained unresolved, the client

requested in writing that Mr. Terry deliver her client file to her. As of December 6, 1999, the client had not received her file.

Matter 3: While his license was suspended, Mr. Terry represented an employer involved in a wage dispute with an employee. Mr. Terry called the employee and told him that he would receive the bulk of the money he was requesting from the employer. When the employee received much less than he requested, he threatened to sue the employer. During his suspension, Mr. Terry wrote two letters to the employee on letterhead identifying him as a lawyer. The letters also stated that Mr. Terry was counsel for the employer.

Matter 4: Mr. Terry represented a client who owned and operated a dry-cleaning business. The court entered a default judgment in a lawsuit filed against the dry cleaner for damages. While his license was suspended, Mr. Terry wrote a letter to a third party allegedly responsible for the damages. The third party paid a portion of the judgment. The plaintiff then wrote a letter stating that if she did not receive the balance of the judgment, she would begin supplemental proceedings. The client was served with an order to appear for supplemental proceedings. The opposing counsel agreed to continue the supplemental proceedings at Mr. Terry's request. Mr. Terry filed a motion to set aside the default judgment. Mr. Terry also requested that the presiding judge continue the supplemental proceedings until the motion to set aside the default could be heard. Mr. Terry told the judge that he was holding his client's funds in his trust account. The presiding judge did continue the supplemental proceedings. The court denied the motion to set aside the default judgment, ordered that the funds in Mr. Terry's trust account be released, the supplemental proceedings go forward, and that Mr. Terry pay \$300 in attorney's fees for bringing his motion. Mr. Terry did not notify either of the judges involved in these proceedings that his license was suspended.

Matter 5: At the time he was suspended, Mr. Terry was representing a client in a criminal proceeding. The client was charged with two counts of second-degree

assault. Mr. Terry did not withdraw or inform the client, the court or the prosecutor of his suspension. Trial in this case was set for March 2, 1998. Although Mr. Terry's license was suspended, he appeared for trial. The judge learned of his suspension and continued the trial date. The court also held subsequent hearings to appoint new counsel.

Matter 6: At the time he was suspended, Mr. Terry was representing a client charged with first-degree kidnapping and attempted first-degree murder. Mr. Terry did not withdraw or inform his client, the court or the prosecutor of his suspension. While his license was suspended, Mr. Terry represented the client during a five-day jury trial. After the jury returned a not-guilty plea on one charge and a hung jury mistrial had been declared on the second charge, the prosecutor learned of Mr. Terry's suspension. The prosecutor informed the trial judge of Mr. Terry's status.

Matter 7: At the time he was suspended, Mr. Terry represented three defendants in a civil lawsuit. He did not withdraw or notify his clients, the court or opposing counsel that his license had been suspended. Mr. Terry represented the clients in depositions, negotiations and a five-day bench trial while his license was suspended.

Matter 8: At the time he was suspended, Mr. Terry represented two defendants in a civil lawsuit. He did not withdraw or notify his clients, the court or opposing counsel that his license had been suspended. Mr. Terry represented the clients in depositions and mediation while his license was suspended. On March 10, 1998, Mr. Terry told opposing counsel that his license had just been suspended. On March 11, 1998, another lawyer appeared for the clients. Mr. Terry did not file a notice of withdrawal, and resumed active representation of the client when his license was reinstated.

Mr. Terry's conduct violated RPC 1.15(a)(1), requiring a lawyer to terminate client representation if continuing representation violates the RPCs or other laws; RPC 5.5(a), prohibiting practicing law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction; RPC 8.4(d), prohibiting con-

duct prejudicial to the administration of justice; RPC 1.3, requiring lawyers to diligently represent their clients; RPC 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters; RLD 1.1(l), prohibiting practicing law while suspended from law practice; RLD 8.2, requiring lawyers to discontinue prac-

ticing when their license is suspended; and RLD 8.1(a)(1), requiring lawyers to notify clients, courts and opposing counsel of the suspension of their licenses.

Disciplinary Counsel Douglas Ende represented the Bar Association. D. Michael Tomkins represented Mr. Terry. The hearing officer was Michael Kight. ☞

Lawyers' Fund for Client Protection

The Lawyers' Fund for Client Protection Committee meets quarterly to review applications for gifts from the Fund. The Committee is authorized to make gifts of up to \$3,000 to qualified applicants. On applications for more than \$3,000, the Committee makes recommendations to the Board of Governors, who are the Fund's trustees. At their meeting on May 12, 2000, the Committee took the following action:

- **Charles D. Fornero** (WSBA No. 20971, Seattle; disbarred) – In 1998, the Committee approved two payments regarding Mr. Fornero for \$930 and \$715. In this case, Fornero misappropriated estate funds from the sale of real property. The estate subsequently obtained judgment against Fornero, who has disappeared. The Committee approved payment of \$3,988.
- **Richard A. Jackson** (WSBA No. 5675, Renton; disbarred) – Jackson abandoned his practice in November 1997, after removing nearly all client funds from his trust account. On February 10, 2000 he pleaded guilty to two counts of first-degree theft. The Committee approved seven applications concerning Jackson:
 - \$6,000 misappropriated from a dissolution client who had paid the funds to Jackson to transfer to the client's former wife's lawyer;
 - \$3,000 misappropriated in an earnest money transaction;
 - \$520.30 advance fee payment neither repaid nor accounted for;
 - \$1,200 advance fee payment neither repaid nor accounted for;
 - \$750 advance fee payment neither repaid nor accounted for;
 - \$4,336.65 misappropriated dissolution settlement funds;
 - \$9,365.10 misappropriated estate funds.
- **Brad A. Plumb** (WSBA No. 20337, Spokane; disbarred) – The Committee approved payment of \$2,000 paid to Plumb as an advance fee for which no services were performed, and the funds were neither repaid nor accounted for.

The Committee considered an additional 13 applications which were denied on the basis that they were fee disputes, claims for malpractice, or because, in two instances, restitution had been made.

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

Lawyers and Students Enjoy Law Week 2000

Almost 400 lawyers, 40 judges and more than 6,000 students participated in Law Week 2000 during the week of May 8-12. Lawyers and judges in 14 Washington counties made classroom visits to discuss current legal issues and specific areas of the law. Some presentations also included mock trials in which students played all the courtroom roles.

Participating teachers and lawyers were enthusiastic in their praise of Law Week. They noted that students were very attentive during the programs, asked thoughtful questions, and participated in lively discussions of legal issues. Law Week 2000 Chairman Russell Speidel said, "Law Week presentations provide students with a deeper understanding of the Constitution, the legal system, and the foundation of citizenship. It's exciting to see kids get so involved in their rights and responsibilities as citizens."

The Law Week 2000 Committee extends a special thanks to all the lawyers and judges who volunteered their time, and to the participating schools for inviting us into their classrooms. The commitment to public legal education on the part of so many Washington lawyers and judges is greatly appreciated. Thanks for making a difference!

LawWeek2000



MAY 8-12



May 15, 2000

Thank you for coming to our classroom. It was a fun subject. Is it hard work? I bet it is. I learned how to be a judge and now I could probably "get this job". It was a wonderful time and I enjoyed it.

Sincerely,
Yevgeny

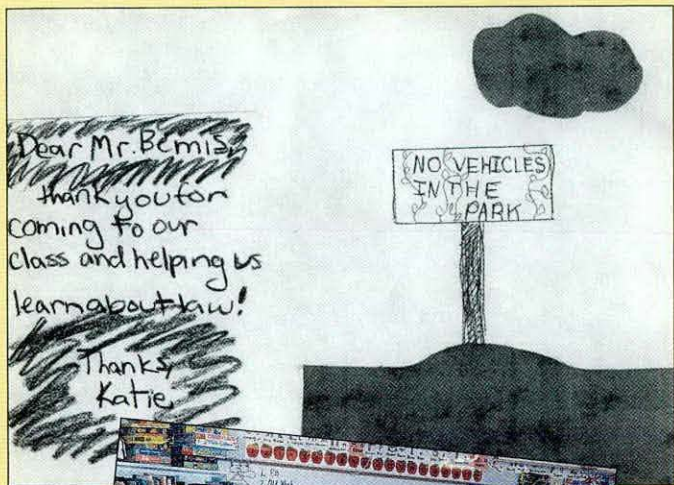
Yevgeny



ABOVE TOP: Washington State Supreme Court Chief Justice Richard Guy speaks to students at Lewis and Clark High School in Spokane. John Powers listens attentively.

ABOVE: Bennett Elementary School students participate in jury deliberations at Northeast District Court in Redmond.

LEFT: Lynette Weatherby-Teague explains her role as senior counsel in the Office of the Attorney General to students at Beachwood Elementary School on the Fort Lewis post.



ABOVE: District Judge Alicia Nakata and Wenatchee lawyer Russell Speidel speak with first graders at Cascade Elementary School in East Wenatchee.



ABOVE: Tacoma lawyer Karl Williams explains the difference between civil and criminal proceedings to fifth-grade students at Tacoma's Seward Elementary School.



ABOVE: Students participate in a mock trial.

LEFT: Wenatchee lawyer Tiffany Schaak works with fourth graders at Newberry Elementary School.



Death Penalty Moratorium

The WSBA Civil Rights Committee has recommended that the WSBA call on Governor Locke to declare a moratorium on the death penalty. The Board of Governors will consider action at its August 4-5 meeting in Port Angeles. The discussion is not about the death penalty per se, but about adequate process, procedures and safeguards in death penalty cases, and whether a moratorium should be declared pending review of these issues.

The Board invites all interested persons to submit comments and recommendations. In order to be included in the board book, materials must be received by July 21. Materials should be sent to the Office of the Executive Director, WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org.

Washington Women Lawyers' Dinner at Celebration 2000

Enjoy an evening of fine food, relaxing conversation and good company at the Washington Women Lawyers' dinner, to be held Wednesday, September 13 at the WestCoast Grand Hotel at the Park (formerly Cavanaugh's Inn at the Park) during Celebration 2000. Everyone is welcome to attend. The cost of the dinner is \$35 per person (please note that the dinner is not included in the Celebration 2000 registration fee). For more information or to purchase tickets, contact Rodgers & Peterson at 509-327-8711. For information about sponsoring tables, contact Shelley Swanson at 509-624-5265.

Pro Bono Survey

Under the Rules of Professional Conduct, attorneys are encouraged to provide some services on a pro bono basis. Despite this, very few firms have a pro bono policy. The WSBA Pro Bono and Legal Aid Committee is looking into what can be done to change this. What would be an incentive for you and the attorneys in your firm to do more pro bono work? Help us find out by completing the pro bono survey on the WSBA website at www.wsba.org. The survey will also appear in the August issue of *Bar News*. The Committee would very much appreciate your participation.

Legal Foundation of Washington Seeks Goldmark Award Nominations

The Legal Foundation of Washington is now accepting nominations for the 2001 Goldmark Distinguished Service Award. This award is given annually to an exceptional individual or organization that, by their vision, leadership and creativity, has provided meaningful access to Washington's civil justice system. Nomination forms may be obtained by calling the Legal Foundation of Washington at 206-624-2536, or by e-mailing dtheories@legalfoundation.org. Nominations must be received by Friday, September 1, 2000.

International Alliance of Holistic Lawyers Conference

The International Alliance of Holistic Lawyers, a nonprofit membership and educational organization established in 1991, announces that their annual conference will be held in Chicago, August 31-September 3. The conference theme is "Trans-

forming Legal Practice.” For more information, visit their website at <http://www.iahl.org>, phone 802-388-7478 or fax 802-388-4079.

Amendment to RPC 1.8(k)

On June 8, 2000, the Supreme Court approved amendment to the Rules of Professional Conduct 1.8(k), as follows:

A lawyer who is representing a client in a matter:

(k) Shall not:

(1) have sexual relations with a current client of the lawyer unless a consensual sexual relationship existed between them at the time the lawyer/client relationship commenced; or

(2) have sexual relations with a representative of a current client if the sexual relations would, or would likely, damage or prejudice the client in the representation.

(3) For purposes of rule 1.8(k), “lawyer” means any lawyer who assists in the representation of the client, but does not include other firm members who provide no such assistance.

International Franchise Association to Meet in Portland

Northwest franchise executives will meet in Portland on Tuesday, July 11, 2000 for a demonstration on the use of technology for employee recruitment, training and retention. The lunch meeting, hosted by Gary R. Duvall of Graham & Dunn PC, will be held from 11:30 a.m. to 1:30 p.m. The registration fee is \$25 per person, which includes materials and a light lunch. For more information, contact Danielle Nelson at Graham & Dunn, 206-340-8769.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in June 2000 is 6.318 percent. The maximum allowable interest rate for July is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of the 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 for January 1987 to date appears at www.wsba.org/barnews.

King County Superior Court Announces New Fee

Effective June 8, 2000, there is a \$120 fee for all Statements of Arbitrability, Orders Transferring to Arbitration, and Small Claims Appeals entering the King County Mandatory Arbitration Program. This fee is in addition to the normal filing fee for the case. For more information, contact Barbara Miner at 206-296-2910.

WSBA Staff Milestones

The following WSBA staff members have celebrated significant milestones within the past six months:

10 Years: Mary Barnes

5 Years: Felice Congalton, Joan Fairbanks, Joy McLean, Sonia Pagonakis, Julie Shankland

Washington Estate Tax Penalties Reduced

Recent legislation will affect the way estates are penalized for the late filing of the Washington estate tax return. House bill 2515 revises RCW 83.100.070, pertaining to imposition of the estate tax penalty for late filing. Under the revised law, there will be no penalty for voluntary late filing, but a penalty of five percent per month not to exceed 25 percent or \$1,500, whichever is less, will be applied to nonvoluntary filings. This law will affect estates with a July 1, 2000 due date or later. For more information, contact Julie Japhet at 360-753-7518 or Phoebe Hein at 360-753-5547.

Discipline 2000 Task Force Meets

The Discipline 2000 Task Force will meet at the WSBA offices on Monday, July 10 at noon. Meetings, which are open to the public, will occur throughout this year to examine and suggest improvements to our discipline system. For more information, contact Randy Beitel at 206-727 8257.

Tax Law Section Annual Luncheon

The Second Annual Tax Law Section Luncheon was held at the Columbia Tower Club on April 17, 2000. Arizona Congressman **Jim Kolbe**, chairman of the Appropriations Subcommittee which funds the budget for the Treasury Department, was the guest speaker. The

Roger Stouder Award was presented to retired University of Washington law professor **John Houston** for his contribution to the Washington state tax community. **Jennifer Gellner** from the Seattle University School of Law received a \$5,500 scholarship to attend an LLM program.

Government Lawyers Bar Association Offers CLE

“The Lessons of Nuremburg and Their Meaning Today” is the title of a WSBA-approved CLE program scheduled for July 11, 2000 in Olympia, and sponsored by the Government Lawyers Bar Association.

Speakers include Justice **Gerry Alexander**, speaking on Washington judges who participated in the Nuremburg trials; **Christopher Browning**, author of *Ordinary Men*, and a recent expert witness in the English libel case of *Irving v. Lipstadt*; **Jonathan Bush**, biographer of the late Gen. Telford Taylor; and **Helena Meyer-Knapp**, speaking on alternatives to war crimes trials. The cost of the program, which has been approved for 7 CLE credits, is \$45 for WSBA members and \$60 for non-members. The location is the O’Brien Building (House of Representatives Office Building), Hearing Room B, Capitol Campus in Olympia.

Emeritus Program Training Sessions:

Training sessions for the Emeritus Program are being scheduled statewide, with the first session to be held in Seattle on September 26 for attorneys in King and Pierce Counties. The Emeritus Program is a new WSBA status. The practice of a lawyer admitted under this section is limited to providing legal services for low-income clients for no fee through a qualified legal services provider. Please watch for more information regarding additional dates and locations in the August, September and October issues of *Bar News*. Contact Sharlene Steele at 206-727-8262 or sharlene@wsba.org for information about the Emeritus Program or to register for training sessions.

Congratulations to the New Admittees from the Spring 2000 Bar Exam!

Accebedo, Pierre E.	San Diego CA	Elfo, William James	Blaine	King, Stephen Troy	Tacoma
Adewale, Francis Alaba	Hyattsville MD	Elison, Jami K.	Salem OR	Kliewer, Lauralyn Brown	Seattle
Albon, Michaela Ann	Issaquah	Ellavsky, Megan	Longview	Kliewer, Lori Kristiane	Bend OR
Alexander, Kelly Jean	Everett	Enhada, Carina Yoshiko	Seattle	Kling, Molly Mak	Tacoma
Alexander, Shawn B.	Olga	Eraut, Allen E.	Medford OR	Kozicki, Scott Michael	Chicago IL
Allen, Beth A.	Sandy OR	Essig, Michael S.	Seattle	Kreutzer, John M.	Portland OR
Andersen, Matthew J.	Vancouver	Etherton, Scott	Kennewick	Ku, Peter Chiei	Redmond
Anderson, Robert T.	Seattle	Feste, Jonathan Porter	Seattle	Kullberg, Dianne Armendariz	Sumner
Anderson, Shawn N.	Lynnwood	Fifield, Andria C.	Eugene OR	Kusunose, Taro	Newcastle
Andrade, Mark D.	Newport	Finlay, Angela M.	Seattle	Kusyk, Douglas A.	Tigard OR
Arndt, James Arnold	Bellevue	Fisher, Jeffrey L.	Seattle	Kwon, Helen S.	Puyallup
Arnett, Stephen Edward	Seattle	Fleischbein, Lynn K.	Silverdale	Laird, Rick Lawrence	Shoreline
Ayers, Krista Jill	Seattle	Focher, Andrew L.	Spokane	Lake, James Ellis	Spokane
Baird-Levine, Robert White	Kingman AZ	Force, David Lawrence	Leavenworth	Lamb, Mark Christopher	Seattle
Baker, Elizabeth	Tumwater	Fowler, Julie K.	Bellevue	Lamont, Becky A.	Puyallup
Baker, Scott Gregory	Federal Way	Francis, Melissa	Seattle	Langlotz, Angela Valberg	Portland OR
Baklund, Steven J.	Seattle	Frans, Michael R.	Seattle	Larson, Jennifer M.	Spokane
Bale, Ashley M.	San Francisco CA	Fraser, Thomas J.	Portland OR	Lastomirsky, Steven R.	Portland OR
Banna, Joseph	Kalispell MT	Fredman, James J. III	Bellevue	Lau, Kalai	Bellevue
Barnes, Timothy P.	Gig Harbor	Freeman, Katherine Ann	Tacoma	Lebien, Sandra	Santa Clarita CA
Barry, Daphne Marie	Spokane	Friedman, Robyn Y.	Bothell	Lee, Jason W.	Los Angeles CA
Barry, Kim	Seattle	Friedman, Susan Joyce	Redmond	Leebron, John F.	Redmond
Batiste, Angela Danielle	Seattle	Fritsch, H. Andrew	Mountlake Terrace	Lees, Earle David III	Dubois PA
Bedirian, Byron	Spokane	Gaffney, Amy Reinhart	Seattle	Leist, Scott Frederick	Issaquah
Berg, Eron M.	La Conner	Gail, Michelle Anne	Seattle	Lerner, Noel	Tacoma
Bernard, Michael John	Bellevue	Gamel, Ilya S.	Tacoma	Levan, Joseph B.	Bainbridge Island
Bigsby, Sarah Catherine	Helena MT	Gardner, Matthew Lee	Chehalis	Levitt, Julie Maureen	Issaquah
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Busby, Tierra A.	Portland OR	Guthrie, Heather L.	Oregon City OR	Macklin, Cynthia Ann	Tacoma
Byrne, John Harlow	Bremerton	Haaserh, Michele M.	Olympia	Madden, Mario James	Salem OR
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Coberly, Elizabeth Anne	Portland OR	Harris, Timothy M.	Bellevue	Mayhook, John Jeffrey	Vancouver
Cohen, Christopher N. Coby	Seattle	Haverty, Irene Margaret	Bellevue	Mayo, Joseph A. IV	Spokane
Concannon-Sasich, Kim	Spokane	Hayhurst, Matthew Brannan	Seattle	McClure, Michelle Karen	Sherwood OR
Condit, Jeffrey G.	Portland OR	Healy, Erin A.	Seattle	McCullough, Michael Colin	Tacoma
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Costales, Sueanne Denise	Seattle	Hilst, Katherine L.	Juneau AK	McMillion, Evans	Seattle
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Cullen, Terrence Patrick	Duvall	Jaine, Shauny L.	Redmond	Miller, Renee Glenda	Bellevue
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Edwards, Christopher H.	Seattle	Khan, Zeshan Q.	Seattle	Odermat, Lance	Medina
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Announcements

DAVIES PEARSON, PC

ATTORNEYS AT LAW

is pleased to announce that

Carol J. Cooper

has become an associate of the firm,
focusing on business law
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GROFF & MURPHY, PLLC

is pleased to announce that

Stephen J. LaForte

has joined the firm as an associate.

Mr. LaForte is a graduate of
The George Washington University Law School.

Mr. LaForte's practice will focus
on corporate and business transactions.

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So, Jae H.
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The Law Office of
HINTON & ROTH

is pleased to announce that

Diane K. Golbeck
has joined the firm.

For over 14 years, Ms. Golbeck worked for NASD Regulation, Inc. investigating complaints, terminations and related allegations of securities rule violations against brokerage firms and individual brokers, as well as conducting on-site audits for compliance with applicable rules and regulations.

At Hinton & Roth, Ms. Golbeck will continue her work in securities law, representing brokers, brokerage firms and customers. Ms. Golbeck will also provide consultation for brokerage firms in the areas of compliance and supervision-related issues.

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KARR TUTTLE CAMPBELL

is pleased to welcome

Kenneth L. Karlberg
as a shareholder

in the Litigation Department's
Commercial and Product Liability Practice Group

and

Andrew J. Propst

as an associate

in the Business and Finance Department's
Tax and Transaction Practice Group,
both in the firm's Seattle office.

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Gerald B. Treacy
Of Counsel

and

Dana M. Reid
Associate

June 2000

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Calendar

ADR

Training to Be a Professional Mediator

July 20-21 – Seattle. 15 CLE credits, including 1 ethics. By Alhadeff Mediation Services; 206-281-9950.

EMPLOYMENT LAW

Employment Law

July 21 – Portland. 7 CLE credits pending. By Oregon State Bar; 503-684-7413.

The Seven Deadly Sins of Washington Employers: Recognizing and Avoiding Them

July 28 – Seattle. 6 CLE credits pending. 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 (Seattle); 7.5, including 1 ethics (Mt. Vernon). By WSBA-CLE and RPPT Section; 800-945-WSBA or 206-443-WSBA.

Advanced Probate (video replay)

July 27 – Port Hadlock. 7 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA. (taped July 1999)

ETHICS

Ethics, Professionalism and Civility: The Hard Questions (video replay)

August 3 – Port Hadlock. 3 CLE ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA. (taped September 1999)

Promoting Diversity and Eliminating Bias in the Legal Profession (video replay)

August 22 – Port Hadlock. 6.5 CLE ethics credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA. (taped September 1996)

GENERAL

Nuts & Bolts Series

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) – Seattle. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Successful Trial Techniques in Action

July 28 – Portland. 6.5 CLE credits pending. By Oregon State Bar; 503-684-7413.

Summer Video Week

August 14-18 – Lake Oswego. CLE credits TBD. By Oregon State Bar; 503-684-7413.

Computer Camp for Counselors™ Using the Internet in Your Practice

August 16 & 23 – Seattle. 4 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA. (morning sessions)

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.

Computer Camp for Counselors™ Legal Research Over the Internet

August 16 & 23 – Seattle. 4 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA. (afternoon sessions)

Computer Camp for Counselors™ Advanced Net Use

August 17 & 24 – Seattle. 4 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA. (afternoon sessions)

Write to the Point: Pack Power into Your Legal Writing with a Plain English Approach

August 18 – Seattle. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LAW PRACTICE MANAGEMENT

Working Smarter, Not Harder: How the Solo/Small Firm Practitioner Can Compete More Effectively

August 2 – Mt. Vernon; August 3 – Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

LITIGATION

Electronic Commerce and Internet Law: Doing Business Online

July 27 – Seattle. 7.5 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Communication Skills for the Litigator: Persuasive Strategies and Personal Style

August 4 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Judge J. Dean Morgan: Trial Evidence

August 24 (Civil Evidence); August 25 (Criminal Evidence) – Bellevue. 6.5 CLE credits pending. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.



Professionals

APPEALS

James E. Lobsenz

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

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LABOR AND EMPLOYMENT LAW

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STATE & LOCAL TAX

Frank Dinces welcomes referrals on matters involving state and local taxation.

With over 15 years of focused experience, Mr. Dinces represents clients being audited, challenging tax assessments, seeking tax refunds, engaging in tax planning, pursuing tax legislation, or under investigation for tax evasion or fraud.

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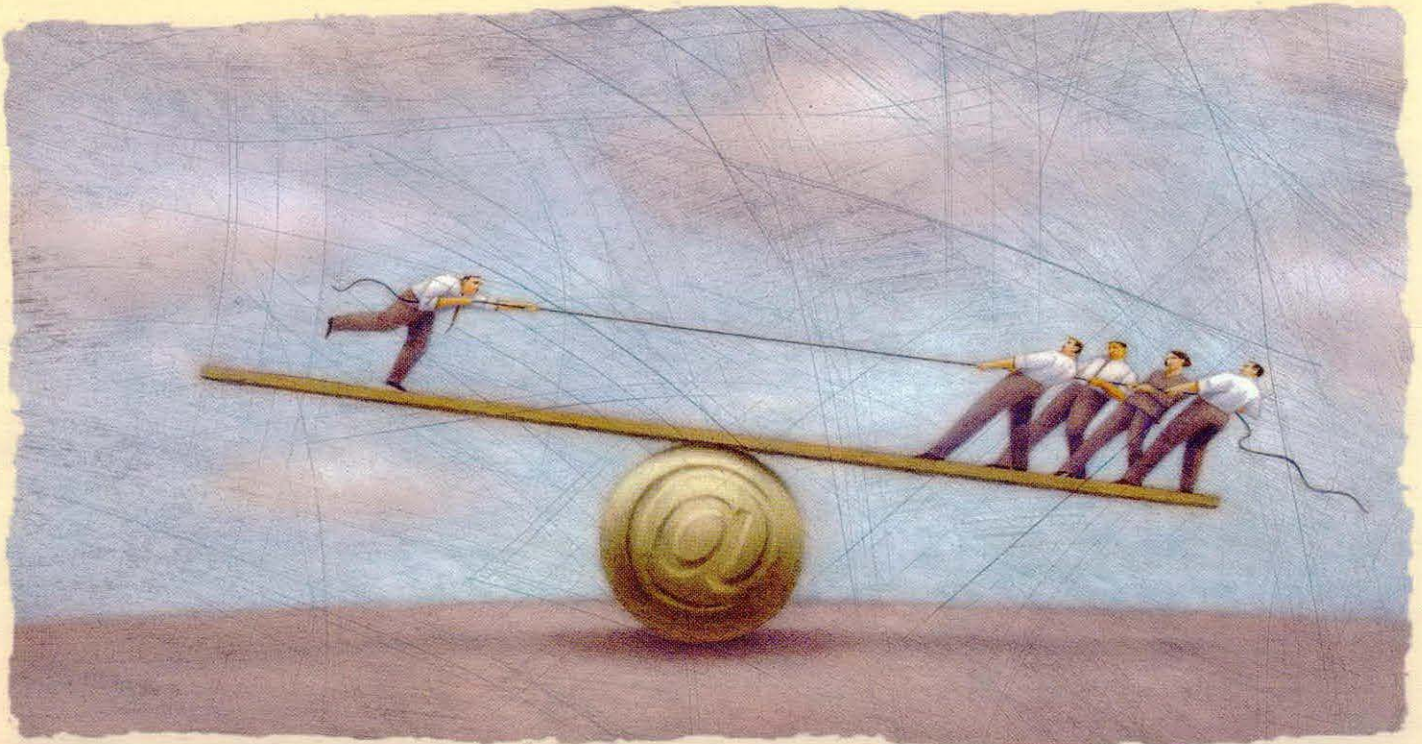
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