

Vol. 55 No. 11

Washington State

BarNews

The Official Publication of the Washington State Bar ■ NOVEMBER 2001

SEPTEMBER 11, 2001

Welcome to the
New WSBA Governors
p. 38

You work in a small law firm.

It's how you know[™]
you'll have the flexible, easy-to-use
research tools you need to serve
your clients in Washington.

*Because your work
is anything but small.*

LexisNexis[™] provides you the exact research resources you need, backed by our award-winning customer service, free training and expert consultation.

- Custom Content Packages
- Flat-Rate Pricing
- Superior Standard Features
 - Shepard's*[®] Citations
 - Lexis[®] Search Advisor
 - Core Concepts
 - Case Summaries
 - News and Public Records
 - Free Printing



LexisNexis[™]

It's how you know[™]

Learn more about small law resources @ www.lexisnexis.com

LexisNexis and the Knowledge Burst logo are trademarks and Lexis and *Shepard's* are registered trademarks of Reed Elsevier Properties Inc., used under license. It's How You Know is a trademark of LexisNexis, a division of Reed Elsevier Inc. © 2001 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

AL3968

NEW!
CD Law libraries
are now included
in LexisNexis
Washington
Packages





Your Reputation. Your Firm's Assets. Your Future.

What do you risk to save a few dollars on your malpractice insurance?

We're entering turbulent economic times. What was booming yesterday could bust tomorrow.

Does your insurance company have the resources to weather a downturn? To protect their bottom line amidst financial pressures, many insurance companies resort to severe policy restrictions or even discontinue insuring professionals.

At HALL-CONWAY-JACKSON, INC. every policy is underwritten by GE's Westport Insurance Corporation. Westport has the financial rating of AAA from Standard & Poor's and A++ from A.M. Best. There are no higher ratings.

With Westport, no matter what tomorrow brings, you're protected.

Hall-Conway-Jackson is the exclusive Program Administrator for Westport in Washington.

Is your peace of mind worth anything less?

For a Quote or to Learn More Contact:



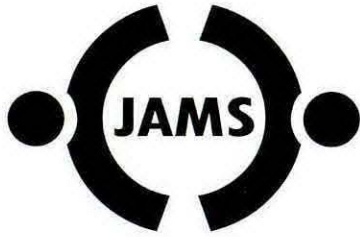
HALL-CONWAY-JACKSON, INC.
INSURANCE BROKERS/
PROGRAM ADMINISTRATORS
Formerly Quinan-Pickering, Inc.
Serving Washington Lawyers Since 1960

21540 30th Dr. S.E., Suite 140
Bothell, Washington 98021
P.O. Box 8010
Mill Creek, Washington 98082-8010
E-mail: kdougherty@hallcj.com
Tel (425) 368-1200
Fax (425) 368-1293
(800) 877-8024



Westport

GEInsuresLawyers.com



THE RESOLUTION EXPERTS

PLEASE WELCOME OUR NEWEST RESOLUTION EXPERTS



Hon. Patricia Aitken

King County Superior Court (Ret.)

Judge Aitken served on the King County Superior Court from 1982-2000 and was a prosecuting attorney in the King County Prosecutors Office. Known for her fairness and ability to grasp issues quickly while keeping the process moving along, she has developed particular expertise in family law, employment and personal injury issues.



Hon. Richard P. Guy

Chief Justice, Washington Supreme Court (Ret.)

Justice Guy served as a Chief Justice and Justice of the Washington State Supreme Court, trial judge of Spokane County Superior Court and a lawyer for 40 years. He has extensive experience in a wide variety of cases including business/commercial, banking, bankruptcy, real estate, employment, genetics, technology and appellate issues.

Our Washington team also includes the following respected and experienced neutrals:

Gregory L. Bertram

Fred R. Butterworth, Esq.

Hon. Robert J. Doran, Ret.

Hon. Marshall Forrest, Ret.

Hon. James I. Maddock, Ret.

Shawn Otorowski, Esq.

Hon. Robert H. Peterson, Ret.

Hon. Norman W. Quinn, Ret.

Hon. Gerard M. Shellan, Ret.

For inquiries or to schedule an appointment, please call **1-877-jamsadr (526-7237)**.

Contents

Articles

- 24 Title VII:** The Washington Law Against Discrimination in the Shadow of Federal Law
by Katrin E. Frank
- 34 Amicus Curiae Briefs in Washington**
by Greg Overstreet
- 38 Welcome to the New WSBA Governors**
by Allison L. Parker

Columns

- 19 President's Corner:** The WSBA: *Your* Bar Association
by Dale L. Carlisle
- 21 Editor's Page:** Two Cents' Worth
by Mark A. Panitch
- 23 Executive's Report:** Thanking the 2000-01 Bar-Year Team

Features

- 53 2001 WSBA Award Recipients**
- 54 Honoring the WSBA's 50-Year Members**

Departments

- 7 Letters**
- 40 Changing Venues**
- 42 Ethics & the Law:** Washington's Lawyer Discipline System
by Barrie Althoff
- 48 Disciplinary Notices**
- 55 FYI**

Listings

- 58 Announcements**
- 59 Calendar**
- 60 Professionals**
- 62 Classifieds**

Cover photograph: Michael Howell



P. 21



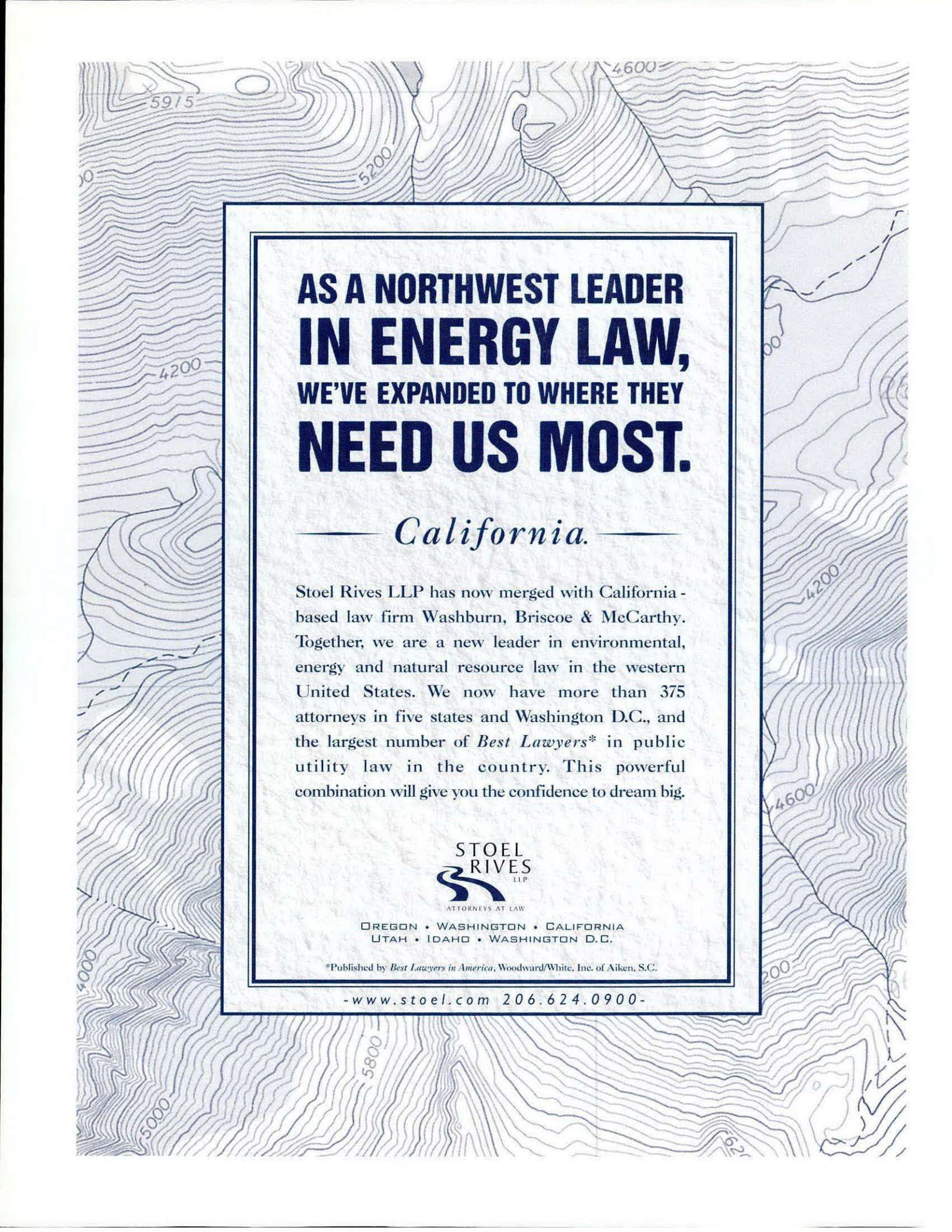
P. 24



**Working together
to champion justice**

Submission Guidelines

Readers are invited to submit correspondence and articles. They may be sent via e-mail to comm@wsba.org or provided on disk in any conventional format with accompanying hard copy and sent to *Bar News* Editor, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330. Article submissions should run approximately 1,500 to 4,000 words. Graphics and photographs are welcome. The editor reserves the right to edit articles as deemed appropriate.



**AS A NORTHWEST LEADER
IN ENERGY LAW,
WE'VE EXPANDED TO WHERE THEY
NEED US MOST.**

California.

Stoel Rives LLP has now merged with California-based law firm Washburn, Briscoe & McCarthy. Together, we are a new leader in environmental, energy and natural resource law in the western United States. We now have more than 375 attorneys in five states and Washington D.C., and the largest number of *Best Lawyers** in public utility law in the country. This powerful combination will give you the confidence to dream big.



OREGON • WASHINGTON • CALIFORNIA
UTAH • IDAHO • WASHINGTON D.C.

*Published by *Best Lawyers in America*, Woodward/White, Inc. of Aiken, S.C.

-www.stoel.com 206.624.0900-

BarNews

Published by the

WASHINGTON STATE BAR ASSOCIATION

2101 Fourth Ave., Fourth Fl.
Seattle, WA 98121-2330

M. Janice Michels
Executive Director

Mark A. Panitch
Editor

206-223-1553; pan-law@qwest.net

Judith M. Berrett

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

Amy Hines

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

Jack Young

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

Allison Parker

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

Randy Winn

Webmaster
206-733-5913; randyw@wsba.org

Amy O'Donnell

*Classifieds and Subscriptions
Bar News Online*
206-727-8213; amy@wsba.org

Communications Department e-mail:
comm@wsba.org

©2001 by
Washington State Bar Association
Printed by Valco Graphics

All editorial material, including editorial comment, appearing herein represents the views of the respective authors and does not necessarily carry the endorsement of the Association or the Board of Governors.

Likewise, the publication of any advertisement is not to be construed as an endorsement of the product or service offered unless it is specifically stated in the ad that there is such approval or endorsement.

Washington State Bar News
(ISSN 886-5213) is published monthly by the Washington State Bar Association, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, and mailed periodicals postage paid in Seattle, WA. \$9.83 of a regular member's dues is used for a one-year subscription.

The annual subscription rate for inactive members is \$15. Nonmember subscription rate is \$24 a year. Washington residents add 8.8% sales tax.

Postmaster: Send changes of address to:
Washington State Bar News
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330

Printed on recycled paper



Advertising

Display: Contact Jack Young at 206-727-8260 or jacky@wsba.org.

Announcements: For WSBA members only. Contact Jack Young at 206-727-8260 or jacky@wsba.org.

Classifieds: Advance payment required (payment may be made by credit card). Please see classified pages for rates and submission guidelines or contact Amy O'Donnell at 206-727-8213 or amy@wsba.org.

Professionals: The boxed ads preceding classifieds; for WSBA members only. Cost: \$50/inch; advance payment required (payment may be made by credit card). Contact Jack Young at 206-727-8260 or jacky@wsba.org.

Deadline: Copy must be received (not postmarked) by the first of each month for the issue following. No cancellations will be accepted after the deadline. Please submit typed copy with check (payable to WSBA) or credit-card information to:
Bar News, 2101 Fourth Avenue, Fourth Floor, Seattle, WA 98121-2330.
No phone orders, please.

WSBA Board of Governors

Dale L. Carlisle, *President*
J. Richard Manning, *President-elect*
Kenneth H. Davidson, *First District*
Jon E. Ostlund, *Second District*
Stephen J. Henderson, *Third District*
Robert M. Boggs, *Fourth District*
William D. Hyslop, *Fifth District*
S. Brooke Taylor, *Sixth District*

Carl J. Carlson, *Seventh District-Central*
Lucy Isaki, *Seventh District-West*
Jenny A. Durkan, *Seventh District-East*
Victoria L. Vreeland, *Eighth District*
Bryce H. Dille, *Ninth District*
Zulema Hinojos-Fall, *At-large*
David W. Savage, *At-large*

Editorial Advisory Board

Paula C. Littlewood, *Chair*
Hari Alipuria, *Ninth District*
Theodore W. Armbruster, *Second District*
Danshera Cords, *Ninth District*
Bradford A. DaPont, *Second District*
Kelly Ann Delaat-Maher, *Eighth District*
Judith A. Endejan, *Seventh-Central District*
William J. Flynn, *Fourth District*
Kirsten W. Foster, *First District*
Michelle Gonzalez, *Seventh-Central District*
Don M. Gulliford, *Eighth District*

Stephen L. Henley, *Seventh-East District*
James H. Hopkins, *First District*
Joan H. Lukasik, *First District*
Richard A. Paroutaud, *Third District*
David H. Rorden, *Third District*
Margaret M. Smith, *Seventh-East District*
Jeffrey A. Smyth, *Eighth District*
William R. Sullivan, *Second District*
Melissa O'Loughlin White, *Seventh-Central District*

WSBA Contacts

WSBA SERVICE CENTER

800-945-WSBA / 206-443-WSBA / e-mail: questions@wsba.org

- General inquiries
- Address changes
- Current WSBA CLE seminars and CLE products (information or seminar registration)
- MCLE credits and course accreditation
- Licensing
- Office of Disciplinary Counsel (complaints about lawyers)
- Order placement for all WSBA products (inquiries about pending orders 206-733-5918)

WSBA fax 206-727-8320

Web site & Bar News online www.wsba.org

Admissions 206-727-8209

Ethics line (for lawyers only) 206-727-8284

Jobline (recording) 206-727-8261

Lawyer Services (for lawyers only) 206-727-8268

- Voluntary fee arbitration
- Mediation
- Lawyers' Assistance Program
- Law Office Management Assistance Program

The mission of the Washington State Bar Association
is to promote justice and serve its members and the public.

HAYNE FOX BOWMAN & DUARTE

presents

Defending DUIs

The best annual seminar
just got better!

*Prosecutors, Law Enforcement
and DOL Personnel
will not be allowed to attend this seminar!!*



All Day Friday, November 30, 2001, Seatac Doubletree Inn
8 CLE Credit Hours—including 1.0 Ethics credit (pending)

Featuring:

Legendary
Retired WSP
Breath Test
Expert
Tony M^cElroy

The Program:

House of Horrors: Dealing with DOL, Francisco Duarte
Ethical Solutions, In and Out of Court, Bill Bowman
Worst-Case Scenarios, Jon Fox and Steve Hayne
Pretrial Motions, Garth Dano
DUIs and the FAA, Marjorie Tedrick
Blood Tests, Ken Fornabai
Legislative/Case Law Update, Jeff Veitch
Inside the Breath Test Section, Tony M^cElroy

To Register call (425) 688-7674
Online Registration: duidefenseseminar.com

Letters

Bar News has received an overwhelming response to the article "Washington Rejects 'Friendly Parent' Presumption in Child Custody Cases" published in August (p. 32). Here, the authors respond.

What Is the Friendly Parent Concept?

The letter from attorney Doug Becker does not agree with our statement "under the friendly parent concept, primary custody is awarded to the parent most likely to foster the child's relationship with the other parent." (October *Bar News*, p. 7, ¶4). The statement is, however, accurate per case law and published commentary. See, e.g., *In Re Marriage of Lawrence*, 105, Wn. App. 683, 687, 20 P.3d 792 (2001) and Joan Zorza, "Protecting Children in Custody Disputes When One Parent Abuses the Other," *Clearinghouse Review*, Vol. 29, No. 12, April 1996, p. 1122.

Mr. Becker also states: "[a] friendly parent is one who does not make unfounded allegations about the other parent, does not withhold access without basis, and is cooperative when appropriate." He states that when making the friendly parent determination, courts look to whether these behaviors are "well-founded or at least in good faith." (*Id.*).

These factors can be part of a friendly parent analysis. Rather than focus on the child's needs, the court's inquiry shifts to the marital dispute, e.g., which parent was uncooperative when; were the parents' actions toward each other in good faith or bad (friendly or unfriendly). The child custody dispute morphs into a dispute about marital conduct. The interests of the child become secondary.

The Friendly Parent Concept in Practice

The letter from Doug Martin provides an interesting example (p. 10, ¶1). He states: "The real Catch 22 is the father who faces the typical 'every other weekend' schedule during the interim proceedings. If he fights to see his child(ren), he is engaged in the abusive use of conflict or found to be intransigent and loses. If he doesn't fight to see his child for more than this, he has abandoned the child and loses." Mr. Martin states that he knows of one father "who was found intransigent and fined \$25,000 for simply going to trial with the position of 'near equal,' or in the alterna-

tive, 'father majority residential parent.'" Mr. Martin states that there "wasn't even a hint of .191" (the father had clearly not engaged in behavior that would justify a restriction under RCW 26.09.191).

Given that Mr. Martin has fairly presented the facts, what he describes is an application of the friendly parent concept. The father lost the case simply because he was uncooperative with the mother's position, i.e., he asserted that he should be designated primary parent. The example does not demonstrate an "abusive use of conflict" because there was no basis for a

restriction. Cf. RCW 26.09.191(3)(e); *Marriage of Wicklund*, 84 Wn. App. 763, 770, 932 P.2d 652 (1996); and *Marriage of Littlefield*, 133 Wn.2d 39, 55, 940 P.2d 136 (1997).

A fundamental danger of the friendly parent concept is that it results in ad hoc decision making. Rather than apply an objective and uniform standard, the judge applies his or her own values with regard to gender roles, litigation conduct, and parenting in general. Mr. Martin implies that this is what occurred in his example. The trial court did not see the father's ad-

LEGAL



EASE LLC


Est. Feb. 13, 1996

Washington's Attorney Placement Specialists


Contract & Permanent

[See Positions Available at www.legalease.com](http://www.legalease.com)


Lynda J. Jonas, Esq. - Placement Director
615 Market Street, Suite B • Kirkland, Washington 98033
Ph: 425-822-1157 • 425-889-2775 fax
E-Mail: legalease@legalease.com



Mary Spillane



Margaret Sundberg



Daniel Fern

The Appellate Group at Williams, Kastner & Gibbs PLLC handles state and federal appeals in a wide variety of civil cases including:

- Medical Malpractice**
- Products Liability**
- Employment**
- Real Estate**
- Contracts**
- Insurance Coverage**
- Consumer Protection**
- Torts**
- Commercial Disputes**

Williams, Kastner & Gibbs PLLC
A NORTHWEST LAW FIRM

(206) 628-6600
601 Union Street, Suite 4100 • Seattle, Washington 98101-2380
www.wkg.com

Got Your CLE Done Yet?

How about an online course...

Check out the online courses sponsored by WSTLA, KCBA & WLI. Ethics and other selected courses are also available in our extensive related state catalogs: California, Alaska, & New York.

Tæcan.com's online CLE catalog offers more than 350 separate accredited CLE titles. In addition to courses from accredited providers in Washington, you can take an online course from such well known accredited providers as the State Bar of California, the City Bar of New York, Texas, the Florida State Bar, Ohio State Bar, the Missouri Bar and many others.

**Only \$25
Per Credit Hour**

Tæcan.com™

Convenient, Accredited, Quality CLE on the Internet since 1998

Go to: www.taecan.com

All WSTLA, KCBA & WLI courses are accredited in Washington for self study credit.
Accreditation pending for select courses. Not all courses may be accredited in all jurisdictions.
Call us at 800-321-3250 or check our web site for specific information.

vocacy as "paternal concern," but as unfriendly conduct.

Friendly parent legislation has been rejected by our Legislature nearly every session since 1982. *Lawrence*, 105 Wn. App. at 687. It has also been rejected by our appellate courts. *Id.* Washington should hold its course of nearly 20 years. A friendly parent factor is not in the interest of children.

Margaret K. Dore
J. Mark Weiss
Seattle

"Friendly Parent" Concept Not the Answer

Editor:

This letter is in response to the article by Margaret Dore and J. Mark Weiss criticizing the "friendly parent" criteria as a factor for residential placement (child custody).

The notion of requiring divorcing spouses to support each other's relationship with their children is superficially appealing. In practice, the "friendly parent" determination is both subjective and speculative. Parenting evaluators interview the contending parents and third parties in private without procedural safeguards, and receive communications from the parents and their counsel which are kept from the other side.

The friendly parent bias of the evaluators stimulates the interviewees to report "unfriendly" incidents. The evaluators reserve to themselves the determination of the credibility of the persons interviewed. Conducted in this secret fashion, these parenting "investigations" resemble inquiries — lacking due process and completely at odds with our judicial traditions and values.

In making the friendly parent determination, many evaluators integrate personality profile testing such as the MMPI into their investigations. Profile testing employs actuarial assumptions and probabilities as its "diagnostic" method. While the publishers of such tests caution that the results are "probabilistic" and therefore not predictive of future behavior, the evaluators employ the results to predict which parent will be more friendly. This is a prime example of "junk science."

The investigations themselves encour-

age alienating, "unfriendly" conduct. The parents know that whomever manages to convince the evaluator of the other parent's unfriendliness gets the winning recommendation. This motivates exaggeration, distortion and outright lying. The evaluators self-righteously claim that their clinical experience enables them to see through this conflicting "dirt," and to predict the friendlier parent with certainty. This is the ultimate of hubris.

The article's observation that application of the friendly parent criteria needlessly aggravates an already difficult con-

flict and tends toward solutions which are bad for children is accurate. With its publication, *Bar News* does a great service to children and their families.

Michael S. Pecherer
Walnut Creek, CA

Editor:

I am writing in support of the assessment done by Ms. Dore and Mr. Weiss in their recent *Bar News* article regarding the so-called "friendly parent" concept. In my practice, I almost exclusively represent survivors of domestic violence, or parents

Minzel & Associates, Inc.

ATTORNEYS ■ PARALEGALS ■ SUPPORT STAFF
TEMPORARY & PERMANENT

Let us help you make better hiring decisions, respond to fluctuations in workflow, cover gaps in staffing, control costs and enhance profits. Our staff of attorneys prescreens and qualifies candidates for temporary, temp-to-perm, and permanent placement with law firms and corporations throughout the Pacific Northwest.

Attorneys

Paralegals

Contract Administrators

Support Staff

- Secretaries
- Word Processors
- Document Coders
- File Clerks
- Receptionists

Tel. 206.328.5100 ■ Fax 206.328.5600 ■ www.Minzel.com ■ mail@Minzel.com

We Find Missing Heirs A Better Way!SM



IGS INC.

When you need to locate heirs consider the facts.

OTHER SEARCH FIRMS

NEVER

Bases fees upon a percentage of the Estate or the missing heir's portion

Regularly

NEVER

Independently seeks to negotiate a contract with the missing heir

Usually

NEVER

Puts you at risk related to your fiduciary responsibility

Potentially

NEVER

Starts a search without your knowledge or authorization

Possibly

NEVER

Offers two contradictory fee recovery systems

Constantly

Whether you decide the fee should be charged to the Estate or to the missing heir's portion, our fees are ALWAYS reasonable and non-percentage based. We offer worldwide service, have a 97% success rate, and our results are guaranteed... or no charge!

Always Better for the Heirs and Better for YouSM

It's your call.

1 • 800 • ONE • CALL[®] (663 • 2255)
fax 1 • 800 • 663 • 3299 www.heirsearch.com



INTERNATIONAL
GENEALOGICAL
SEARCH INC.

Established 1967

whose children have been abused by the other parent. The idea that I may someday soon have to litigate these cases in a world where the "friendly parent" has an advantage is frightening to say the least.

Judges look at cases as a whole. There is no existing way in which DV cases are filtered out, and then examined differently than cases without domestic-violence allegations. Although I would, and have, argued that judges should look to the .191 factors first, and only if they do not exist — then move on to the best-interest factors in section .187 of the statute, I don't think this always happens in practice.

In the proposed "friendly parent" legislation from last session, I saw no practical guidelines that would empower judges to look to see if domestic violence exists first, and only then move on to look at the other factors, including that of who has been the so-called "friendlier" parent. I was also appalled at the fact that the version of the bill that had the support of the WSBA Family Law Section would unweight the "primary caretaker" prong of the statute. Why is the section willing to lend its support to essentially undo the entire parenting act without ensuring that a full and

open debate takes place about it first?

Cases are not litigated in parcels or by issue. To those who insist that domestic violence or abuse allegations are made lightly, or are useful as a way to get a leg up in a parenting dispute and therefore would be relevant to note in the assessment of whether a parent was "friendly," I ask if you have actually tried to get a .191 limitation in a final parenting plan recently? In my experience, such restrictions are difficult to obtain at trial, even in the face of physical documentation of abuse and injury.

And what about the process by which a court would do that first look to determine whether the case has credible DV allegations, and therefore should be exempted from the friendly parent factor (if such an exemption existed in the legislation)? At trial, I have had judges decline to make a finding of a history of domestic violence and yet order the opposing party into batterer's treatment, indicating that the court believed there was some credible evidence that the opposing party actually abused my client. Even when the court takes a close and careful look at domestic-violence allegations, it does not al-

ways see fit to make a DV finding or issue a .191 restriction, even when other facets of its decision indicate that the evidence of DV was credible.

I shudder to think about the process of proving which parent was "friendly" and which was not. We already put neighbors, teachers and friends on the stand to testify to their personal observations about our clients' and the opposing parties' parenting skills. Should we now put them on to testify to how Jane disparaged her husband in a conversation while at the PTA meeting, or how Marcus was really at home during the time he said he couldn't trade visitation days because of a work-related obligation, and therefore could have traded the days? How does that help children? How does it help the court make a more informed decision about where children should live and what time they should spend with their parents?

Family law litigation demands that people open their most private lives and let in the court, parenting evaluators, guardians ad litem, family law facilitators, mental health practitioners and attorneys to take a look around. Parents are expected to expose their most personal experiences

JUDICIAL DISPUTE RESOLUTION



"The Dynamic Seven"

Left to right: George Finkle, former King County Superior Court Judge; Rosselle Pekelis, former King County, Court of Appeals & Supreme Court Judge; Charles S. Burdell, Jr., former King County Superior Court Judge; Jack Rosenow, formerly of Rosenow, Johnson and Graffe; Terrence A. Carroll, former King County Superior Court Judge; JoAnne L. Tompkins, former Washington Court of Appeals Commissioner. And, welcome to our newest member . . . Larry A. Jordan, former King County Superior Court Judge.

JDR offers:

- Large, formal trial/arbitration room
- 13 comfortably-appointed mediation rooms
- JDR Arbitration Rules
- Confidential, creative and timely arbitration and mediation solutions
- Other services including special master, hearing officer, mock trial and appellate consultation

Judicial Dispute Resolution

1411 Fourth Avenue, Suite 200

Seattle, WA 98101

206-223-1669

fax: 206-223-0450

www.jdrllc.com



You Are Not Alone...

*Rated "Excellent" by
A.M. Best - The nation's
most respected
independent evaluator of
insurance companies.*

...When You Practice With Mainstreet

Mainstreet® is the Nation's Small Firm Expert. Solo Practitioners and Small Law Firms deserve special attention and get it from Mainstreet®. Most small firms are actually lower in risk than larger firms and should be paying lower premiums. Now you can make one call to compare service, policy features and price. We immediately qualify your firm and provide quotes. No long delays.

AFFORDABLE PROFESSIONAL LIABILITY INSURANCE IS JUST ONE CALL AWAY.

800-817-6333

MAINSTREET INSURANCE PURCHASING GROUP

1402 Third Avenue, Suite 520, Seattle WA 98101-2118 (206) 583-0877

www.EZlawquote.com

and choices to strangers during litigation—and now we apparently might demand that parents appear “friendly” while under this scrutiny, at risk of losing future time with their children.

Do we, as a Bar, really want the court to get involved in such posturing nonsense? Is it important to children for judges to have a mandate placing value on the perception of someone’s cooperation with the other parent at a time when the family is breaking apart and every person involved is under tremendous stress? Is it more

important to place a premium on superficial friendliness than to ensure that all allegations that a parent is an unsafe caretaker are fully examined? I, for the sake of my clients and the courts, hope our collective answer to these questions is no.

Jennie Laird
Seattle, WA

Editor:

This letter is in response to the article by Margaret Dore and J. Mark Weiss. I am the editor of *Domestic Violence Report*, a

periodical with offices in New York and New Jersey, and with an advisory board of 29 individuals who are located in 16 states. *Domestic Violence Report* has over 15,000 readers throughout the United States, Canada and other countries. Its distribution is roughly 40 percent to domestic violence programs, 40 percent to academic institutions, and the remainder to medical and mental health personnel, courts, police and prosecutors. *Domestic Violence Report* is committed to ending domestic violence and protecting children. To this end, Washington’s rejection of the friendly parent concept is welcome news.

On the surface, friendly parent provisions, requiring consideration of which parent is more likely to provide “frequent and continuing contact,” are appealing. In practice, and whether as a factor or presumption, they make it far more likely that a violent, abusive or neglectful parent will be awarded full custody of a child. For children of victims of domestic violence, they provide a dangerous and absurd test for custody.

Indeed, friendly parent provisions make it all but impossible for a mother to raise legitimate issues which place her child at risk (e.g., if the father has a substance abuse problem, is sexually abusing the child, drives recklessly, or is not appropriately watching the child).

The article by Ms. Dore and Mr. Weiss is a valuable contribution to the emerging commentary on this important subject. Hopefully their article will inspire other states to follow Washington’s lead to clearly reject the friendly parent concept. This is an important step to the protection of women and children incident to divorce, paternity and custody cases.

Joan Zorza
New York, NY

Editor:

I couldn’t agree more strongly with Margaret Dore’s article. “Friendly parent” is a misnomer for substituting a process that focuses on how divorcing parents treat each other for one that is child-centered. The current statutes were adopted after much thought and input from child-care experts. They look at who has been the primary caretaker for the child. This process is child-centered, factual, and much



LAW DAWGS, INC.

“A Different Breed in Legal Placement”™

SHIFTING THE BURDEN™ IN SEATTLE’S LEGAL COMMUNITY
WITH TEMPORARY AND DIRECT HIRE LEGAL PLACEMENTS
CANDIDATES ALWAYS PRE-SCREENED & QUALIFIED

- Engagements for Contract Attorneys, Associates & Partners
- Contracts Administrators
- Junior & Senior Paralegals
- Receptionists
- Legal File Clerks & Office Support
- Document Coders & Reviewers
- Legal Secretaries & Word Processors



“The Attorney’s Best Friend”™

LEGAL STAFFING SPECIALISTS

SERVING WASHINGTON’S LEGAL AND CORPORATE COMMUNITIES

TEL: (206) 224-8269 (LEGAL TEAM) FAX: (206) 224-8291

www.lawdawgs.com | e-mail: seattle@lawdawgs.com

WASHINGTON MUTUAL TOWER • 1201 THIRD AVENUE • TWENTY-NINTH FLOOR
SEATTLE, WA 98101-3029

less subject to manipulation by the parent who can afford the best attorney and the most money on litigation.

If parents who are currently losing "custody" battles are unhappy with that outcome, they might consider changing their behavior and becoming more intimately involved in their children's lives before their marriage breaks up. That would be a much better solution than creating more fractious litigation, which we all know is one of the worst things that can happen to a child of divorcing parents.

*Patricia H. Wagner
Seattle*

Editor:

I have viewed with interest the discussion and comments on the friendly parent concept. As a practitioner who does some family law on occasion, I have observed the behavior patterns described in the "friendly parent" article by Margaret Dore and J. Mark Weiss. It has been my observation that the friendly parent criteria can be manipulated, and most often increases conflict among parents already given to manipulative and hostile behavior.

The true tragedy in this situation is the child or children involved. Individuals engaging in this behavior do not have the best interest of the child as the underlying reason for such behavior. This puts the child and the courts at a disadvantage. The child becomes a pawn in an adult conflict. The court must discern whether the parents' behavior actually represents a true and loving parental interest (as always advanced), or the request is a subtle attempt to use the legal system to hurt an ex-spouse (or soon to be ex-spouse). It is a difficult task even with the assistance of family court services, counselors and evaluators.

The friendly parent concept tends to increase litigation between parents on an emotional level that is not healthy for the adults, or in the best interest of the child. The Legislature's decision to reject the concept in Washington puts children's needs first and removes a tool that can be used by immature adults to hurt each other without regard to the impact on the children involved.

*L. Yvonne Paramore
Seattle*

Editor:

I read with interest "Washington Rejects 'Friendly Parent' Presumption in Child Custody Cases" in the August *Bar News*. The issue of the use of the "friendly parent" is a matter of great controversy in the family law bar. Repeated attempts to implement a "friendly parent" presumption have been rejected by the Legislature. I agree in large part with the views expressed by Ms. Dore and Mr. Weiss, and I agree that the adoption of this concept burdens the judges with the application of a concept which is largely unprovable.

What is so difficult about "friendly parent" is that the concept seems so transparently "good" that at first glance you cannot imagine why one would not support it. Unfortunately and perhaps surprisingly, the concept cannot be implemented in practice without creating a litigation tool for parents acting in bad faith who are seeking to create conflict.

The proponents of the friendly parent presumption have never clarified how a court is to make this determination. Before the *Lawrence* case, I saw this concept used by the court or by a psychologist to



Your Complete Legal Staffing Provider

The Affiliates specializes in the full-time and temporary placement of lawyers, law clerks and other legal support professionals.

The Affiliates ensures that our Account Executives have significant prior experience within law firms and corporate legal departments. Our experience guarantees you will be presented with legal professionals who are precisely matched to your staffing needs.

206.749.9460
601 Union Street, Suite 4300
Seattle, WA 98101
www.affiliates.com

The Affiliates

© The Affiliates EOE

PAID ADVERTISEMENT

Free Report Shows Lawyers How To Get More Clients

Rancho Santa Margarita, CA.— Why do some lawyers get rich while others struggle to pay their bills?

The answer, according to California lawyer David M. Ward, has nothing to do with talent, education, hard work, or even luck.

"The lawyers who make the big money are not necessarily better lawyers," Ward says. "They have simply learned how to market their services."

A successful sole practitioner who once struggled to attract clients, Ward credits his turnaround to a referral

marketing system he developed six years ago.

"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>

criticize a parent's conduct immediately prior to or during the actual custody litigation.

This is at best a tragic misuse of the friendly parent concept. If implemented without clarification, the friendly parent concept would be at odds with a parent's implied duty to provide the court with the information required under both RCW 26.09.191 and RCW 26.09.187. The court must place certain restrictions on a parent who is found by the court to engage in conduct such as "physical, sexual, or a

pattern of emotional abuse of a child" or a "history of domestic violence." See RCW 26.09.191. The court cannot engage in this analysis if a parent is discouraged from coming forward to allege that the inappropriate conduct occurred.

Let's look at how the court would ordinarily obtain evidence, for instance, of a parent's domestic-violence history. In order for a court to engage in this analysis, the abused party, or a parent seeking to protect an abused child, must present the evidence to the court. In custody litigation,

this evidence could appear in many forms, but typically a parent would submit a declaration for a hearing to adopt a temporary parenting plan along with any other admissible evidence (e.g., pictures). He or she would likely be interviewed by a forensic psychologist or a guardian ad litem, and finally present testimony at a trial or evidentiary hearing.

Under the friendly parent concept, the parent bringing forth evidence of the other parent's past "bad" behavior would be subject to criticism as the "unfriendly parent" from the moment the first declaration is filed. The other parent will naturally respond by accusing the first parent of manufacturing the allegation for the purpose of influencing the custody litigation. This strategy is used to muddy the waters so that it is more difficult for the fact-finder to determine by a preponderance of the evidence that the alleged conduct has occurred.

As it is, many victims of domestic violence are afraid to come forward because they fear retaliation by the other parent. I have heard many clients tell me that the only reason they are leaving an abusive or battering relationship is that they want to protect their children. These clients, faced with the prospect of being attacked as the "unfriendly parent," may never leave these relationships, and as a result, those children will remain at risk. Alternatively, the clients who find themselves in custody litigation will not come forward with the relevant evidence, and the court will never be in a position to protect that parent or his/her children.

I have heard proponents of the concept argue in response that the solution to this problem is to require the court to apply the concept only in circumstances where there is no finding of domestic violence under RCW 26.09.191. This proposal ignores the practical realities of the litigation system where each side takes an adversarial position and the court hears all evidence in one proceeding. A parent defending against an allegation of domestic violence will inevitably come into court wielding the friendly parent concept as a sword. In my experience, judges are reluctant to find that a parent has a history of domestic violence, in part because of the significant consequences set forth in the

What Is Your Client's Business Worth?

QUALIFYING THE ANSWER IS CRITICAL.

IN TODAY'S CLIMATE, YOU MUST HAVE CURRENT, ACCURATE AND RELIABLE VALUATION INFORMATION AVAILABLE TO YOU AT A MOMENT'S NOTICE. SALES, SUCCESSION, ACQUISITION, BUY-SELL AGREEMENTS, DIVORCE, ESTATE PLANNING, THE IRS —

THESE ARE REASONS WHY A THOROUGH, QUALIFIED VALUATION THAT CAN WITHSTAND CHALLENGES MAKES SENSE.

The
Hanlin Moss
Group
P.S.

EXPERT WITNESSES

CERTIFIED PUBLIC ACCOUNTANTS ♦ VALUATION ANALYSTS

MEMBER: NATIONAL ASSOCIATION OF CERTIFIED VALUATION ANALYSTS

1411 Fourth Avenue ♦ Suite 410 ♦ Seattle, Washington 98101

(206) 623-3200 ♦ Fax (206) 623-3222

Email whanlinjr@aol.com

statute (i.e., mandatory restrictions on decision-making authority, dispute resolution, and limitations on residential time). The most effective use of a friendly parent strategy is its use in opposition to a request for a finding of domestic violence or other behavior which would subject a parent to restrictions under RCW 26.09.191, regardless of how the friendly parent concept is codified in the statute.

Moreover, many clients are faced with the practical realities imposed by a limited litigation budget. A client with a legitimate domestic violence history may be unable to afford to go to trial to request the finding of domestic violence from the court. If that client chooses to settle without such a finding in an agreed parenting plan (a likely inevitable consequence of settling), then the other parent can use the friendly parent concept as a tool to lay the foundation for a post-decree modification action by creating circumstances where the abused parent looks unfriendly after the decree has been entered.

For instance, the manipulative parent would engage in a pattern of telephonic harassment and then allege that the other parent was unfriendly because that parent refused to answer the telephone when the parent "called to discuss the children." The manipulative parent would agree to swap weekends with the other parent, and then call the police to document that visitation has been withheld during his/her weekend. Then, when the manipulative parent seeks primary residential care via a petition for modification, the other parent is at an inherent disadvantage because the modification statute disfavors the consideration of predecree facts, and that parent's ability to raise the domestic violence history from before the decree may have been compromised.

In sum, I suggest that the friendly parent concept cannot be applied to behavior which occurs in the context of the custody litigation, and as a practical matter, I see no way to determine who is the more friendly or unfriendly parent without creating these unintended consequences. Proponents of the friendly parent concept have done a good job of raising a troubling issue: How can the adversarial court system encourage parents to be cooperative for the benefit of their children? Unfortu-

nately, the friendly parent concept is not the answer.

David S. Law
Seattle

Reliance on *Nunn* Misplaced

Editor:

I was appellate counsel for the mother in the *Custody of Nunn* case that was "explained" in an article in the August *Bar News*. I had a hard time recognizing the case after the authors finished cramming it into their "friendly parent" paradigm. You would never know from their description that *Nunn* was a third-party custody case, applying for different standards than those used in establishing a parenting plan for divorcing parents. Characterizing *Nunn* as a "friendly parent" case is stretching things, to say the least.

There should be nothing extraordinary or wrong with a court considering which parent will facilitate contact within a family in deciding a residential plan for the children of divorcing parents. Unfortunately, false and exaggerated claims of "abuse" and other misconduct are made every day in our courts in order to gain unfair advantage in parenting disputes, with little regard to the long-term consequences to the family.

A parent's abusive use of the court system in this manner can and should be considered in making parenting-plan decisions. Yet it is just as often the parent who challenges misleading claims of misconduct who is excoriated as an advocate of the "friendly parent" concept. Hostility and conflict between parents is rarely in a child's best interests. None of the cases cited in the article prohibits consideration of a parent's hostile attitude toward the other parent.

I suggest that we all try to decide what cases mean by looking at what the judges wrote. The appellate court in *Nunn* held that a parent could not be found to be unfit, and custody of her child awarded to a third party, simply because the parent resisted untrue allegations. Reliance on *Nunn* to support the authors' agenda of eradicating use of the so-called "friendly parent" concept is misplaced.

Catherine W. Smith
Seattle

CORPORATION KITS FOR WASHINGTON

\$55.95

Binder & slipcase, index tab set, printed stock certificates w/full page stubs & gold foil starbursts, transfer ledger, embossing seal & pouch, 50 sheets of blank 25% cotton bond paper.

Same kit with By-Laws, minutes & resolutions package and 6 sheets of blank 25% cotton bond paper plus tax forms for EIN and "S" corporation election.

\$58.95

Kit without seal \$44.95



OTHER PRODUCTS

LTD. LIA. CO. OUTFIT	\$59.95
NON-PROFIT OUTFIT	\$59.95
LTD. PARTNERSHIP	\$59.95
FAMILY LTD. PART.	\$59.95
SEAL W/POUCH	\$25.00
STOCK CERTS (20)	\$25.00



AVAILABLE ON DISK \$29.95
FOR
WORD PERFECT 5,6,7,& 8

ARTICLES PLUS BY-LAWS, MINUTES & RESOLUTIONS PACKAGE FOR CORPORATIONS. OPERATING AGREEMENTS FOR LIMITED LIABILITY COMPANIES (BOTH MEMBER & MANAGER). SIMPLE WILL FORMS & ORDER FORM.

ASK ABOUT
WILL & TRUST STATIONARY

REGISTERED AGENCY SERVICES
FOR MONTANA

ORDER TOLL FREE !
PHONE 1-800-874-6570
FAX 1-800-874-6568
E-MAIL corpkit@digisys.net

ORDERS IN BY 2:00 PM SHIPPED SAME DAY.
\$5.00 PER KIT UPS GROUND CHARGE.
(Rural and/or residential may be slightly higher)
LAW FIRMS: WE WILL BILL WITH YOUR ORDER.
SATISFACTION GUARANTEED !!!

**CORP-KIT NORTHWEST,
INC.**
**P.O. BOX 697
LANGLEY, WA
98260**

Needs-based Awards Unreliable

Editor:

While impressed by the research in Coreen R. Ferencz's article "Child Support and Wealthy Parents: How Much Is Too Much?" (August *Bar News*, p. 22), I cannot agree with final conclusions to place the burden upon the presumably less wealthy parent to itemize the "needs" of the children to receive support commensurate with a wealthy parent's ability to pay. What an additional boon such a privilege would be for the wealthy that now they

don't even have to pay child support as a percentage of their income like the rest of us "Muggles,"¹ but may even pay far less if they can prove by virtue of their stinginess that their children need less.

Ms. Ferencz's argument seems to be that support awards which exceed the actual needs of the child are not child support, but either 1) an unfair windfall to the custodial child via distribution of a part of the obligor's estate, or 2) unfairly deprive the noncustodial parent of the right to take part in discretionary spending de-

isions for the child. In fact, noncustodial parents can make all the discretionary spending decisions they want to during their residential time with the child. A child is most likely to emulate the parent they respect most, whether that person is a miser or a spendthrift. I don't see how requiring a parent to list their child's actual needs, which may include a large mortgage, security system, entertainment center, etc., all of which may be argued are paid to keep the child in the same living standard established by the parents, will feel less like a partial distribution of the wealthy obligor's estate.

Ms. Ferencz concedes that a rule based upon the actual needs of the child will lead to some inconsistency and unpredictability in cases with each side itemizing the child's needs, but she believes it will bring decisions closer to the true purpose of child support, which she reasons will benefit both parents and the child.

But the ensuing litigation would likely result in the greatest windfall for family law attorneys. We attorneys could put in our two cents about how and where to spend the most money on one's children to increase child-support awards. I'm sure there would be a plethora of cases which tried to distinguish "actual" needs with "basic" needs of a child. The court file would be loaded with receipts offered by the custodial and noncustodial parents and the rest of us looky loos could see where the rich spend their money. But the bottom line is that all this litigation would likely only hurt both parents and children.

Predictability and stability in family law are to be cherished. Even with the mandatory child-support schedules in place, divorcing parents still manage to find all kinds of issues to argue. In those cases where income is not disputed, the mandatory schedules make a nice starting point from which parties have been forced for the most part to agree. It is also a simple fact that the more contentious two parties are, the worse divorce can be for the children. This fact cuts across all economic lines. Children of rich parents suffer no more or less than children of poor parents over the splitting of their families.

While I agree with Ms. Ferencz that there is hopelessly little guidance in Washington for courts to set support for couples



AFTER FINISHING 800 ENTREES OF NORTHWEST SALMON WITH DILL SAUCE, ERICK GONZALEZ IS NOW READY FOR DESSERT.

To Erick, every meal is a feast. Because to him the joy of cooking is surpassed only by the joy of eating. The Renaissance Madison Hotel: renovated guest rooms, complimentary coffee and newspaper at your door every morning, award-winning service year after year, Marriott Rewards Program participant. It's the hardest working hotel in Seattle.


RENAISSANCE.
MADISON HOTEL
SEATTLE, WASHINGTON

Mileage Plan
Alpha Alliance

515 MADISON STREET, SEATTLE, WASHINGTON 98104

T: 206.583.0300 TOLL-FREE: 800.278.4159 WEB: www.renaissancehotels.com

with net incomes which exceed \$7,000 per month, I would skip the laundry list of need-based support in favor of either encouraging the Legislature to adopt a higher threshold level and increase child-support amounts along the same slightly declining percentage curve as the current schedules (as in the state of New Jersey), or simply encourage the courts to set a strict percentage formula based upon net income and number of children (as in states like New York).

Although need-based awards sound logical and reasonable, they are too contentious, too unpredictable, and too unreliable to support.

*Emily J. Tsai
Des Moines*

1. For those language purists, the term "Muggle" comes from J.K. Rowlings' *Harry Potter and the Sorcerer's Stone*, and actually means those people who do not possess magical powers or powers of wizardry. Used here, it is a metaphor for parents who do not earn a combined monthly net income above \$7,000.

Praise for Editor

Editor:

You are doing a great job as the editor. Keep it up.

*Llewelyn G. Pritchard
Seattle*

Readers are invited to submit letters of reasonable length to the editor via e-mail at comm@wsba.org, by fax (206-727-8319), or mail. Due date is the 10th of the month for the second issue following, e.g., November 10 for publication in the January issue. Letters to *Bar News* will usually be published, unless the writer specifically asks us to withhold publication. The editor reserves the right to edit letters as deemed appropriate.

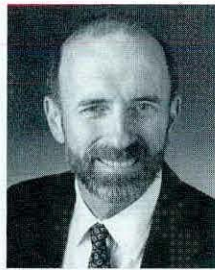


Child Abuse Cases

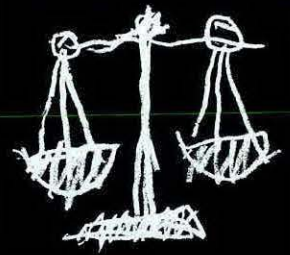
I work on them every day.

Child abuse litigation is tough. But it's a little less tough if you do it daily.

For six years I have been committed to providing superior representation in child abuse cases.



David S. Marshall
206.382.0000



Please call me for referral, association, or consultation. Or go to www.childabuselaw.ws to receive my free email updates on child abuse law and science.

New postings include...

The Legislature has raised the stakes in sex prosecutions.

TSONGAS LITIGATION CONSULTING^{INC.}

STRATEGIC PARTNERS IN TRIAL PREPARATION

*Complete Trial Consulting Services for the
Northwest's Leading Law Firms*

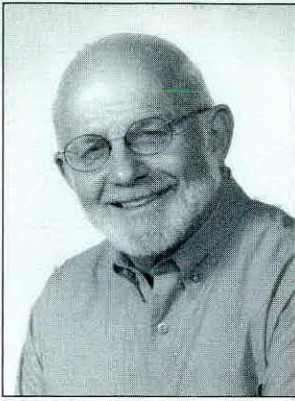


Strategy•Research•Graphics



Call for the latest in courtroom technology or contact: elizabeth@tsongas.com

Telephone: 503/225-0321 Toll Free: 888/452-8019 Fax: 503/225-0382
222 SW Columbia Street, Suite 1650, Portland, Oregon 97201
info@tsongas.com www.tsongas.com



The WSBA: Your Bar Association

by Dale L. Carlisle
WSBA President

It is not possible to write this column without commenting on the national tragedy of September 11 and the United States' response. As Americans, we tend to take our safety, freedom and rights for granted. These events have provided a stark reminder of the high cost of these inherited rights.

The ABA reports that an estimated 14,000 lawyers occupying space in the World Trade Center buildings have been displaced. Consider that this number is more than half that of the WSBA membership. As lawyers we will respond, both internally and externally, by attempting to balance the restoration of our security and safety with protecting the freedoms and rights we enjoy.

Although undoubtedly there will be some erosion of our freedoms, we must recognize this need for balance. Because we support and maintain the rule of law inherent in our society, our judicial system will allow us to maintain a balance between increasing our individual security and preserving the principles that have served our country for more than 200 years.

Member Involvement

In the year ahead, we expect to have increased interest from members who want to become involved in Bar activities. We very much invite and welcome your participation. There are still openings on many committees — simply contact your district governor if you're interested (see page 5 for a listing of all governors). If you're not already a member of a section, I encourage you to think about membership; it's a wonderful way to meet other lawyers in your area of practice, and keep up to date about issues and events. You can find information about the WSBA's 23 sections on the WSBA Web site at www.wsba.org/sections, or you may contact WSBA Sections Liaison Toni Doane at tonid@wsba.org or 206-727-8293.

Many people connect with colleagues and friends by participating in specialty and local bar associations. There's a list of these organizations and contact information on the WSBA Web site at www.wsba.org/guide. Because of our state's civil equal justice funding crisis, we are in critical need of volunteers to provide pro bono service. I encourage you to help the less fortunate members of our communities. See the WSBA Web site at www.wsba.org/atj/support.html, or contact Sharlene Steele at sharlene@wsba.org or 206-727-8262.

WSBA Publications

A new *WSBA Membership Guide*, which includes information about numerous member services and Bar programs, is distributed to all new members, and other members may find it useful, too. For a copy, go to the WSBA Web site at www.wsba.org/membership-guide. If you don't have Internet access, you may request a copy by contacting the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Also new is a pamphlet titled *8 Myths Truths about Lawyers*, which helps dispel some of those all-too-common misperceptions about lawyers and our legal system. See page 58 for details about ordering the pamphlets.

Most of you are already aware of *Resources*, the membership directory which the Bar Association distributes annually at a very modest cost to members. The directory assists you in finding lawyers throughout the state, and includes other useful information such as ethics opinions, WSBA bylaws, the Rules of Professional Conduct, MCLE information, a state and federal court directory, and much more.

License Fees

License fees are now fixed by the Supreme Court for the next two years. This is usually done in three-year cycles, and 2001 was the first year of the current cycle. The WSBA, like other businesses, has a general group of expenses which are relatively fixed, with increases based on various components of the cost of living. We also have variable factors, including the size of our staff. The Bar has a number of functions, the primary one of which is discipline, that use member license fees for their operation. Others — most notably WSBA-CLE — are fully self-supporting, and no member license fees are used. We plan to address, over the next year, our long-term license-fee structure (in an effort to keep it less than cost-of-living increases), as well as ways to continue to fund and provide services that our members wish to have available.

The financial operation of the Bar Association is reported in an audited annual financial report, which will be presented to the Board of Governors in early January. This information will be posted to the WSBA Web site at www.wsba.org/finances. The Board of Governors remains committed to being financially responsible in operating the Association and in budgeting for expenditure of members' license fees. ☞

NOW SHIPPING!

Revised Code of Washington

2001 Supplement

\$40.00 plus 8% sales tax

Price includes the 2001 RCW cd*

Call us today toll free at: **1-866-650-6369**

We'll gladly take your credit card order over
the phone.

Or fax this form to: **360-586-6480**

If you prefer to pay by check, send your order
to: Office of the Code Reviser, Order Dept,
PO Box 40552, Olympia WA 98504



Method of Payment:

Check for total amount enclosed.

Make checks payable to the Office of the Code Reviser

Card number Visa Master Card

Month Year
Expiration Date

Ship _____ RCW Supplements to:

* CD will ship as soon as it becomes available

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------	----------------------

First Name

Last

Signature [required for all charge orders]

Company

Fl/Suite/Department

Address

Bldg/Apt

City

St

Zip

[] -

Daytime Phone

email address

Tax & shipping Information:

Sales tax is 8% of total amount

You are not required to pay sales tax if:
1. Your order is being sent out of state
2. You are a federal agency.

No shipping or handling charges



Two Cents' Worth

by Mark A. Panitch
Bar News Editor

This month, Spokane lawyer Carl Hueber writes about appreciating each moment, coping with unbearable loss, and looking forward with hope to Thanksgivings to come.

When he received the 2001 WSBA President's Award at the recent WSBA awards dinner, Randy Gordon — Bellevue lawyer, professor and frequent *Bar News* contributor — mused on what it means to be a country that was literally invented by lawyers. As we grapple with our

collective identity as lawyers, Randy gives us some essential perspective on who we are.

Both pieces were written before September 11, but both seem particularly poignant and appropriate now.

In the aftermath of the September 11th tragedy, as we look for personal strength for ourselves and political strength for our country, these essays offer two essentials — hope and perspective.

The staff of *Bar News* wishes our members and their families a happy and healthy Thanksgiving.

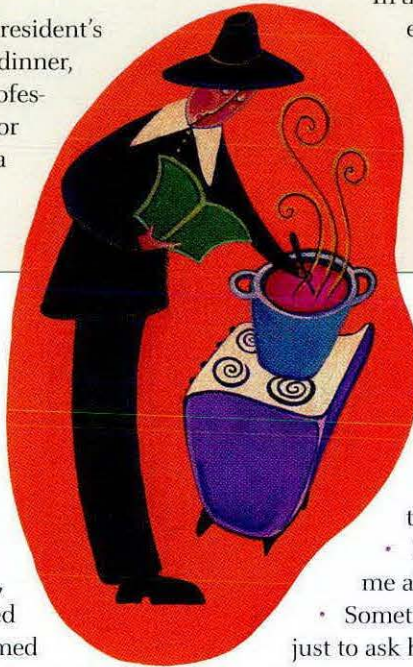
Carl Hueber writes: I spent most of my youth perfecting my skills as an underachiever. My folks were concerned I would never make it through high school, and started putting money away to buy me a gas station.

Someone changed my direction. Her name was Kellie Craigen. She had red hair and Irish blood. We met in high school, dated through college, and were married shortly after graduation. I had always dreamed of being a lawyer; Kellie helped me realize I could reach my goal. With her support, I made it through law school. We often talked of her one-half interest in my degree.

We both built our careers. Despite the occasional warning to not use "that lawyer voice," she was proud of my profession. She didn't think lawyer jokes were funny. Kellie was at her best with our home filled with friends, most of them lawyers.

In 1995, life was as good as it could get. We celebrated our 20th anniversary and 20th college reunion the same month. Kellie was pregnant with our second child, and we had figured out how to pay our bills while she took a few years off. We also learned that she had malignant melanoma. She delayed treatment until our son was born. Christopher was nine months old when we lost her.

My world was turned upside down. I learned a lot about life and myself during this time:



- Family is not limited to blood relatives.
- It is hard to find a masculine-looking diaper bag, and most restaurants only have a diaper-changing station in the women's restroom.
- Luck and divine intervention have everything to do with finding a good nanny.
- I was fortunate to have partners who gave me all the support and time I needed.
- Sometimes, a judge will call an attorney to the bench just to ask how he is doing.
- Parents should not have to bury their children.
- Sometimes, court staff will call to see if you need a continuance.
- You need your kids as much as they need you.
- Time really does heal all wounds, but it doesn't do much for the scarring.

In my younger years, I had an occasional fantasy: I am at a large gathering in my honor — perhaps an investiture, awards dinner or retirement party. At the podium, I am eloquently speaking of how none of this would have been possible without Kellie. I never got to live my fantasy; cancer got in the way. I regret that I never took the time to publicly thank her — until now.

As you sit at your Thanksgiving table, take a look around. Is there someone there who was responsible for your becoming a lawyer? It might be a good time to say thanks.

Randy Gordon writes: My thanks to President Jan Eric Peterson for this award and his leadership. Ordinarily, my heart would be brimming over with happiness at receiving this award. But with the tragic events and loss of life of this week, I am heartsick. My heart is broken.

I have struggled to find words to share. It occurred to me that there are two types of durability: that of concrete and steel, slow to form, and difficult, but as we have seen, not impossible to break; and that of flowers — fragile, evanescent, yet resilient and enduring. America has both types of durability. There is plenty of concrete and steel. But the *idea* of America is not based on concrete and steel, and cannot be touched, even by acts as savage as those of September 11.

I have often said that the idea of America was invented by lawyers. This would not be much of an overstatement were we only to consider that 31 of the 55 members of the Constitutional Convention were lawyers. But, in addition, lawyers can also claim John Adams, that colossus of independence; Thomas Jefferson, the author of the Declaration of Independence; James Madison, the father of the Constitution; Abraham Lincoln and both the Union and Confederacy secretaries of

Whenever constitutional rights arising under that raft of legal technicalities called the "Bill of Rights" are attacked, it is lawyers who defend them.

war, Edwin Stanton and Judah Benjamin; roughly half the presidents; John Marshall and the justices of the Supreme Court; most of the Senate; and currently, about a third of the House of Representatives. Whenever constitutional rights arising under that raft of legal technicalities called the "Bill of Rights" are attacked, it is lawyers who defend them. These rights are not self-executing. Yet, as Senator Dow Constantine tells us, only nine out of 147 Washington legislators are lawyers. We can do better.

Ceneas, the emissary from King Pyrrhus to the Roman Senate, was asked upon his return what the Senate was like. He replied that it was an "assemblage of kings." I value this award from my colleagues in the Bar as being received from an "assemblage of kings."

We lawyers have nearly forgotten ourselves. And that is how my effort to un-

dertake the tug of war over lawyers' public image began: to help us remember ourselves. It was somewhat like the story of the man standing outside the gates of Sodom holding a sign saying: "Repent." He was approached and told: "These people won't change. You're wasting your time." The man replied: "I do not hold the sign to change them, but to keep myself from being changed."

Imagine going to plumbing school for three years and being told all about pipes and joints and welds and fixtures, but never being told about water. They call this law school. For we teach about laws and statutes and rules, but do not teach the fundamental fact that just as plumbing is a water-delivery system, law is a justice-delivery system. And where does the justice come from? It comes from the hearts and conscience of lawyers, from that touchstone of individual conscience mentioned in our Rules of Professional Conduct.

So now you understand why it is that I believe that those who attack lawyers are attacking the water supply, poisoning the reservoir, attacking the justice-delivery system — why it is I am proud to accept this President's Award for my work on behalf of our profession, and why I am proud to be a lawyer. ☺

Meet the Northwest's newest peace-keeping force.



Albert Malanca



Joe Gordon Jr.



Mark Honeywell



Dale Carlisle



Elizabeth Martin



Thomas Greenan



Donald Thompson



Jim Waldo

The Mediators & Arbitrators Panel at Gordon Thomas Honeywell Malanca Peterson & Daheim LLP

Armed with over 50 years of negotiating experience, our power-packed Mediators & Arbitrators Panel (MAP) will put an end to lengthy and costly litigation. We offer professional, confidential dispute resolution in your metropolis or ours. Put MAP to work for you.



1201 PACIFIC AVENUE SUITE 2200 TACOMA WASHINGTON 98401 (253) 572-5050 1 (800) 240-5051
ONE UNION SQUARE 600 UNIVERSITY SUITE 2100 SEATTLE WASHINGTON 98101 (206) 676-7500 WWW.GTH-LAW.COM



Thanking the 2000-01 Bar-Year Team

by Jan Michels

WSBA Executive Director

October 1 is the WSBA "new year." I don't want to say goodbye to the past year without a pause to notice and thank our 2000-01 bar-year team. WSBA governance is that of strong board/weak president. (This in no way reflects on the individual presidents, but rather is the model of governance that has been adopted.) The board thrives on the support, ideas and prodding of its many team members in committees, sections, specialty and local bars, and special task forces and study groups. Some special mentions are needed.

The 12-member Discipline 2000 Joint Task Force led by Justice Charles Johnson and Dick Manning revamped and improved the Rules for Lawyer Discipline (RLD), and is recommending that the RLDs be renamed the Rules for Enforcement of Lawyer Conduct (ELC). *Thank you, Discipline 2000.*

King County Bar Association President Fred Noland prompted a review of Washington's drug laws and treatment options. *Thanks, Fred.*

Bonnie Glen and Ray Gonzales, working with the WSBA Committee for Diversity, the minority bar associations, and the minority bar coalition, steered the BOG toward more representative governance as 16 at-large volunteer applicants offered their support for diversifying the board. *Thanks to Bonnie, Ray, the WSBA Committee for Diversity, and minority bar leadership.*

The 18 volunteers on the President's Initiative Task Force implemented the "Proud to Be a Lawyer" feature on the WSBA Web site (www.wsba.org/proud), revived the lawyer-to-lawyer (mentorship) program, acknowledged local heroes, developed the *Lawyer Myths Truths* brochure (see p.58), and launched "Legally Speaking," the twice-a-week legal special broadcast on KING-5 TV. *Thanks, Jan Eric Peterson and all your friends and colleagues on the President's Initiative Task Force.*

Wayne Blair remained steadfast as a Bar leader in representing the best of the WSBA in the massive court-improvement initiative — Project 2001. *Thanks again, Wayne, and thanks, Kirk Johns.*

The WSBA Electronic Communications Committee's (EC2) consistent energy devoted to technology brought a

breakthrough toward getting case law online (coming in early 2002). *Thanks, all.*

The Future of the Profession Study Group, after a year of vigorous debate, brought multijurisdictional practice reforms to the board, and mixed multidisciplinary practice. *Thanks, Tom Fain and the Future of the Profession Study Group for your tenacity.*

And, like maintaining plumbing and wiring in your house, the hardworking Court Rules & Procedures Committee, Law Examiners Committee, Character & Fitness

Committee, and the Lawyers' Fund for Client Protection Committee held their focus on improving the practice of law, quality of new lawyers, and public appreciation of lawyers. *Thanks, Dave Savage, Frank Slak, David Boerner, Tom Dreiling and your respective committee members.*

The 14-member Disciplinary Board survived the heaviest caseload in its history as the remnants of the investigation backlog hit the public proceedings phase. *Thanks, Stephen C. Smith and your capable board.*

Thanks, Supreme Court, for working with the WSBA on how to deal with the nonlawyer practice of law.

And *applause to Judge "Chip" Small, Michele Jones, and the Access to Justice Board* for an eventful and proactive year. On behalf of those needing access to justice, with special note about the energy and enthusiasm of *Don Horowitz* to assure technology does not become a barrier, *our sincere thanks.*

Thanks to Judge Marlin Appelwick and Judith Billings, who, along with the Public Legal Education Council and countless volunteers in and beyond the legal community, promoted a significant citizen awareness of our democratic and justice concepts.

And *thanks, Harry McCarthy and the WSBA Professionalism Committee,* for the new Creed of Professionalism.

And last, *thanks to the WSBA staff!* Without your capable support and follow-through, even the best ideas could flounder.

With the help and support of members and Bar leaders we had a great 2000-01 year. Happy 2001-02 new year! ☺

I don't want to say
goodbye to the past year
without a pause to notice and
thank our 2000-01
bar-year team.

Title VII: The Washington Law Against Discrimination in the Shadow of Federal Law

by Katrin E. Frank

Who is a supervisor? What is a “tangible” employment action? What must an employer do to exercise reasonable care? What is prompt and corrective remedial action? When is an employee’s failure to report harassment unreasonable? What actions are on account of sex or gender? These are some of the central issues at the forefront of sexual harassment litigation today. In the process of addressing these questions, Washington courts have recently tended to follow the federal lead.

Within the category of gender discrimination, federal and state courts have identified two types of sexual harassment in the employment context: quid pro quo and hostile work environment. Broadly speaking, quid pro quo means an employer, in the person of a supervisor or higher-level manager, offers the employee a job benefit or threatens a job detriment in exchange for sexual favors; hostile work environment means that harassment on account of sex or gender is so severe or pervasive that it alters the terms and conditions of employment and creates an abusive work environment.

Over the past three years, courts at the state and federal levels have refined and modified their analysis of claims of sexual harassment. The United States Supreme Court, federal and state courts have more clearly defined the test for employer liability and have continued to refine when harassment is “on account of gender,” thereby bringing conduct within the purview of the laws against discrimination.

Federal Law

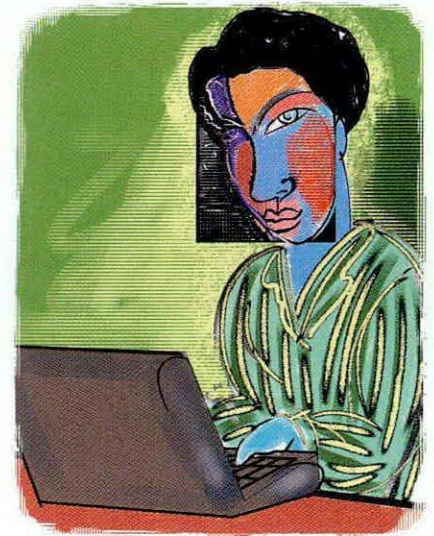
In 1998, the U.S. Supreme Court changed the landscape of employer liability analy-

sis for sexual harassment in two important cases interpreting Title VII, 42 U.S.C. § 2000e. Under this new analysis, an employer is presumed liable for sexual harassment by a supervisory employee who has immediate or successively higher authority over the victimized person. *Faragher v. City of Boca Raton*, 524 U.S. 775, 118 S. Ct. 2275, 141 L. Ed. 2d 662 (1998); *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742, 118 S. Ct. 2257, 141 L. Ed. 2d 633 (1998).

If the supervisor took a tangible employment action, the employer is vicariously liable for the conduct and may not overcome the presumption of liability. If there was no tangible employment action, the employer may overcome the presumption through proof that a) the employer exercised reasonable care to prevent and promptly correct any sexually harassing behavior; and b) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to otherwise avoid harm. *Faragher* at 807. At all times, the burden of proof as to each element of the affirmative defense rests with the employer. *EEOC Guidance on Vicarious Employer Liability for Unlawful Harassment by Supervisors*, [6/18/99] Employment Discrimination Report Vol. 12, No. 25 (BNA) (June 23, 1999) (hereafter “EEOC Guidance”).

Washington Law Before *Faragher* & *Ellerth*

Washington courts have relied on the unique language of the Washington Law Against Discrimination (WLAD), RCW 49.60, to in some instances provide broader protections to victims of discrimination,



including sexual harassment, than are available under federal law. *Glasgow v. Georgia-Pacific Corp*, 103 Wn.2d 401, 404, 693 P.2d 708 (1985); *Martini v. Boeing Co.*, 137 Wn.2d 357, 971 P.2d 45 (1999). However, where the Washington courts have not articulated a principled basis for a more expansive and independent analysis of RCW 49.60, state courts look to federal law interpreting Title VII, 42 U.S.C. § 2000e for guidance. *Henningsen v. Worldcom, Inc.*, 102 Wn. App. 828, 842, 9 P.3d 948 (2000). Recently, two divisions of the Washington Court of Appeals have adopted, in part, the federal employer liability jurisprudence as recently articulated in *Faragher, supra*, and *Ellerth, supra*. Whether the Washington Supreme Court will follow suit remains to be seen. In 1985, interpreting RCW 49.60, the Washington Supreme Court recognized a claim for sexual harassment in the form of a hostile work environment. *Glasgow v. Georgia-Pacific*, 103 Wn.2d 401, 693 P.2d

708 (1985). In *Glasgow*, over the course of several years, female employees complained to the plant manager that a co-worker used "abusive language around female employees," that he had "touched or fondled" one of the plaintiffs, and acted in an intimidating way to female employees. No corrective or disciplinary action was taken. *Id.* Other employees had similar problems, and at least one of them complained to the plant manager, "who did nothing." *Id.* at 403. The Supreme Court affirmed the trial court finding that the employees were subject to uninvited sexual harassment by a co-worker "with the actual knowledge of two supervisory personnel who undertook no reasonably prompt and adequate remedial measures to alleviate the resulting hostile and intimidating work environment..." *Id.* at 404.

place is sufficiently severe and persistent ... is a question to be determined with regard to the totality of the circumstances. *Id.* at 406-07.

4. The harassment is imputed to the employer: Where an owner, manager, partner or corporate officer personally participates in the harassment, this element is met by such proof. To hold an employer responsible for the discriminatory work environment created by a plaintiff's supervisor(s) or co-worker(s), the employee must show that the employer (a) authorized, knew or should have known of the harassment, and (b) failed to take reasonably prompt and adequate corrective action. This may be shown by proving (a) that complaints were made to the employer through higher managerial or supervi-

ability law too has evolved, *Glasgow* seems to have become even less authoritative than it once was.

Who Is a Supervisor?

An employer is liable for the sexual misconduct of a supervisor because the supervisor is aided by the authority delegated from the employer to employee to engage in the unlawful conduct. *Faragher*, 118 S. Ct. at 2290; *Ellerth*, 118 S. Ct. at 2269. The EEOC, the agency authorized by Congress to develop regulations to implement Title VII, defines "supervisor" as a person who, without regard to job title, (a) "has authority to undertake or recommend tangible employment decisions affecting the employee; or (b) ... has authority to direct the employee's daily work activities." EEOC Guidance Part III.A. Even if a supervisor

Within the category of gender discrimination, federal and state courts have identified two types of sexual harassment in the employment context: quid pro quo and hostile work environment.

The Court held that "sexual harassment as a working condition unfairly handicaps an employee against whom it is directed in his or her work performance and as such is a barrier to sexual equality in the workplace." *Id.* at 404. The court then set out the four elements of a claim for hostile work environment:

1. The harassment was unwelcome, *Glasgow* at 406.
2. That the harassment was because of sex, i.e., would the employee have been singled out and caused to suffer the harassment if the employee had been of a different sex? This statutory criterion requires that the gender of the plaintiff employee be the motivating factor for the unlawful discrimination. *Id.* at 406.
3. The harassment affected the terms or conditions of employment: Casual, isolated, or trivial manifestations of a discriminatory environment do not affect the terms or conditions of employment to a sufficiently significant degree to violate the law. The harassment must be sufficiently pervasive so as to alter the conditions of employment and create an abusive working environment. Whether the harassment at the work-

sory personnel or by proving such a pervasiveness of sexual harassment at the workplace as to create an inference of the employer's knowledge or constructive knowledge of it and (b) that the employer's remedial action was not of such a nature as to have been reasonably calculated to end the harassment. *Id.* at 407.

Glasgow was for many years the baseline as Washington courts reviewed claims of sexual harassment, hostile work environment. However, the fourth element of the *Glasgow* test, which defines when the employer is liable for the conduct, has been difficult for courts to interpret and apply, because there has been no clear statutory or judicial definition of the term "manager." There was no answer as to how high a level a manager had to be to impute liability to the employer. As a result, even before *Faragher* and *Ellerth*, the Washington Supreme Court began to move from a status test to a more duties-related analysis to evaluate employer liability for managerial and supervisory sexual misconduct. See, e.g., *King v. Riveland*, 125 Wn.2d 500, 507, 886 P.2d 160, 165 (1994)¹; *DeWater v. State of Washington*, 130 Wn.2d 128, 921 P.2d 1059 (1996). As federal employer li-

does not have actual authority over the employee, "if the employee reasonably believed that the harasser had such power because 'the chains of command are unclear,' or the supervisor had 'broad delegated powers,' that individual would be considered a supervisor for purposes of Title VII." EEOC Guidance Part III.B. See also *Durham Life Ins. Co. v. Evans*, 166 F.3d 139, 154-55 (3d Cir. 1999) (individual who is one of several who can take adverse employment action against the plaintiff is a supervisor for purposes of Title VII).

Washington courts are beginning to adopt a similar analysis. In a recent Washington case, the Court of Appeals Division III chose not to use supervisory status to impute liability to the employer for the acts of a supervisor because the alleged harasser was not the plaintiff's direct supervisor. *Francom v. Costco Wholesale Corp.*, 98 Wn. App. 845, 849, 991 P.2d 1182, 1184 (2000).

Hathaway was the warehouse's front-end manager and not the plaintiff's direct supervisor, although she was required to work with him on occasion. *Id.* at 849. Ms. Francom reported incidents of sexual harassment by Hathaway to her direct supervisor, the pharmacy manager, and to warehouse assistant managers, who re-

ported it to the warehouse manager. *Id.* at 849. The court refused to find Costco liable for the conduct of the harasser because of his status as a supervisor "because there is no evidence [he] was 'a supervisor with immediate authority' over Ms. Francom." *Id.* at 853 n.4.

The Court of Appeals Division I also engaged in an analysis of employer liability for hostile work environment. Rejecting the "labels" test articulated in *Glasgow*, the court adopted a "duties" test to analyze whether an employer would be liable for supervisory misconduct. The court focused on whether the position of supervi-

sor aided the harasser to obtain sexual favors, and whether his position aided him in controlling or trying to control the conduct of the employee. *Henningsen*, 102 Wn. App. 839-4.

The Court of Appeals Division III also adopted federal jurisprudence, holding, "[a]n employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee." *Sangster v. Albertson's, Inc.*, 99 Wn. App. 156, 164, 991 P.2d 674 (2000), quoting *Ellerth*, 118 S. Ct. at 2261.


Thus, if the harassment is actionable and the harasser has supervisory authority over the victim, the presumption is that the employer is vicariously liable for the harassment. This presumption may be overcome only if the alleged harassment has not resulted in a tangible employment action and then only if the employer can prove both elements of the affirmative defense. *Sangster* at 165.

However, the rule remains that if the harasser is at a high level — president, partner or corporate officer — he or she need not be in the supervisory chain to impute liability to the employer. *Faragher*, 118 S. Ct. 2284; *Ellerth*, 118 S. Ct. at 2267; see also EEOC Guidance Part VI.A and B; *Francom v. Costco* at 854. The *Francom* court observed that the language in *Glasgow* "clearly distinguished between on the one hand, the class of person so closely connected to the corporate management that their actions automatically may be imputed to the employer, and on the other hand, the employees, supervisors, and co-workers whose actions alone may not be imputed to the employer." *Francom v. Costco*, at 853-54.

Acknowledging that the case law does not "reveal any easy formula," the court engaged in a lengthy review of Washington cases which address whether management status in and of itself imputes liability to the employer. *Id.* at 854. After exhausting that analysis, the court turned to "familiar agency principles," citing federal and state cases which affirm that the principle "is limited to the high echelons of an employer's officers." *Id.* at 855. Hathaway, as merely a mid-level manager, was not acting as Costco's alter ego, ergo, no employer liability under that analysis. *Id.* at 856.


What Is a Tangible Employment Action?

With the *Faragher* and *Ellerth* decisions, definition of "tangible employment action" has become an important focus of sexual-harassment litigation. A tangible employment action constitutes a significant change in employment status. *Ellerth*, 118 S. Ct. at 2270; *Faragher*, 118 S. Ct. at 2284; EEOC Guidance Part IV.B. *Faragher* recognized that a tangible employment action can be a job benefit or a job detriment. *Faragher*, 118 S. Ct. at 2284; see also EEOC Guidance Part IV.B. According to the EEOC, a tangible employment action can



PETERSON YOUNG PUTRA
ATTORNEYS AT LAW

We're Glad to Have You Back!



Attorneys
FLETCHER, KELBY D.
KNOPP, MATTHEW G.
MASSONG, JUDY I.
PETERSON, JAN ERIC
PUTRA, BRIANA
YOUNG, CHRISTOPHER E.
ZEDER, FRED M.
BRACELIN, ELIZABETH
(in memoriam)

Peterson Young Putra
Law Offices
2800 Century Square
1501 Fourth Avenue
Seattle, WA 98101

(206) 624-6800
(206) 682-1415 fax

www.pyppfirm.com
mail@pyppfirm.com

The partners and staff of
PETERSON YOUNG PUTRA are
proud to honor Jan Eric Peterson for his dedication
and service to the legal profession as President of the
Washington State Bar Association,
2000-2001

www.pyppfirm.com

AVAILABLE FOR ASSOCIATION AND REFERRAL

include hiring and firing, promotion and failure to promote, demotion, undesirable reassignment, a decision causing a significant change in benefits, compensation decisions, and work assignments. EEOC Guidance Part IV.B. See also *Molnar v. Booth*, 224 F.3d 593 (7th Cir. 2000) (harassment made it difficult or impossible for plaintiff to do her job and harasser gave plaintiff a negative performance evaluation causing denial of teaching certificate); see also *Kohler v. Inter-Tel Technologies*, 244 F.3d 1167 (9th Cir. 2001).

A disciplinary action which is part of a program of discipline is a tangible employment action because it brings the employee closer to discharge. Taking action which inhibits an individual's ability to have opportunities for promotion is a tan-

quently over the course of the next several years that she "owed" him for the promotion. The Court of Appeals held that there had been a tangible employment action, the promotion. *Id.* at 841. Applying the *Faragher* and *Ellerth* test, the court imputed liability to Worldcom, because there was a tangible employment action; the manager had used his authority over Henningsen to obtain sex. Because there was a tangible employment action, the employer was precluded from raising an affirmative defense to liability.

Practitioners should be careful not to confuse the terms "adverse employment action" and "tangible employment action." The term "adverse action" appears in many sexual harassment cases, most often in the context of claims of retaliation. To bring a

An adverse employment action is adverse treatment reasonably likely to deter employees from engaging in protected activity.

gible employment action. See *Durham Life Ins Co. v. Evans*, 166 F.3d 139, 152-53 (3d Cir. 1999) (assigning duties with severe negative impact on earnings and depriving an individual of a private office and secretary are tangible employment actions); *Bryson v. Chicago State University*, 96 F.2d 912-17 (7th Cir. 1996) (depriving the person of the opportunity to have assignments which would lead to promotion is a tangible employment action similar to depriving a person of the job itself); but see *Flaherty v. Gas Research Institute*, 31 F.3d 451, 457 (7th Cir. 1994) (changing reporting relationship to a former subordinate which did not affect salary benefits or level of responsibility is not a tangible employment action).

Division I of the Washington Court of Appeals adopted the *Faragher* and *Ellerth* tangible employment-action analysis to analyze employer liability for the sexual harassment of an employee by a mid-level manager. *Henningsen v. Worldcom, Inc.*, 102 Wn. App. 828, 9 P.3d 948 (2000). Ms. Henningsen had sought a promotion and her manager refused her request, saying she was not qualified. After he convinced her to sleep with him, he promoted her. He continued to seek sexual favors after the promotion and told her fre-

claim of retaliation for a complaint of sexual harassment, a plaintiff must prove an "adverse employment action." See, e.g., *Trent v. Valley Electric Assoc. Inc.*, 41 F.3d 524, 526 (9th Cir. 1994). An adverse employment action is adverse treatment reasonably likely to deter employees from engaging in protected activity. *Ray v. Henderson*, 217 F.3d 1234, 1242-43 (9th Cir. 2000); see also *Felder v. UAL Corp*, 218 F.3d 973 (9th Cir. 2000) (employer liable for co-worker retaliation which rises to level of adverse employment action). While it may be clear that a discharge or demotion is a tangible employment action and an adverse one as well, many actions may be adverse for purposes of making a prima facie case of retaliation, but do not rise to the level of a tangible employment action for purposes of imputation of liability to an employer.

As mentioned above, the *Martini* decision recognized that the language of the Washington Law Against Discrimination may provide greater protections to victims of discrimination than does federal law. With this in mind, the Washington courts have the opportunity to give a broader meaning to the term "tangible employment action" than have the federal courts.

RIGHT EXPERT RIGHT AWAY!

3,000 Medical & Technical Experts, Multiple Disciplines.

"Pro/Consul's ability to locate appropriate witnesses is unsurpassed."

- Nationwide Service
- Rigorous Standards
- Customized Searches
- Mediators and Arbitrators
- Free Resume Binder
- Fast Inspections
- Neutral Experts
- Our Service Is a Cut Above

1(888)9-EXPERT

Pro/Consul, Inc.

(602) 279-2422 Fax (602) 604-9454
1714 E. Bethany Home Road
Phoenix, Arizona 85016



TRADEMARK

& COPYRIGHT SEARCHES

TRADEMARK-Supply word and/or design plus goods or services.

SEARCH FEES:

- COMBINED SEARCH - \$315 (U.S., State, Expanded Common Law and Internet)
- TRADEMARK OFFICE - \$135
- STATE TRADEMARK - \$140
- EXPANDED COMMON LAW - \$165
- DESIGNS - \$210 per International class
- COPYRIGHT - \$180
- PATENT SEARCH - \$450 (minimum)

INTERNATIONAL SEARCHING

DOCUMENT PREPARATION

(for attorneys only - applications, Section 8 & 15, Assignments, renewals.)

RESEARCH- (SEC - 10K's, ICC, FCC, COURT RECORDS, CONGRESS.)

APPROVED- Our services meet standards set for us by a D.C. Court of Appeals Committee.

Over 100 years total staff experience - not connected with the Federal Government.

GOVERNMENT LIAISON SERVICES, INC.

200 North Glebe Rd., Suite 321
Arlington, VA 22203
Phone: (703) 524-8200
FAX: (703) 525-8451

Major credit cards accepted.

TOLL FREE: 1-800-642-6564

WWW.TRADEMARKINFO.COM

SINCE 1957

When Is Harassment on Account of Sex or Gender?

The United States Supreme Court has held that same-gender harassment can be a violation of Title VII. *Oncala v. Sundowner Offshore Services, Inc.*, 523 U.S. 75, 79, 118 S. Ct. 998, 140 L. Ed. 2d 201 (1998). As part of its analysis, the Court held that the offensive conduct need not be motivated by sexual desire to be a violation of Title VII.

The 9th Circuit recently addressed whether harassment of an effeminate man fell within the protection of Title VII. *Nichols v. Azteca Rest. Enterp. Inc.*, 256 F.3d 864 (9th Cir. 2001). Nichols worked as a

host at Azteca, a restaurant chain. He alleged he was verbally harassed by male co-workers and a supervisor because he was effeminate and did not meet their views of a male stereotype. Azteca defended on a number of grounds, one of which was that the harassment was not "because of sex." The 9th Circuit disagreed, comparing Mr. Nichols' situation to that of the plaintiff in *Price-Waterhouse v. Hopkins*, 490 U.S. 228, 109 S. Ct. 1775, 104 L. Ed. 2d 268 (1989). In *Price-Waterhouse*, the court held that the defendant violated Title VII when the plaintiff was denied partnership in an accounting firm because

she did not meet a female stereotype. Similarly, the 9th Circuit found that Nichols was harassed because he did not meet a male stereotype, i.e., he did not act as a man "should" act. Following the *Price-Waterhouse* rule that bars discrimination based on sex stereotypes, the court found that Nichols endured harassment "on account of sex." Washington law, too, requires that the plaintiff prove the hostile conduct was on account of sex. See *Glasgow* at 406; *Herried v. Pierce City Public Transport*, 90 Wn. App. 468, 474-75, 957 P.2d 767 (1998) (hostile, intimidating conduct towards everyone with no sexual content to acts or words does not violate RCW 49.60); *Kahn v. Salerno*, 90 Wn. App. 110, 951 P.2d 321 (1998) (question of fact if word "bitch" and other words were "because of sex").

More recently, Division III analyzed the term "because of gender" in *Sangster v. Albertson's, Inc.*, supra. Ms. Sangster sued Albertson's because of sexual harassment by a mid-level manager. The conduct included comments to plaintiff about her sex life and wearing of tighter and/or shorter shorts; telling her she looked great in a bathing suit; calling her "honey," "sweetie" and "little girl"; and making sexually suggestive and demeaning remarks. He told her she should date older men and join his mile-high club. He also made numerous statements and sexually charged comments at staff meetings, such as, "Damn, that makes my titties hard"; "Try it, it will make your pecker stand out." *Sangster*, 99 Wn. App. at 158, 159.

According to the court, several of the comments Ms. Sangster listed did not fulfill the element of "because of her gender," because the comments were made to a group of males and females, were not directed to her, and were not motivated by her sex. *Id.* at 161-62. Nevertheless, the court acknowledged that a number of the comments directed to her, such as telling her to wear shorts a size smaller, asking her to try on a dress in front of him, asking about her sex life, and telling her she should join his mile-high club, were inappropriate comments about her sex life. The court also found that comments involving her dating older men, and calling her "honey," "sweetie" and "little girl" were definitely based on her gender. "The sexual nature of these incidents supports a reasonable inference that the conduct oc-

MARK YOUR CALENDAR NOW! FEDERAL PRACTICE CLE and ANNUAL RECEPTION AND DINNER

Sponsored by The Federal Bar Association for the
Western District of Washington

TUESDAY - DECEMBER 18, 2001

Four Seasons Olympic Hotel, Seattle, Washington
1:00 p.m. to 5:00 p.m.

CLE PROGRAM:

- ◆ **RECENT CHANGES TO THE LOCAL CIVIL RULES**
➤ Issues, pitfalls, and practical advice
- ◆ **FEDERAL CRIMINAL LAW FOR THE CIVIL PRACTITIONER**
➤ Essentials every lawyer should know
- ◆ **DAMAGES, REMEDIES, AND ATTORNEYS' FEES**
➤ There's more to winning than proving liability

Three informative and practical panel discussions featuring
attorneys and Judges of the Western District

\$125 per person (\$100 public interest/government counsel)
4.0 CLE credits expected

For information contact:

Cathy Hamborg - 206-343-7340 ext. 31; chamborg@earthjustice.org

FOLLOWING THE CLE PROGRAM THE
FEDERAL BAR ASSOCIATION WILL HOST ITS

ANNUAL HOLIDAY RECEPTION AND DINNER

Four Seasons Olympic Hotel, Seattle, Washington
Reception 5:30 p.m.; Dinner 7:00 p.m.

\$65 per person

Special Guest:

The Honorable Chief Judge Mary M. Schroeder
U.S. Court of Appeals for the Ninth Circuit

curred because she was female." *Id.* Because of those remarks, Ms. Sangster met the "because of gender" element of her prima facie case.

If There Is No Tangible Employment Action

To prevail on a claim of sexual harassment when the harassment is by co-workers or a supervisor who does not have immediate or successively higher authority over the plaintiff, a plaintiff must show he or she was subject to a hostile environment. The plaintiff must present evidence the workplace was "both objectively and subjectively offensive." *Azteca*, 254 F.3d at 871. The plaintiff must show that a reasonable person would find the environment hostile or abusive, and that he or she did so perceive it. *Id.* at 871-82. And, the conduct must be "because of sex." *Id.* at 872.

Whether an environment is so hostile or abusive as to violate Title VII requires an analysis of all the circumstances, including the frequency of the conduct, its severity, how physically threatening or humiliating it is, and whether it interferes with an employee's work. *Azteca*, 256 F.3d at 872, citing *Harris v. Forklift Sys., Inc.*, 510 U.S. 17, 23, 114 S. Ct. 367, 126 L. Ed. 2d 295 (1993). In *Azteca*, the harassment, name-calling and abuse occurred at least weekly and often several times a day for almost four years. The court found that a reasonable man would have found the "sustained campaign of taunts ... designed to humiliate and anger him sufficiently severe and pervasive to alter the terms and conditions of his employment." *Id.* at 873. Mr. Nichols' complaints to the restaurant manager and to Azteca's HR director about the extent and nature of the verbal abuse showed he perceived his workplace to be hostile. *Id.* He was therefore able to show an objective and subjective hostile work environment. *Id.* at 873.

The Washington courts continue to use the standard set by *Glasgow* to assess whether conduct creates a hostile environment. Washington cases also look at the totality of the circumstances to assess whether sexual harassment creates a hostile environment for purposes of WLAD. See *Glasgow*, 103 Wn.2d at 406; *Sangster* at 162-63. The court will consider the frequency, severity, whether the conduct was physically threatening or humiliating or a mere offensive utterance, and whether it

Chemnick, Moen & Greenstreet

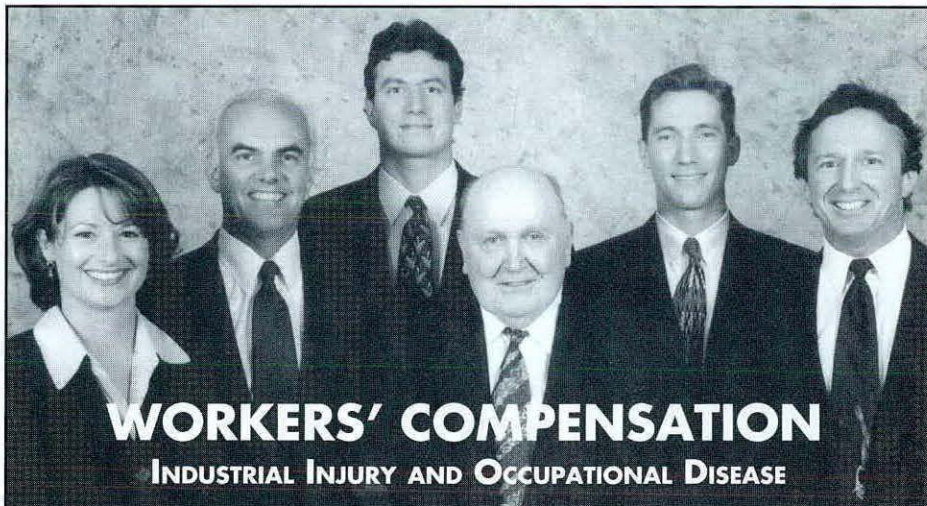


450 Market Place Two
2001 Western Ave
Seattle, WA 98121
(206) 443-8600
Fax: (206) 443-6904
email: cmg@cmglaw.com



A team approach to complex medical negligence claims

- Eugene M. Moen, JD
- Paul W. Chemnick, JD
- Patricia K. Greenstreet, RN, JD
- Paul S. Nelson, MD, JD



WORKERS' COMPENSATION INDUSTRIAL INJURY AND OCCUPATIONAL DISEASE

We welcome and appreciate your referrals
"Representing Injured Workers For Over 65 Years"

WALTHER, WARNER, THOMPSON, EAGAN & KEENAN

(206) 623-5311 • Toll Free 1-800-824-6215

THE WALTHER BUILDING

123 Third Avenue South (at South Washington) • Seattle, WA 98104

unreasonably interfered with the employee's work performance. *Sangster* at 162, quoting *Harris v. Forklift Sys., Inc.*, 510 U.S. at 22. "Casual, isolated or trivial manifestations of a discriminatory environment do not affect the terms and conditions of employment to a sufficiently significant degree to violate the law." *Francom* at 857-58. "Isolated incidents (unless extremely serious) will not amount to discriminatory changes in 'terms and conditions of employment.'" *Sangster* at 162-63, quoting *Faragher*, 118 S. Ct. at 2283.

"So long as the environment would reasonably be perceived and is perceived as hostile or abusive," the conduct need not

be so severe as to be psychologically injurious. *Francom* at 858. In its analysis of whether Costco had constructive or actual knowledge of the harassment, the *Francom* court reviewed the pervasiveness of some of the conduct at issue and whether it rose to the level of a hostile environment. The reported conduct included inappropriate touching of one person at an off-work party; a complaint by a female manager that she was uncomfortable working with the harasser; and a complaint by a third woman of inappropriate sexual comments by the harasser. *Francom* at 857. The court did not consider the "incidents to demonstrate the existence of a pervasive

abusive working environment." *Id.* at 858. As a result, reports of such conduct did not put Costco on notice of a hostile environment.

In *Sangster*, the plaintiff complained of continuous verbal sexual harassment over a period of years. See discussion, *supra*. The court found that she presented sufficient evidence to create an issue of fact "because reasonable persons could reach different conclusions as to whether the harassment altered the conditions of employment." *Id.*

Employer Liability and Affirmative Defenses

When there is no tangible employment action, the employer may raise a defense to a claim of sexual harassment by proof that (a) it has exercised reasonable care to prevent and promptly correct sexually harassing behavior; and (b) the employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer. *Faragher* at 807. To prove its affirmative defense, the employer must show that it has a policy against sexual harassment; that the policy has been circulated to all employees; that employees, including managers, have received training about the policy; and that the policy explains what conduct is covered, how to complain about offensive conduct, and assures protections from retaliation. See generally, EEOC Guidance Part V.C. See also *Kohler v. Inter-Tel Technologies*, 244 F.3d 1167 (9th Cir. 2001); *Montero v. AGCO Corp.*, 192 F.3d 856 (9th Cir. 1999). The existence of a policy will assist employers to meet the first prong of the affirmative defense, but is not sufficient in and of itself the policy it is not enforced. *Hurley v. Atlantic City Police Department*, 174 F.3d 95 (3d Cir. 1999).

Assuming success on the first prong of the affirmative defense, the employer must also show that the plaintiff employee unreasonably failed to take advantage of the opportunities offered to avoid or stop the harassment. See *Kohler, supra*. In this context, the employer must show that it has an effective policy that employees are aware of, and that when an employee makes a complaint there is a prompt investigation; prompt, corrective and remedial action; and no retaliation or further harassment against the complaining employee.

Nickerson & Associates

Economic and Statistical Consulting

- Economic Analysis and Damage Calculations
- Statistical Testing and Inference
- Public Policy Analysis
- Database Development and Compilation of Computerized Business Records
- Mediation Preparation and Settlement Administration

Peter H. Nickerson, Ph.D.

Phone: 206-332-0270

Fax: 206-332-0252

900 Fourth Avenue, Suite 3031

Seattle, WA 98164



APPRAISERS AND VALUATION CONSULTANTS

Private Valuations, Inc.
1412 - 112th Avenue N.E.
Suite 200
Bellevue, Washington
98004

Adrien E. Gamache, Ph. D., President

- Valuations of Businesses & Intellectual Property
 - Family Limited Partnership and LLC Interests
 - Experienced Litigation Support

Call for references and qualifications

(425) 688-1700 • (425) 450-9990 FAX

To overcome the employer's affirmative defenses, the plaintiff may argue that he or she did not know of the harassment policy; did not receive training; that individuals who made complaints were retaliated against, frozen out, forced to quit, involuntarily transferred, or were treated in other ways that chilled complaints by other employees, causing them to fear making a claim of harassment (see discussion, *supra*, re retaliation); and/or that the corrective action was not prompt enough and/or effective enough to meet the twin goals of stopping the current harassment and deterring future harassment. *Azteca*, 256 F.3d at 875-76.

Even where there is a policy in place, an employer is liable for sexual harassment by supervisors or co-workers if the employer has actual or constructive notice of the conduct and fails to "take adequate remedial measures in order to avoid liability." *Azteca*, 256 F.3d at 875, 877. Such measures must include remedies that "are reasonably calculated to end the harassment and deter future harassment." *Id.* at 875. The court will look at the reasonableness of the remedy to evaluate whether it "1) stop[s] harassment by the person who engaged in the harassment, and 2) persuades potential harassers to refrain from unlawful conduct." *Azteca* at 875. "When an employer undertakes no remedy or where the remedy does not end the current harassment and deter future harassment, liability attaches for both the past harassment and any future harassment." *Id.* at 875-76.

In *Azteca*, the court found that the employer made no effort to investigate Nichols' complaints, did not discuss allegations with alleged perpetrators, did not demand that the unwelcome conduct stop, and did not threaten more serious discipline if the harassment continued. *Azteca* at 876. In effect, "by conditioning its response on Nichols' reports of further harassment, *Azteca* placed virtually all its remedial burden on the victimized employee." *Azteca* at 876. *Azteca* failed to take prompt corrective remedial action once on notice of the harassment and was therefore liable for the conduct. Washington courts follow a similar analysis. See *Glasgow* at 103 Wn.2d 401. See also *Francom v. Costco*, *supra*, 98 Wash. App. 845.

In *Francom*, the plaintiff was dissatisfied that the discipline imposed by the em-

SERIOUS PERSONAL INJURY

ILLUSTRATIVE CASE:

Co-Counsel,
Mahler v. State Farm



William S.
Bailey
Washington State
Trial Lawyer
of the Year
1991

C. Steven Fury
Selected for
Best Lawyers
in America

REFERRAL, ASSOCIATION OR CONSULTATION

FURY BAILEY
TRIAL LAWYERS

P.O. Box 20397, 710 - 10th Avenue East, Seattle, WA 98102
(206) 726-6600 FAX (206) 726-0288

LAW OFFICES

GARVEY, SCHUBERT & BARER

We are pleased to announce that

ROLAND L. HJORTH

Dean Emeritus of the University of Washington School of Law, has joined our firm in an Of Counsel capacity. Professor Hjorth will focus his practice on federal taxation, particularly corporate tax issues.

Seattle

Eighteenth Floor
1191 Second Avenue
Seattle, WA 98101
(206) 464-3939

Washington, D.C.

Fifth Floor
1000 Potomac St. NW
Washington, D.C. 20007
(202) 965-7880

Portland

Eleventh Floor
121 SW Morrison St.
Portland, OR 97204
(503) 228-3939

New York

Eighth Floor
599 Broadway
New York, NY 10012
(212) 431-8700

AVAILABLE FOR REFERRALS:



Mucklestone & Mucklestone, LLC

The Broderick Building
Penthouse Suite 720
615 Second Avenue
Seattle, WA 98104



TRAFFIC MATTERS:
Speeding tickets/Infractions
Criminal Misdemeanors
Pre-Trial/Jury Trials

206-623-3330

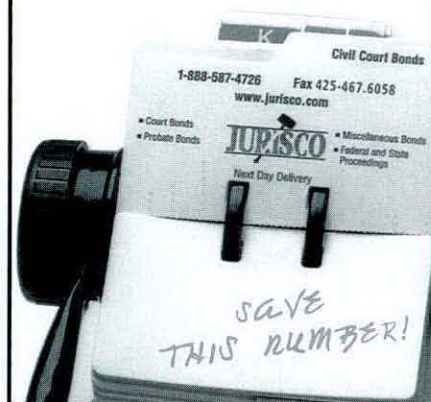
Fast, Accurate and Guaranteed.

Civil Court Bonds
ASAP !



1-888/587.4726
www.jurisco.com

fax 425/467.6058



ployer was not severe enough. Costco had transferred the harasser to a new work site several months after the reported harassment. However, the delay occurred because the harasser was on disability leave. The court rejected Ms. Francom's complaint that the company was liable for the conduct because the discipline was delayed. Rather, the court held that Costco's corrective action "was reasonable and adequate as a matter of law," even though it was delayed. *Id.* at 856-57. "Costco was required to take only such action as would be reasonably likely to prevent further harassment," *Id.* at 857. According to the

squarely on the employer:

If the company fails to establish a clearly marked, accessible, and adequate channel for complaints, judicial inquiry will have to turn to who in the company the complainant reasonably believed was authorized to receive and forward (or respond to) a complaint of harassment.

Francom at 860. The standard is whether the employee made a complaint or brought information to the attention of someone who, either through his or her

To obtain punitive damages a plaintiff must prove that the employer acted with malice or with reckless indifference to a plaintiff's federally protected rights.

court, that the harassing conduct was never repeated after the plaintiff's complaints demonstrates the discipline was reasonable and adequate. *Id.*

When Does Reporting Sexual Harassment Put the Employer on Notice?

The *Francom* court adopted the *Faragher* and *Ellerth* approach to employer liability and employer affirmative defenses. *Francom v. Costco, supra.* Ms. Francom reported her own complaints of harassment to her immediate supervisor. He was aware of a similar problem another employee had with the same alleged harasser, but took no action to prevent further harassment. *Francom* at 858. Rejecting some of the federal cases cited by defendants holding that harassment must be reported to somebody at a sufficiently high level, the court adopted a "more logical approach to when an employer has knowledge of the harassment." *Id.* at 859.

The information must either (1) come to the attention of someone who (a) has under the terms of his employment, (b) is reasonably believed to have, or (c) is reasonably charged by law with having a duty to pass on the information to someone within the company who has the power to do something about it; or (2) come to the attention of such someone. *Id.* (citation omitted). The court put the onus

duties or stature in the company, could do something about the complaint or refer it to somebody who could do something about it. *Id.* at 860.

The court held that Ms. Francom had appropriately reported to her supervisor, as authorized by the handbook. *Id.* at 861. This report gave Costco "constructive" knowledge of Mr. Hathaway's conduct in July 1993. *Id.* Because his conduct continued until October 1993, a fact-finder could conclude that Costco failed to take reasonably prompt corrective action. *Id.*

In *Sangster*, Albertson's had a policy prohibiting sexual harassment. Ms. Sangster did not follow that policy precisely by timely reporting the harassment by the store director. Instead, after two years of harassment she decided to step down from her deli service manager position, and only then did she report the harassment. *Id.* at 166. The court refused to follow the fourth element of the *Glasgow* test to impute liability to Albertson's for the manager's conduct. Rather, the *Sangster* court found *Glasgow* was not controlling because *Glasgow* did not attempt to articulate defenses an employer could raise to liability or the effect of the failure to use an anti-harassment policy. *Id.* at 166-67. Nevertheless, because plaintiff's claims were reinstated, as a result of the appeal and the case remanded for trial, the court declined to conclude whether Albertson's would be

able to successfully meet its burden on the affirmative defenses. *Id.* at 167.

Why Consider State and Federal Claims?

Different types and amounts of damages are available under federal and state law.² A plaintiff may recover past and future wage-loss and compensatory damages, including emotional-distress damages, under both federal and state law, and may bring state and federal claims at the same time. A prevailing plaintiff is also entitled to recover costs and attorney's fees. RCW 49.60.030; 42 U.S.C. 2000e-5(g)(2)(B)(i); 42 U.S.C. 1988. The types of damages recoverable under RCW 49.60.180(3) are not limited by the statutory scheme, only by proximate cause. RCW 49.60.030(2); *Martini v. Boeing Co.*, 137 Wn.2d 371, 357 971 P.2d 45 (1999). A plaintiff may also obtain injunctive relief under both statutes.

In addition to wage-loss and compensatory damages, Title VII provides for punitive damages. 42 U.S.C. 1981a (amended 1991). To obtain punitive damages a plaintiff must prove that the employer acted with malice or with reckless indifference to a plaintiff's federally protected rights. *Kolstad v. ADA*, 527 U.S. 526, 536, 119 S. Ct. 2118, 144 L. Ed. 2d 494 (1999). The amount of punitive damages a plaintiff may recover is capped, depending on the size of the employer. 42 U.S.C. 1981a(b)(3). These damages include future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses. Front pay is not an element of compensatory damages. *Pollard v. E.I. du Pont de Nemours & Co.*, 2 U.S. 121 S. Ct. 1946, 1949, 150 L. Ed. 2d 62 (2001).

As federal law has evolved, recent Washington Court of Appeals' decisions have looked to and relied on the recent analysis of Title VII to interpret RCW 49.60. As a result, lawyers must continue to keep informed of developments on the federal level, at least until the Washington State Supreme Court once again recognizes the difference between state and federal statutes, and reasserts an independent analysis of the Washington Law Against Discrimination. ♪

Katrin Frank practices employment, discrimination, civil rights and immigration law at MacDonald Hogue Bayless. She is vice president of the board of the Legal Foundation of Washington.

With thanks to Kwame Amoateng, Marinel de Jesus and Mary Klein for their invaluable assistance.

NOTES

1. Under Washington law, the definition of "employer" includes any person acting in the interests of the employer. RCW 49.60.040. Based on this language, the Washington Supreme Court has recently held that an individual act-

ing in the interests of an employer may be subject to individual liability for acts of harassment and discrimination. See *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 20 P.3d (2000). Because federal law defines "employer" differently, 42 U.S.C. 2000e, most federal courts have held an individual employee will not be personally liable for violations of Title VII.

2. To ensure availability of a claim under Title VII, in Washington a plaintiff must file a complaint with the EEOC within 300 days of the discriminatory act. While a claim may include conduct beyond the 300-day period, it is best to file a complaint with the EEOC as soon as practical after an act or acts of discrimination or retaliation.

LAW OFFICE OF RON PEREY TRIAL LAWYERS



Practice Limited to Major Damage Claims for:

- Medical Malpractice
- Hospital Negligence
- Laboratory Negligence
- Automobile Accidents
- Workplace Accidents
- Catastrophic Personal Injuries
- Product Liability
- Death

Focusing on Medical Malpractice Claims involving:

Obstetrical, Gynecological, Surgical, Cardiac, Pap Smear, Cancer, Vascular, Orthopedic, Neurological, Pharmaceutical and Emergency Room Negligence

CONTINGENCY FEE and FREE INITIAL CONSULTATION

- 33 Years of Personal Injury Trial Experience
- Listed in Best Lawyers in America
- Listed in Who's Who in American Law
- Voted a Washington "Super Lawyer"
- Listed in Bar Register of Preeminent Lawyers
- Washington State Trial Lawyers Association (Governor '83-'85 & '89-'91)
- Washington State Bar Association (Governor '94-'97)
- Damage Attorneys Round Table (President '00-'01)
- American Board of Trial Advocates - WA Chapter (President '01)
- American Board of Trial Advocates (Governor '96-'00; National Secretary '01)
- Board Certified Civil Trial Specialist

We are available for consultation, association or referral in cases involving medical or hospital negligence and catastrophic injury. Medical malpractice cases are difficult, expensive and risky. Cases must be carefully investigated, analyzed and screened. Each prospective case is reviewed carefully by our legal and medical staff before acceptance. If a case is accepted, we will do whatever is needed to win and to maximize the monetary recovery.

Lawyers

Ron Perey, J.D. • Jane Seavecki, R.N., J.D. • John Siegel, J.D.
Carla Tachau Lawrence, J.D. • Douglas Weinmaster, J.D.

Medical Director

Alexandra Finney McCafferty, M.D.

Case Managers

PJ Anderson, R.N. • Barbara Fletcher, L.A. • Janice Perey, R.N.

Market Place Tower

2025 First Avenue, Suite 250, Seattle, WA 98121

Fax (206) 443-4785

www.pereylaw.com

(206) 443-7600

Amicus Curiae Briefs in Washington

by Greg Overstreet

The Loch Ness Monster

As a Washington attorney you probably know that “amicus curiae” is Latin for “friend of the court.” You also know that an amicus brief is a pleading filed by a nonparty to aid a court in an important, precedent-setting decision. Other than that, an amicus brief is like the Loch Ness monster — you’ve heard of it, but probably have never really seen one.

This article aims to change that by familiarizing you with these increasingly common pleadings, and revealing the diverse set of Washington attorneys who are now supporting their clients — and their causes — with these briefs.

This article has three parts. The first analyzes the role of amicus briefs. The second part presents the “strange bedfellows” illustration and analyzes how amicus briefs perform the important function of allowing citizens to ethically communicate with their elected judges. The third part describes the nuts and bolts of Washington amicus curiae briefs.

Role of Amicus Briefs: It's OK to Advocate

Amicus briefs have evolved over time. They began under Roman law and became fully enmeshed into English common law.¹ Back then, legal scholars or scientific experts on a topic wrote amicus briefs, informing the court about a unique or unusually difficult legal topic. They were usually objective and not intended to support one party; an amicus was truly a “friend of the court,” not of one party.² Today this is still half true. Amicus briefs are generally written by legal experts (or people who think they are) and are intended to inform the court about a complicated area of law and the ramifications of its ruling. However, in contrast to the old days, modern amicus briefs almost always advocate for a particular policy outcome. “No longer a mere friend of the court, the amicus has become a lobbyist, an advocate, and most recently, the vindicator of the politically powerless.”³

Just because modern amicus briefs advocate for a particular policy outcome does not mean that amici have completely abandoned their traditional role. It is still true that the “function of an amicus curiae is to call the court’s attention to law or facts or circumstances in a matter before it that may otherwise escape its consideration.”⁴ The only thing that has changed is that amicus briefs now almost always advocate for changing (or preserving) the law to carry out the amicus’s public-policy objectives.

While it is perfectly appropriate for an amicus brief to advocate for a particular public-policy objective, the amicus must never forget to provide an insightful and accurate legal analysis to the court. As further described, this article argues that an amicus, in exchange for the rather extraordinary privilege of participating in someone else’s case and getting a chance to affect the law, has a special duty to provide cogent and helpful legal briefing that truly assists the court. Amicus briefs failing to do so are a waste of judges’ valuable time. “The courts welcome rational briefing by an informed person or group, but may reject a shrill or exaggerated brief that generates more heat than light.”⁵

amicus curiae:
n. Latin for
“friend of the
court,” a party or
an organization
interested in
an issue which
files a brief or
participates in
the argument in
a case in which
that party or
organization is
not one of the
litigants.

**Those seeking to affect public policy go where
the action is — the courts. The amicus brief is how they get there.**

Where the Action Is: The Increasing Use of Amicus Briefs

The number of amicus briefs has sharply increased in the past few decades.⁶ In the Washington State Supreme Court, a survey of the number of amicus briefs from 1960 to 2000 shows a sharp and steady increase: in 1960, 6.5 percent of published opinions list an amicus; by 2000, the figure was 27 percent.⁷ The increase in the use of amicus briefs mirrors the swell of the policy questions presented to the courts beginning in the 1960s. With courts increasingly deciding the laws that govern almost every aspect of our lives, amici increasingly want to shape those decisions. Those seeking to affect public policy go where the action is — the courts. The amicus brief is how they get there.

Strange Bedfellows: Example of an Amicus Brief in Washington

The following example of how public-policy groups use amicus briefs is illustrative — and very interesting. What issue brings together the ACLU and the Building Industry Association of Washington? What could unite the media and a “conservative” think-tank like the Evergreen Freedom Foundation? These diverse groups (and the Washington Association of Realtors and Washington State Farm Bureau) recently filed a joint amicus brief.⁸ This brief, dubbed the “strange bedfellows” amicus, illustrates how modern amicus briefs work in Washington — and why they are a good thing. But before describing more about the “strange bedfellows” amicus brief, some background on an elected judiciary is necessary to put the matter in context.

In Washington, judges are elected. However, judges are not regular elected officials; the Code of Judicial Conduct prevents judges from campaigning like, well, politicians. Under the code, judges cannot have ex parte contacts with litigants, and generally cannot publicly state their positions on policy issues that will likely come before their court. Because they feel they should not converse about many important issues, judges report feeling somewhat isolated from the rest of the legal and public-policy world.⁹

Amicus briefs are the perfect method for judges to ethically hear from the people they serve (or at least from the groups representing them). Amicus briefs are an ethical method of communicating because they are the exact opposite of the kind of contact prohibited by the Code of Judicial Conduct, such as one party lobbying a judge over cocktails. Amicus briefs are written legal arguments, supported by citation to authority, which can be answered by the parties — exactly how judges should decide cases.

Unlike legislative bodies, where lobbying through personal visits and other communications is appropriate, direct communications with members of [a] court in an effort to influence the outcome of litigation is inappropriate. However, the long tradition of accepting [amicus briefs by courts] is an honorable one, used by organizations on both sides of controversial debates to present cogently their views or additional facts which may be important for consideration of the case.¹⁰

An important function of amicus briefs is to show a court who cares about an issue, which is where we return to the “strange bedfellows” amicus brief. Suppose you are a judge looking at an issue such as whether the Public Records Act allows a person suing a government agency to simultaneously obtain information from a records request instead of exclusively from formal discovery in the underlying case.¹¹

Through an amicus brief, the Washington State Supreme Court learned that the amazingly diverse groups forming the “strange bedfellows” coalition all relied on these during-litigation, public-records requests to obtain important information. In its amicus brief, the coalition spelled out exactly how preserving during-litigation, public-records requests were pivotal in, among other things, reversing a death-penalty sentence and exposing the largest violation of campaign-reporting laws on record. Without amicus briefs, none of this information could have been presented to the Court. The Court probably

appreciated hearing from a diverse cross-section of those they serve and valued a cogent description of exactly how the case would affect the day-to-day activities of many citizens.

Pro Bono Opportunities: An Amicus Brief Saves the Water-Heater “Criminal”

Another positive aspect of amicus briefs is that they can be used as a powerful pro bono tool. Attorneys often find it difficult to undertake an entire pro bono case from pretrial to appeal; however, an amicus brief is much less time-consuming than a complete case — and may well achieve the same positive result.

For example, in a case I worked on I wanted to help a small-business person who was the only person in a city ever charged with the crime of installing a water heater without a permit, even though hundreds of others had installed them without permits. Even after belatedly obtaining the permit, the small-business person was charged (by a special prosecutor, no less) after he wrote a letter to the editor criticizing the city for its never-before-enforced permit requirement. Unfortunately, I could not devote the time to take on the entire case, and it was pending in a court at the opposite end of the state.

An amicus brief saved the day. I was able to spend a day or two, and brief the issue of procedural equal protection, the obscure doctrine protecting a person who exercises a First Amendment right by criticizing a law and then is the only person charged with violating it. The small-business person could not have afforded the cost of this briefing, which would have greatly exceeded the amount of the probable fine he was facing. The water-heater defendant was acquitted based on the amicus brief. Without the ability to file the brief, a pro bono opportunity to protect constitutional rights would have been lost.

While the water-heater amicus was filed in a municipal court, filing amicus briefs in precedent-setting appellate courts provides another pro bono benefit. An amicus brief on an important issue can help permanently change (or preserve) the law that applies to all of us, thereby benefiting thousands in the pro bono client’s po-

**In Washington, the Rules of Appellate Procedure
govern amicus briefs, at least in the Court of Appeals and Supreme Court.**

sition, not just the single pro bono client. Because they help create precedent that goes for on years, amicus briefs give a tremendous bang for the pro bono buck.

The Nuts and Bolts of Amicus Briefs in Washington

We turn now from the theory of amicus briefs to practical information on how to file one.¹² In Washington, the Rules of Appellate Procedure govern amicus briefs, at

least in the Court of Appeals and Supreme Court (more on that later). The most important requirement for an amicus brief in Washington is that it "would assist the appellate court."¹³ Before filing an amicus brief, the amicus "must review the pleadings on file and avoid repetition of matters in other briefs."¹⁴ This is crucial; judges despise amicus briefs that merely repeat the arguments made by the parties or other amici.

An amicus need not have standing as a party.¹⁵ An amicus brief must address the issues raised by the parties, although on very rare occasions a court will address an important issue raised only by an amicus.¹⁶ A potential amicus must file a motion requesting leave to file an amicus brief.¹⁷ Most amici simultaneously file their motion for leave with the amicus brief.¹⁸ The court and the parties must receive the amicus brief not less than 30 days before the date set for oral argument.¹⁹ Timely amicus briefs are almost always accepted by the courts.

The parties have the right to answer the amicus brief.²⁰ An amicus has no right to oral argument, but can request the party to yield some of its argument time. Or, in cases in which the amicus has a great deal to say or its argument does not squarely support one of the parties, an amicus can move for argument time of its own.²¹ An amicus, like a party, may file a statement of additional authorities.²² An amicus is not entitled to court-awarded attorney's fees.²³

Amicus Briefs: Not Just in Appellate Courts Anymore

The Rules of Appellate Procedure (RAP) governing amicus briefs only apply to the state Supreme Court and Court of Appeals.²⁴ What about filing an amicus brief in a superior, district or municipal court or an administrative tribunal? No court rule or regulation governs amicus briefs in Washington trial courts and agencies, but these bodies seem to routinely allow them.²⁵ In my experience, every superior court, municipal court and administrative tribunal has accepted an amicus brief presented to it. The implied basis for a lower court to allow amicus briefs is the tribunal's inherent power to conduct its affairs. Since no rules govern lower-court amicus briefs, these courts and agencies should look to the RAPs for guidance on deadlines, content and other requirements.

Citing to the Record: Washington Amicus Cannot Make It Up as They Go

A somewhat controversial provision of Washington's Rules of Appellate Procedure requires an amicus to cite to the record to support its factual contentions.²⁶ The re-

**THE COWAN
LAW FIRM**

Defending DUIs

The lawyers lawyers turn to . . .



Douglas L. Cowan

Dean, National College of DUI Defense 1996-1997; Coauthor of text, *Defending DUIs in Washington*, (Lexis Law Publishing); Founder, Washington Association of Criminal Defense Lawyers; Founder/Past President, Washington Foundation for Criminal Justice; Board Certified by the National College for DUI Defense*



Vernon A. Smith

Founder, National College of DUI Defense; Member, Washington Foundation for Criminal Justice; Member, Washington & National Associations of Criminal Defense Lawyers; Lecturer, DUI defense seminars; NITA graduate; Board Certified by the National College for DUI Defense*



William Kirk

Graduate and member, National College for DUI Defense; Member, Northwest Academy for DUI Defense; Member, Washington Association of Criminal Defense Lawyers; Former King County Deputy Prosecutor

*The Supreme Court of Washington does not recognize certification of specialties in the practice of law, and certification is not a requirement to practice law in the state of Washington.

**THE COWAN
LAW FIRM**

425.822.1220
3805 108th Avenue Northeast, Suite 204
Bellevue, Washington 98004
Web: Cowanlawfirm.com

quirement is controversial because many think an amicus should have the almost unlimited leeway to describe the broader public-policy picture confronting the court. Many other courts, including the U.S. Supreme Court, allow an amicus to attach almost any kind of information to its brief.²⁷ Although no court rule directly addresses it, an amicus brief in a Washington court could attach information admissible under the doctrine of judicial notice.²⁸

Washington's requirement that an amicus cite to the record is not as restrictive as it sounds. Most public-policy arguments can be made without adding facts to the case — after all, if the public policy implicated by the case is so broad, it should not depend on the specific facts of the case at hand. Furthermore, as a practical matter, an amicus has very broad latitude to assert matters not always in the record. If an amicus abuses this latitude by attaching factual materials outside the record, the judge reading it is perfectly free to disregard the information. And the party on the other side is free to move to strike it.²⁹

Conclusion

Unlike the Loch Ness Monster, amicus briefs have evolved. Now they are a powerful tool for those — on both sides of an important public-policy issue — who seek to affect the law. Amicus briefs help courts understand a complicated issue and, by describing the ramifications of the case on everyday citizens, broaden the scope of the court's analysis.

Mr. Overstreet has written numerous amicus briefs and serves on WSBA's Amicus Curiae Brief Committee. He is of counsel in the Olympia office of Perkins Coie LLP, where he practices regulatory litigation. His e-mail address is overg@perkinscoie.com.

NOTES

1. Michael K. Lowman, Comment, *The Litigating Amicus Curiae: When Does the Party Begin After the Friends Leave?*, 41 Am. U. L. Rev. 1243, 1243-44, nn. 4 & 5, and 1247-56 (1992).
2. *Id.*, at 1244, n.5.
3. *Id.*, at 1245 (footnotes omitted).
4. 4 Am. Jur. 2d, *Amicus Curiae* § 6 (citations omitted).
5. Mark H. Adams, "Amicus Curiae on Appeal," 41 *Washington State Bar News* 7 (July 1987), at 34 [hereinafter "Adams"].
6. See generally Joseph D. Kearney & Thomas W. Merrill, *The Influence of Amicus Curiae Briefs on the Supreme Court*, 148 U. Pa. L. Rev. 743 (2000) (describing increasing use of amicus

briefs in the U.S. Supreme Court).

7. The following figures show the steady increases — 1960: 6.5 percent; 1970: 7.7 percent; 1980: 16 percent; 1990: 22 percent; 2000: 27 percent.
8. The author of this article was the primary author of the "strange bedfellows" amicus brief.
9. See e.g., Charles H. Sheldon, *A Century of Judging: A Political History of the Washington Supreme Court* (1989) (describing many judges' feelings of isolation from outside the legal community).
10. Kathryn Kolbert, *The Webster Amicus Curiae Briefs: Perspectives on the Abortion Controversy and the Role of the Supreme Court*, 15 Am. J. L. & Med. 153, 155 (1989).
11. The case was *O'Connor v. DSHS*, 143 Wn.2d 895, 25 P.3d 426 (2001).
12. For a general book on amicus briefs, see Reagan W. Simpson, *The Amicus Brief: How to Write It and Use It Effectively* (1998). See also Adams, *supra*, note 5.
13. RAP 10.6(a).
14. RAP 10.3(e).
15. "A person may be granted leave to appear as Amicus Curiae where he or she has no right to intervene and participate as a formal party in the suit." 4 Am. Jur. 2d, *Amicus Curiae* § 5 (citations omitted). Even when an amicus has standing to intervene as a party, amicus status is often the preferred method of presenting the amicus's concerns to the court. See *id.* One of the advantages of being a mere amicus is that the judgment in the case does not bind an amicus, whereas a judgment would bind a party who intervened.
16. *Noble Manor Co. v. Pierce County*, 133 Wn.2d 269, 272, n.1, 943 P.2d 1278 (1997).
17. RAP 10.1(e) & 10.6. The required components of an amicus brief are laid out in RAP 10.3(e). Interestingly, an appellate court can request a person to file an amicus brief if it thinks it needs additional information. RAP 10.6(c). This is extremely rare. It probably reflects the old role of an amicus: a scholar opining on a complicated issue to aid the court, not one of the parties.
18. Since almost all motions and briefs are filed simultaneously, the following analysis of briefs includes the motions accompanying them.
19. RAP 10.2(f). What if there is no oral argument? An appellate court can dispense with oral argument. RAP 11.6. The Supreme Court almost never does so, while the Court of Appeals will do so only rarely, in the most clear-cut cases. It is unclear when an amicus brief is due if a court dispenses with oral argument. However, even when it declines to hear oral argument, an appellate court will inform the parties of the date the panel will consider the case; this would probably be a substitute date for oral argument and therefore should govern the due date of the amicus brief.
20. RAP 10.1(e). The time to answer an amicus brief is extremely short: five days after receipt of the brief. RAP 10.6(d). In addition to answering the amicus brief, a party can object to the filing of an amicus brief. *Id.*
21. RAP 11.2(b). The party supported by the amicus will often agree to yield some of its time. Oral argument by an amicus is uncommon but

not unheard of, at least in the Supreme Court.

22. RAP 10.8. A statement of additional authorities is a notification to the court, in between the briefing deadline and the decision, that a new case or statute affects the outcome of the case.
23. 4 Am. Jur. 2d, *Amicus Curiae* § 11 (citations omitted).
24. RAP 1.1(a).
25. No local rules for superior, district or municipal courts addresses amicus briefs. However, at least one administrative tribunal, the Growth Management Hearings Board, explicitly allows amicus briefs. WAC 242-02-280 (2001).
26. RAP 10.3(e) (incorporating by reference RAP 10.3(a), which requires citation to the record).
27. See U.S. Supreme Ct. R. 37. See generally *Moore's Federal Practice*, ch. 537 (discussing U.S. Supreme Ct. R. 37); *id.*, ch. 329 (discussing Fed. R. App. P. 29).
28. ER 201 (governing "adjudicative facts"). Even without ER 201, a court can take judicial notice of "legislative" facts. For a discussion of "adjudicative" and "legislative" facts, see Karl B. Tegland, *Courtroom Handbook of Washington Evidence*, at 191-93 (2001). See *State v. CPC Fairfax Hospital*, 129 Wn.2d 439, 453-54, 918 P.2d 497 (1996) (rejecting motion to strike appendices to amicus brief because they contained "legislative facts"). See generally *Wyman v. Wyman*, 94 Wn.2d 99, 102-03, 615 P.2d 452 (1980) (describing judicial notice of legislative facts); *State v. Balzer*, 91 Wn. App. 44, 58, 954 P.2d 931 (1998) (same); Tegland, 5 *Washington Practice* § 201.17 (4th Ed. 1999) (same).
29. RAP 10.6(d).

Alternative Dispute Resolution

James A. Smith, Jr.

Mediation, Arbitration,
Early Neutral Evaluation
and
Case Assessment

Years of experience and
proven effectiveness as both a trial
attorney and a neutral. Emphasizing
resolution of complex/multi-party
commercial and tort disputes.

AAA Commercial and
LCCP Arbitrator;
Chairman, FBA ADR Committee
Member ABA,
Washington State and
King County Bar Association
ADR Sections

Smith & Hennessey PLLC
The Burke Building, Suite 500
316 Occidental Avenue South
Seattle, Washington 98104
Telephone 206-292-1770
e-mail: jsmith@smithhennessey.com

Welcome to the New WSBA Governors

by Allison L. Parker

Robert M. Boggs, 4th District

Mr. Boggs began his law career as a deputy prosecutor in Ephrata. Since 1982 he has practiced with the Yakima firm Lyon, Weigand and Gustafson, where he is now a shareholder and primarily represents Central Washington school districts. Mr. Boggs is a member of the Washington Council of School Attorneys, Washington Defense Trial Lawyers Association, Washington State Trial Lawyers Association, Yakima County Bar Association, and John Gavin American Inns of Court.

Carl J. Carlson, 7th-Central District

Mr. Carlson practices commercial litigation with the Seattle firm Carlson & Fabish. His WSBA service includes working as a fee arbitrator and a special disciplinary counsel, and serving on the Rules of Professional Conduct Committee and the President's Initiative Task Force. Mr. Carlson also serves as a cooperating attorney with the Northwest Women's Law Center, and is on the board of directors of the Resource Center for the Handicapped. He recently completed a three-year term on the King County Bar Association board of trustees.

Bryce H. Dille, 9th District

A partner in the firm Campbell, Dille, Barnett, Smith and Wiley, Mr. Dille has engaged in general practice in Puyallup since 1968. He has been actively involved in local and state bar activities, including serving as WSBA special district counsel, and as a member of the WSBA CLE and Legislative committees. He recently completed a three-year term on the WSBA Disciplinary Board. Mr. Dille served as president of the Puyallup Valley Chamber of Commerce and the Puyallup Valley Daffodil Festival.

Zulema Hinojos-Fall, At-large

Ms. Hinojos-Fall is an administrative law judge for the Equal Employment Opportunity Commission. She was born in Mexico, moved to the U.S. at age 10, and has traveled, lived and worked extensively in Europe and Asia. Committed to public service, she has been on the boards of Children's Alliance and the Northwest Women's Law Center, and has volunteered with Leadership Tomorrow, the YWCA Young Women's Leadership Institute, and the University of Washington Professional Mentor Program.

Jon E. Ostlund, 2nd District

Mr. Ostlund has practiced law in Bellingham since 1974. For the last 19 years, he has been the Whatcom County public defender. Mr. Ostlund is a board member for the Washington Defenders Association and the Washington Association of Criminal Defense Lawyers. He served two terms on the Washington State Sentencing Guidelines Commission and has been actively involved in legislative matters on behalf of criminal defense lawyers. He is currently a member of the Whatcom County Law and Justice Commission and the Whatcom County Commission Against Domestic Violence.

David W. Savage, At-large

Mr. Savage is a shareholder and president of the Pullman firm Irwin, Myklebust, Savage & Brown, which he joined in 1973. He is a member and immediate past chair of the WSBA Court Rules Committee, and serves as a hearing officer for the WSBA Disciplinary Board. In 1995, Washington Governor Mike Lowry appointed him to the Walsh Commission to study and recommend procedures for judicial election reform. Locally, Mr. Savage is active in the Pullman United Way, Pullman High School Mentor Program, and the Pullman Chamber of Commerce.

A black and white photograph of a hand holding a die, positioned on the left side of the advertisement. The die is held between the thumb and index finger, with the other fingers curled. The die is a standard six-sided die, and the top face is visible, showing a one. The background is dark and out of focus.

Are you rolling
the dice on your **firm's
future?**

Chances are, you've taken some steps to protect your practice from the financial devastation a lawsuit can bring. *But have you done enough?*

Don't bet on it. These days, even the most careful attorneys can be sued for malpractice.

The Washington State Bar-sponsored Professional Liability Program can help. Our team of insurance professionals has designed a professional liability insurance policy to meet the needs of your practice.

Don't gamble with your firm's future.

Call today for FREE
INFORMATION.

Pamela Blake – 1-800-552-7200, ext. 7802
or
John Chandler – 1-800-552-7200, ext. 7804

Protecting
those who
represent
others.

Underwritten by:
American National
Fire Insurance Company

Sponsored by:



WSBA

Administered by:

SEABURY & SMITH

Changing Venues

Correction: The October issue of *Bar News* incorrectly stated that Roger A. Felice has been selected to serve as president-elect of the Washington State Trial Lawyers Association (WSTLA). Further, Steven G. Toole was identified as the new president of WSTLA. In fact, Mr. Felice is the current WSTLA president, and Mr. Toole is president-elect. *Bar News* apologizes for these errors.

Honors and Awards

Washington Defense Trial Lawyers presented **Michael H. Runyan** with the Jack P. Scholfield Outstanding Achievement Award in recognition of his outstanding loyalty, leadership, commitment and support for the goals and objectives of the civil defense trial bar. Mr. Runyan is a partner and co-chair of the commercial litigation department in the Seattle office of Lane Powell Spears Lubersky LLP.

Donald S. Cohen has been honored as Citizen of the Year by the City of Mercer Island. He was recognized for his service as a 10-year member of the city's planning commission, including five years as chair. Mr. Cohen works in the Seattle office of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim PLLC.

Sohee Ahn has been elected secretary, and **Elizabeth C. Chambers** has joined the board of directors of the King County Sexual Assault Resource Center.

Barry M. Kaplan, a partner with Perkins Coie, has joined the board of directors of Legal Aid for Washington (LAW) Fund.

The Bainbridge Island Kiwanis Club has honored **Lawrence R. Mills** as Bainbridge Citizen of the Year. He was chosen for his charitable work and fundraising on behalf of several Bainbridge Island causes. Mr. Mills is a partner in the Seattle firm Mills Meyers Swartling.

King County Superior Court Judge **Donald D. Haley** and Seattle lawyer **Payton Smith** have been elected fellows of the American Bar Foundation, in recognition of outstanding dedication to the



Bayley



Higby



Burnett



Findlay

welfare of their communities and to the highest principles of the legal profession.

Nine lawyers in the Seattle office of Cozen O'Connor were named "Superlawyers" by *Washington Law & Politics* magazine. They are **Richard F. Allen**, **William L. Black**, **J.C. Ditzler**, **Curt E.H. Feig**, **John A. Granger**, **Thomas M. Jones**, **Jodi A. McDougall**, **Christopher W. Nicoll** and **Timothy J. Tompkins**.

The Spokane County Bar Association Volunteer Lawyers Program honored the following lawyers for outstanding pro

of large projects.

Robert C. Hahn has been named partner in the Spokane firm now known as Raugust & Hahn PLLC. He practices in the areas of bankruptcy, personal injury and immigration.

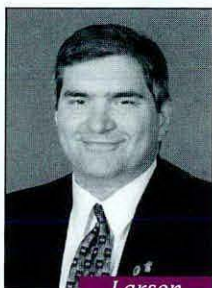
Frank Abramonte has become a partner in the Seattle firm Seed I.P. Law Group. He is a member of the firm's electrical engineering group, and his practice emphasizes domestic and foreign patent prosecution in electrical, software and electromechanical engineering.



Abramonte



Kleisle



Larson



Lehr



Mickey

bono service: **Mary P. Chavez**, **J. Steve Jolley**, **Paul L. Kirkpatrick**, **Ian Ledlin**, **William T. Mableson**, **Edith M. Martinez**, **Linda D. O'Dell**, **Kevin D. O'Rourke** and **Juliana C. Repp**.

Movers and Shakers

Michael J. Bayley and **Vicky L. Higby** have joined the Spokane office of Paine, Hamblen, Coffin, Brooke & Miller LLP as associates. Mr. Bayley's practice emphasizes estate planning, trust and probate administration, and estate taxation. Ms. Higby practices general litigation.

R. Alan Burnett has joined the Seattle office of Lane Powell Spears Lubersky LLP as an associate focusing on aircraft finance. **J. Duncan Findlay** has joined the firm as a partner. He concentrates on the business operations of design professionals, emphasizing loss prevention practices, financial operations, and contracting for the design

Laura Kleisle, **David A. Larson**, **Susan E. Lehr** and **Darryl V. Wareham** have joined the Seattle office of Williams, Kastner & Gibbs PLLC. Ms. Kleisle, an associate, focuses on construction litigation including design professional malpractice and construction-defect disputes. Mr. Larson is of counsel to the firm, and emphasizes the litigation and mediation of construction defect, personal injury, and insurance coverage issues. Ms. Lehr is also of counsel, and she represents clients in the areas of securities, business transactions, tax, corporate and real estate law. Mr. Wareham is an associate focusing on land use, environmental and water law.

Kevin W. Mickey has joined Etter, McMahon, Lamberson & Clary PC in Spokane as an associate. His practice includes civil litigation, small-estate planning, and creditor representation in bankruptcy.

Robert King and **Jean C. Seidler** have

joined Ryan, Swanson & Cleveland as associates in the Seattle firm's litigation group. Mr. King focuses on commercial litigation, and Ms. Seidler focuses on employment litigation.



Batchelor

Wendy L. Rocke has joined Preston Gates & Ellis as an associate in the Seattle office. She is developing a practice in trusts and estates.

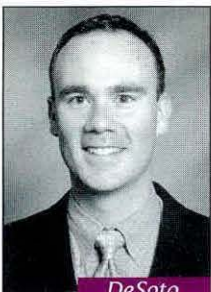
Paul R. Willett has joined Short Cressman & Burgess in Seattle. He is of counsel, and is a member of the firm's business and taxation practice section where he concentrates on estate planning, probate and trust administration, and general business representation.

L. John Iani has been appointed Seattle regional administrator for the U.S. Environmental Protection Agency. He supervises the enforcement of air, water and pollution cleanup laws in Washington, Oregon, Idaho and Alaska.

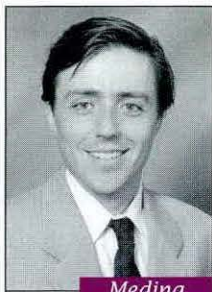
Wendy J. Batchelor has joined the Seattle office of Foster Pepper Schefelman as of counsel. Ms. Batchelor focuses on intellectual property, including copyright, trademarks, data protection and privacy, licensing issues, and international joint ventures. **Brian D. DeSoto**, **Kol W. Medina**, **Alice M. Ostdiek**, and **Ramsey E. Ramerman** have joined the firm as associates. Mr. DeSoto focuses on creditors' rights and bankruptcy. Mr. Medina concentrates on real estate, land use and estate planning. Ms. Ostdiek's practice focuses on municipal law and public finance. Mr. Ramerman practices commercial litigation.

In Memoriam

Pierre Gianni, of Bellevue, died August 25 at age 53. He was a partner with his wife, Monica Gianni, in The Gianni Law Firm PLLC. He previously worked as an international tax and legal consultant for the U.S. government, CPA firms in the U.S. and Africa, and a major law firm and international corporation in Paris. A native of Corsica, France, Mr. Gianni received degrees in law and political science from the University of Aix-en-Provence in France.



DeSoto



Medina

He also received an LL.M. in taxation from the University of Washington.

Ellensburg lawyer **David A. Pitts** died August 3 at age 60. In addition to practicing law, Mr. Pitts taught political science at Central Washington University, worked as a campaign manager and speech writer for Don Bonker and Booth Gardner, and served as a research analyst for Congressman Brock Adams. He served on the Central Washington University board of trustees for seven years, and on the Department of Fisheries' Salmon Advisory Council for three years. Memorials may be made to APOYO (111 Peavine Road, Ellensburg, WA 98926) or Ducks Unlimited (1 Water-



Ostdiek



Ramerman

fowl Way, Memphis, TN 38120).

Lifelong Oak Harbor resident and devoted Husky football fan **Theodore D. (Ted) Zylstra** died September 12 at age 67. He practiced law on Whidbey Island from 1957 until his retirement last year from Zylstra, Beeksmas & Waller. Mr. Zylstra served on the WSBA Board of Governors from 1983 to 1986, and was a member of the American Bar Association, American Trial Lawyers Association, and Island County Bar Association. He also served as president of the North Whidbey Chamber of Commerce, Oak Harbor Jaycees, Oak Harbor Rotary Club, and Oak Harbor Navy League. ☐



IMMIGRATION LAW GROUP

MacDonald, Hoague & Bayless

Protecting and Advancing the Rights of Immigrants for Nearly 50 Years

1500 Hoge Building • 705 2nd Avenue • Seattle, WA 98104-1745
www.mhb.com • (206) 622-1604 • (206) 343-3961 FAX

Seated: Lourdes Fuentes, Kay Frank, Frank Retman.
 Standing: Felicia Gittleman, Ester Greenfield, Dan Smith, Kevin Lederman,
 Kristen Kussmann, Julia Devin, Bob Free, Bonnie Stern Wasser.

Washington's Lawyer Discipline System

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

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

This article describes the organization and operation of the Washington lawyer discipline system. A previous article described what happened in that system during the year 2000. See, Barrie Althoff, "Lawyer Discipline: 2000 Summary Report," *Washington State Bar News* (May 2001, p. 44). A subsequent article will explain how disciplinary sanctions are determined and imposed.

Authority and Purpose

The Washington State Supreme Court has exclusive jurisdiction within Washington for the administration of the lawyer discipline system governing Washington lawyers. Pursuant to its Rules for Lawyer Discipline, the Supreme Court has delegated the administration and operation of that system to the Washington State Bar Association (the Bar), although it has reserved to itself the ultimate authority to suspend or disbar lawyers from the practice of law. With a few exceptions, lawyers practicing law in Washington must be members of the Bar and are thus subject to the Rules for Lawyer Discipline.

The mission of the Bar is to promote justice and to serve its members and the public. One of the ways it does this is by administering and operating the lawyer discipline system on behalf of the Washington State Supreme Court. This system provides a forum and procedures whereby complaints about a lawyer's conduct can be fairly and objectively investigated and, where appropriate, prosecuted through a public hearing.

The lawyer discipline system protects the public by holding lawyers accountable

for their ethical misconduct. The system is complementary to, and not a substitute for, any civil right of action that a consumer might have against a lawyer, and any criminal cause of action that might accrue because of the lawyer's conduct.

Aside from the discipline system, the Supreme Court and the Bar also protect and assist the public through the Bar's operation of a voluntary fee-arbitration program and a mediation program to resolve disputes between lawyers and others. Various other programs exist to help lawyers better serve their clients by maintaining their professional competence, by managing their practices, and by dealing with problems that arise in their lives.

The lawyer discipline system protects the public by holding lawyers accountable for their ethical misconduct.

Structure and Funding

Although the Washington State Supreme Court has delegated the responsibility for operating the lawyer discipline system to the Bar, the Court supervises and retains authority over that system. The Bar fulfills its duty to oversee and operate the system through various boards, committees and staff.

The Bar's Board of Governors (mostly elected by the members of the Bar), together with its president (elected by the Board of Governors), supervise and oversee the general functioning of other participants in the system, provide resources to operate the system, and appoint and remove certain staff and volunteers in the lawyer discipline system.

The supervision and oversight responsibilities for the lawyer discipline system are fulfilled largely through the Discipline

Committee of the Board of Governors, through the Bar's executive director, and through periodic reports from and meetings with others involved in the discipline system. Neither the Board of Governors nor the executive director are involved in individual adjudicative decisions.

The Board of Governors funds the lawyer discipline system through Bar members' annual licensing fees, about 50 percent of which are applied to the costs of that system. The 1999-2000 fiscal-year expenditure of \$3,122,472 for lawyer discipline and trust-account audits was thus paid for solely by lawyer members of the Bar, without the application of any public tax revenues or other public funds. The

2000-2001 fiscal-year budget for lawyer discipline and trust-account audits is \$3,186,747. In addition, the Bar operates a client security fund, funded by annual assessments on each lawyer, which makes gifts (approximately \$208,000 in 2001) to client applicants who have been damaged by their lawyers' dishonesty or failure to properly account for money or property entrusted to them.

Separation of Investigative/Prosecutorial and Adjudicative Functions

Although the lawyer discipline system is operated within the Bar, and although the Bar's executive director, under the direction of the Bar's Board of Governors, employs all Bar staff, the Bar has clearly separated the investigative and prosecutorial functions from the adjudicative functions.

Investigative and Prosecutorial Functions. The Bar's Office of Disciplinary Counsel (ODC) receives, investigates and prosecutes allegations of ethical misconduct ("grievances") by Washington lawyers to determine whether the alleged misconduct should have an impact on the lawyer's

license to practice law. In effect, the ODC is the statewide complaint bureau and prosecutor for ethical complaints against Washington lawyers.

The ODC is headed by the director of lawyer discipline/chief disciplinary counsel. Reporting to the director are the associate director of lawyer discipline, whose primary responsibility is to oversee case management of investigations and prosecutions; four managing disciplinary counsel, who carry active caseloads and oversee the intake team and the three investigation/prosecution teams; and 13 disciplinary counsel (several of whom work on a part-time basis), three investigators, four paralegals, two legal assistants, four secretaries, a file clerk and a docket assistant.

Disciplinary counsel are sometimes assisted in their investigations by "special district counsel," volunteer lawyers appointed by the Bar's Board of Governors with authority to investigate, but not prosecute, cases. Special district counsel are assigned by the chief disciplinary counsel to assist disciplinary counsel on individual cases as needed. In certain cases, often those involving possible conflicts of interest, the Bar's executive director may appoint a nonstaff lawyer as a "special disciplinary counsel" with the authority to both investigate and prosecute specific cases.

In receiving grievances about lawyers, the ODC's role is that of an impartial investigator. At the same time, it seeks to educate consumers and lawyers on the ethical duties of lawyers and, where possible, to resolve informally possible disagreements as to those duties. The ODC's Consumer Affairs team regularly meets with potential grievants, both by telephone and in person, before grievances are filed, to explain the jurisdiction of the ODC, what the potential grievant can reasonably and realistically expect from filing a grievance, and the extent of a lawyer's ethical duty. The expectation is that this will both better educate the public as to the lawyer discipline system and reduce the number of grievances being filed.

The ODC maintains an active informal mediation program to deal with very common and frequent (a) disputes over who owns and has a right to possession of the file created and maintained by a lawyer

when representing a client, and (b) noncommunication problems between a lawyer and a client. If these informal mediations are unsuccessful, the clients or ex-clients often file formal disciplinary grievances against the lawyers, especially if the conduct has been repeated. The informal handling of these matters by the ODC has resulted in fewer formal grievances being filed in these areas.

File disputes often arise when a dissatisfied client seeks a new lawyer but has not paid the former lawyer. The former

lawyer then seeks to be paid by not delivering the file needed by the new lawyer. When the ODC is contacted in this situation, rather than opening a grievance against the lawyer in custody of the file, a paralegal from the ODC will usually promptly contact the client and lawyer(s) (by fax and/or telephone) to determine the facts, make available to them the relevant ethical rules, and suggest solutions on how to resolve the dispute in a manner satisfactory to all persons. Noncommunication problems usually are resolved by a simple


Not Seeing Eye to Eye?

Here's an eye-opening fact. Often, all it takes to stop unblinking foes from seeing red is some timely mediation.

That's why more and more companies are turning to the mediation experts at the American Arbitration Association.

Through our network of 37 offices, experienced AAA mediators add significant value to the negotiation process because of their industry-specific expertise. Successfully assisting the parties in resolving even the most complex disputes, our "client-proven" mediators are respected for their commitment to keeping the mediation process fair, cost-effective and private.

For more information about mediation experts who can help even the most shortsighted adversaries see past their differences, call us in Seattle at 1-800-559-3222 or visit us at www.adr.org.

 American Arbitration Association
Dispute Resolution Services Worldwide

letter or telephone call to the lawyer from the ODC.

The Consumer Affairs team of the ODC annually handles nearly 10,000 telephone calls and numerous in-person meetings, and provides thousands of information sheets on law-practice areas and grievance procedures. Team members typically listen to a grievance, suggest possible ways to resolve the problem informally, explain the Bar's disciplinary jurisdiction and grievance procedures (and, if applicable, the Bar's voluntary fee-arbitration and

mediation programs), and suggest other resources or services that may be helpful in resolving the matter. In some cases a grievant may at that time file a grievance. If the grievant is unable to complete the grievance form because of disability or language problems, the staff attempts to provide reasonable assistance to the person or to refer the person to other resources where assistance may be found.

The ODC also operates an active lawyer discipline prevention program by speaking annually at more than 70 con-

tinuing legal education and other programs, and writing and publishing various articles relating to lawyer ethics, discipline and professionalism.


Adjudicative Functions. The final adjudicative authority in the lawyer discipline system is the Washington State Supreme Court. Other persons and entities involved as adjudicators in the system include the Disciplinary Board, the review committees that make up that board, hearing officers, and Bar staff who support these entities.

The Disciplinary Board is made up of 14 members — 10 lawyers appointed by the Bar's Board of Governors, and four nonlawyers appointed by the Washington State Supreme Court. Two of the lawyers serve as chair and vice-chair, respectively, of the Disciplinary Board; the other 12 members break into four groups with each group comprising a review committee, each consisting of two lawyers and one nonlawyer.

The four three-person review committees serve as gatekeepers to public disciplinary hearings in the lawyer discipline system — first, to consider appeals by grievants of grievances dismissed by disciplinary counsel, and second, to consider recommendations by disciplinary counsel for public hearings of lawyer discipline matters.

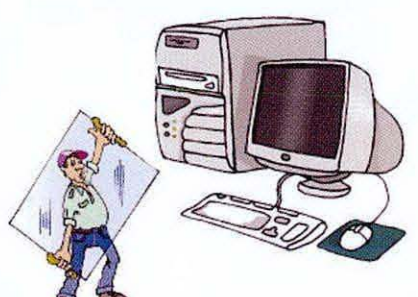
The Disciplinary Board itself serves primarily as an appellate court in the lawyer discipline system, hearing appeals of hearing-officer decisions, reviewing all hearing-officer recommendations for suspension or disbarment, and approving or disapproving all proposed stipulations to discipline in lieu of public disciplinary hearings.

The Disciplinary Board also monitors the performance of the volunteer hearing officers who act as trial court judges in the lawyer discipline system. Hearing officers hear evidence and argument, enter findings of fact and conclusions of law, and make recommendations to the Disciplinary Board for disposition of the matter. Hearing officers are appointed by the Board of Governors, and are then assigned to specific cases by the chair of the Disciplinary Board. The Disciplinary Board is assisted by Bar staff (independent from the staff that supports the ODC), includ-



**Make Your
Family Law
Cases Easier**

Announcing.....



SupportCalc/FD[®] 2001 Windows Edition

**The Same Accurate Software Everyone Trusts
Now Even Easier to Use!!**

SupportCalc[®]

The quick, easy and ACCURATE way to calculate child support!

In use by over 800 law firms (over 1200 attorney users), Office of Support Enforcement, most Superior Courts, the Attorney General's Office, Administrative Law Judges, Appeals Judges, many non-profit organizations, and all 3 Law Schools in the State of Washington.

Easy to Use

SupportCalc[®]/FD 2001 breaks your case down into easy-to-follow, easy-to-use input screens. **SupportCalc[®]/FD 2001** has tabbed screen views for easy navigation. Next and previous buttons and a navigation bar make moving about the program easy! **SupportCalc[®]/FD 2001** is designed to work the way you do. Features like: Print Preview, Enhanced Printer Support, Cut, Copy, Paste, Undo, and More....make using **SupportCalc[®]/FD 2001** a snap!

Gives You Confidence As You Represent Your Client

SupportCalc[®]/FD 2001 was carefully designed to easily and accurately compute child support. Just enter a few facts and **SupportCalc[®]/FD 2001** gives you the child support amount you need for your case.

Financial Declaration

SupportCalc[®]/FD 2001 quickly and accurately produces the Financial Declaration, including taking care of all tedious calculations for you. **SupportCalc[®]/FD 2001** even allows you to add a graphical logo to your firm footer! Combining **SupportCalc** with a way to produce the mandatory Financial Declaration just makes sense. **SupportCalc[®]/FD 2001** uses your existing **SupportCalc** information files to produce the Financial Declaration. Saves you time and needless duplication.

How can you live without it?

Order Today!!

*Complete Family Law Case
Production Software Available
Ask about Forms+Plus!!

1-800-637-1260

**We know you'll love it!
30 day Money Back Guarantee**

PO Box 9759 Seattle, WA 98109 (206) 286-3600 1-800-637-1260 www.legalplus.com

44 Washington State Bar News • NOVEMBER 2001

ing an assistant general counsel and a clerk to the Disciplinary Board.

Handling of Grievances, Investigations and Prosecutions

Grievances. Grievances arise in all areas of law, but most frequently in family and criminal law cases, personal injury cases, real property and trust/estate cases, and litigation cases. They range from simple noncommunication or improper withholding of a client file from a client, to serious misconduct such as theft of client funds, material misrepresentations to clients or courts, or sexual or physical assaults.

Because the disciplinary system exists for the protection of the public and to assure the integrity of the Bar, the system is structured to encourage anyone believing a lawyer has engaged in unethical conduct to communicate that belief to the Bar. Thus, anyone may be a grievant. Grievants are most frequently clients, former clients, judges, opposing parties, opposing counsel, otherwise concerned members of the public, or the Bar itself. There is no requirement that the grievant have any legal "standing," nor are there any filing fees or statutes of limitation for filing a grievance.

Grievances must be written. When a grievance is received, it is analyzed to determine whether it should be investigated, referred to a more appropriate forum, or dismissed. A copy of the grievance is usually sent (stamped "confidential" on the envelope) to the lawyer for response to disciplinary counsel. Some grievances which disciplinary counsel believe do not require a lawyer's response, however, are dismissed immediately, with a copy of the grievance and the dismissal letter sent to the lawyer simply for the lawyer's information. For example, grievances alleging misconduct by a lawyer which, even if the facts were as alleged would not be an ethical violation, are usually dismissed in this manner.

Other grievances may be more appropriate for referral. For example, fee disputes are generally referred to the Bar's voluntary fee-arbitration program, while disputes between lawyers and other professionals are often referred to the Bar's voluntary mediation program. Although the Washington lawyer disciplinary sys-

tem has concurrent jurisdiction with the Washington Commission on Judicial Conduct over alleged ethical violations by Washington lawyers who are judges, submissions to the ODC alleging such misconduct are generally not opened as grievances, but are instead initially referred to the commission for primary consideration.

If a grievance raises the same or substantially the same issues being considered in other civil or criminal litigation, the ODC will usually defer acting on the grievance until the other litigation is resolved.

This deferral is pursuant to policies enunciated by the Bar's Board of Governors and the Washington State Supreme Court. Deferral prevents Bar resources from being used to investigate private disputes and assures that the ODC's actions do not impede other civil or criminal investigations.

Grievances alleging ineffective assistance of counsel in criminal proceedings are, like other grievances, each considered individually, but most are dismissed unless there has been a judicial finding of impropriety. Upon such a finding, the allegations will generally be investigated to

Don't let an appeal catch you off balance.

Whether you're thinking about appealing or you're forced to defend an appeal, the wrong move may be costly. John Mele has the experience to analyze the merits of any appeal and to handle an appeal at any stage. He has appeared before all levels of federal and state appellate courts, is available for consultation, briefing and argument, and will consider a variety of fee arrangements.



JOHN P. MELE

LAWYERS

RYAN, SWANSON & CLEVELAND, PLLC

1201 Third Avenue, Suite 3400
Seattle, WA 98101-3034

Telephone (206) 464-4224 / Facsimile (206) 583-0359
www.ryanlaw.com / E-mail: mele@ryanlaw.com

WASHINGTON DEFENSE TRIAL LAWYERS



SINCE 1962

Defense Lawyers Fighting For Justice In Civil Courts

- 800 civil defense attorney members statewide
- Substantive sections including: Employment, Products, Workers' Compensation, Insurance, Community Service, Professional Liability and Ethics, Construction
- Committees including: Amicus, Legislative, New Lawyer, Technology, Seminar
- *Defense News* featuring substantive articles on current case law and verdicts.
- Legislative representation for issues that impact defense attorneys and the rights of all people and organizations who are sued in court.
- Web page at www.wdtl.org offering "member only" area, seminar information and monthly litigation case reviews.
- Ten seminars annually held in Seattle, Vancouver, Yakima, Spokane, Whistler and Phoenix.
- Free lunchtime CLE programs for New Lawyers, practiced 7 years or less.
- Member luncheons, dinners and judicial receptions



For membership information, contact Nora Tabler at (206) 521-6559 or email to: info@wdtl.org

determine whether the conduct in question rises to the level of ethical misconduct which should subject the lawyer to discipline.

Investigations. If it is determined that investigation of a grievance is warranted, the grievance is assigned to a disciplinary counsel for investigation. With certain exceptions, the Supreme Court's Rules for Lawyer Discipline require that Bar staff and agents, but not grievants or the lawyer against whom the grievance is filed, maintain the confidentiality of disciplinary investigations. Thus, while grievants and respondents generally may freely and publicly discuss a grievance, the Bar generally may not comment on or even acknowledge the existence of a grievance until it becomes public information pursuant to the Rules for Lawyer Discipline.

Following investigation, a grievance may be dismissed, recommended for public hearing, or negotiated for resolution by stipulation with a respondent lawyer.

If disciplinary counsel determines to dismiss a grievance, counsel does so by a letter addressed to the grievant and the respondent lawyer which summarizes the grievance, identifies the alleged ethical issues, and analyzes the grievant's allegations under the Rules of Professional Conduct and Rules for Lawyer Discipline. A grievant may request a review committee to review the propriety of the dismissal. Upon such a request, disciplinary counsel, regardless of any belief or lack of belief in the merit of the grievance, has only two choices: either re-open the investigation or submit the request for review to a review committee. If disciplinary counsel does not re-open the investigation, it must send the request for review to a review committee even if disciplinary counsel continues to believe the grievance should be dismissed.

If disciplinary counsel determines not to dismiss a grievance, disciplinary counsel so advises the grievant and the respondent lawyer by letter. The letter summarizes the grievance, identifies the alleged ethical issues, analyzes the lawyer's alleged misconduct, and provides a summary analysis of the estimated likely range of

sanction if the alleged misconduct were proven. The letter and any responses to it from the grievant or the respondent lawyer are then transmitted as an investigation report to a review committee. A confidential investigation by the ODC generally becomes public information when an investigation report recommending that a public hearing be held or that an admonition be issued is transmitted to a review committee.

Review Committees. All submissions to a review committee are entirely by docu-

Grievants are not parties to the disciplinary proceeding, but instead may serve as witnesses in a manner somewhat similar to a witness in a criminal proceeding.

ment presentation with no oral presentations made by disciplinary counsel, respondent, grievant or their counsel.

A review committee has several options as to reports submitted to it by disciplinary counsel and as to dismissed grievances appealed to it by grievants. The committee can (1) dismiss the grievance outright, (2) dismiss the grievance with a confidential nonpublic "advisory letter" advising the lawyer on how to improve his or her practice to adhere more clearly to the ethical requirements, (3) issue a public admonition to the lawyer, or (4) order the matter to a public hearing.

If a review committee dismisses a grievance, or rejects a grievant's appeal of disciplinary counsel's dismissal of the grievance, the grievant may appeal the decision to the chair of the Disciplinary Board, who may in turn refer the matter to the Disciplinary Board. The chair's (or board's) decision on whether or not to dismiss the grievance is final.

Prosecutions. If a review committee orders a public disciplinary hearing to be held on whether a lawyer's conduct constitutes an ethical violation, the ODC then drafts a formal complaint which is somewhat like a civil complaint initiating a private lawsuit or a criminal charging document specifying the violations alleged. If

multiple grievances against a lawyer are ordered to a hearing, they are usually consolidated into a single formal complaint and a single hearing. The formal complaint is then filed with the Disciplinary Board, and all further proceedings are generally public. After the formal complaint is filed, the lawyer responds to the complaint, discovery may be conducted, and a public hearing is held in a manner somewhat similar to an administrative proceeding.

The filing of the formal complaint formally commences the public disciplinary proceedings. The parties to the disciplinary proceeding are the Bar (through the ODC) and the respondent lawyer against whom the grievance was filed. Grievants are not parties to the disciplinary proceeding, but instead may serve as witnesses in a manner somewhat similar to a witness in a criminal proceeding.

Disciplinary hearings (other than those related to a lawyer's possible disability) are open to the public. At the hearing, the hearing officer hears evidence and argument, enters findings of fact and conclusions of law, and makes a recommendation to the Disciplinary Board for dismissal or for imposition of a disciplinary action.

Disciplinary Actions/Sanctions/Stipulations. Disciplinary "actions" include both disciplinary "sanctions" (each of which results in a permanent public disciplinary record) and admonitions (which result in a temporary public disciplinary record generally retained for only three to five years). An admonition is a disciplinary "action" (but not a disciplinary "sanction") issued to a lawyer for misconduct involving inattention, neglect, or lack of competence in handling a matter.

Disciplinary sanctions are, in order of increasing severity, censures, reprimands, suspensions and disbarments. A censure is a public written statement that describes the misconduct and censures the lawyer for the misconduct. A reprimand involves a similar public written statement, but in addition, the statement is personally read aloud to the lawyer in a nonpublic portion of a meeting of the Bar's Board of Governors. A suspension from the practice of law may be for any period of time

not to exceed two years, and may include conditions to be fulfilled by the lawyer. A disbarment revokes the lawyer's license to practice law, with a disbarred lawyer not being able to seek re-admission to the Bar sooner than five years after being disbarred. Only the Supreme Court may order a lawyer suspended or disbarred.

If a hearing officer recommends an admonition, censure or reprimand, and the recommendation is not appealed, the action is final. Decisions of hearing officers may be appealed to the Disciplinary Board. All hearing officer recommendations for suspension or disbarment of a lawyer are automatically reviewed by the Disciplinary Board and by the Supreme Court.

The Bar's Disciplinary Board reviews all recommendations by hearing officers for suspension and disbarment, and all stipulations to disciplinary action. It also serves as the appellate court for hearing appeals from the decisions of lawyer discipline system hearing officers. If the Disciplinary Board determines a lawyer should be suspended or disbarred, the determination is automatically reviewed by the Washington State Supreme Court;

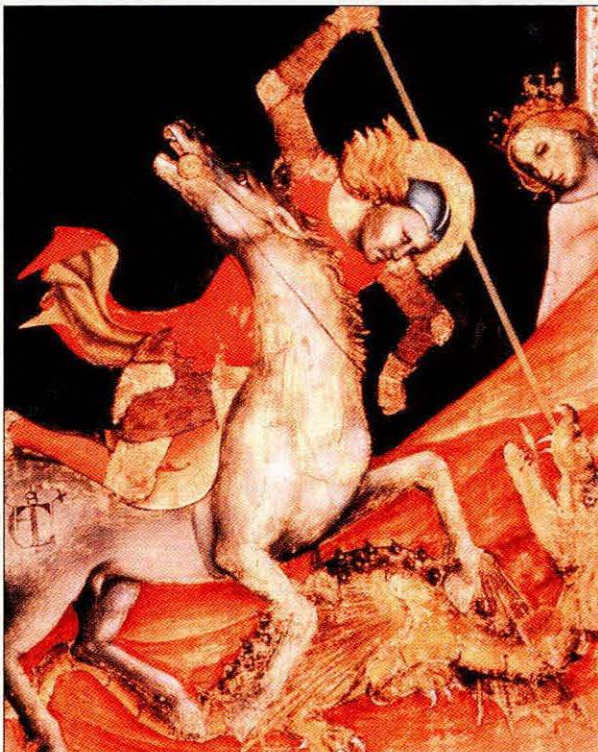
the Court may also, in its discretion, review other actions of the Disciplinary Board.

As an alternative to a public disciplinary hearing, a respondent lawyer may agree with disciplinary counsel to imposition of a specific disciplinary sanction or action. These agreements or stipulations are then submitted to the Disciplinary Board for approval, and, if approved, then become public. If the stipulation involves either suspension or disbarment, the stipulation goes to the Washington Supreme Court for its consideration and imposition of an appropriate order. The Court may, in its discretion, approve the stipulation or take such other action as it deems appropriate, including imposing a different sanction or dismissing the case. If the Disciplinary Board does not approve a stipulation, the stipulation remains confidential, and the matter either then proceeds to a public hearing or a new stipulation is negotiated.

Another alternative to formal discipline may be available if the alleged misconduct is "less serious misconduct," that is, conduct not involving misappropriation of client money, dishonesty, fraud, deceit or

misrepresentation; or serious injury to clients or conduct of the same type for which the lawyer has been previously disciplined. The ODC may divert such a case out of the formal discipline system into various alternatives. For this to happen, the lawyer must admit to the misconduct and sign a contract to do certain things outside the formal discipline system to address the misconduct. For example, the agreement may require the lawyer to agree to implement better office procedures, agree to arbitrate or mediate fee or other disputes, obtain counseling or treatment, take educational courses, or make restitution for injuries the lawyer has caused. If the lawyer satisfies the diversion contract, the disciplinary grievance is dismissed; if the lawyer does not satisfy the contract, the grievance is reinstated.

Occasionally, a lawyer with a pending disciplinary investigation or proceeding will seek to resign from the Bar rather than go through the disciplinary process. Under the Bar's bylaws, such a lawyer may resign only with the consent of the Bar's Board of Governors. If the disciplinary investigation or proceedings involve serious ethical misconduct, only very rarely will



BATTLING FOR JUSTICE.

Over the last 100 years, our Personal Injury Group has become known for taking on dragons and coming out on top. So if you're looking to refer a client to someone with the resources and experience to be a powerful advocate for individual rights, give us a call.

GORDON, THOMAS & HONEYWELL
MALANCA, PETERSON & DAHEIM
LAWYERS SINCE 1884
www.gth-law.com



that consent be given. Instead, the lawyer's option is to stipulate to the misconduct or complete the disciplinary process.

Proposals for Change

In early 2000, the Washington State Supreme Court and the Bar's Board of Governors jointly appointed the Discipline 2000 Task Force, composed of individuals with very extensive knowledge and experience in lawyer discipline. The full task force met 13 times, and its committees met more than 70 times, with all meetings open to the public. The task force focused on improving the effectiveness, fairness and efficiency of the procedures within the existing structure, since it believed that the structure of Washington's lawyer discipline system was sound and appropriate without need for major structural change. Thus, substantially all the description given above of Washington's lawyer discipline system would remain unchanged.

The Discipline 2000 Task Force submitted its report in July 2001 to the Bar's Board of Governors, which voted at its September 2001 meeting to adopt most of the task force's recommendations and submit them to the Supreme Court for possible rule adoption. Under normal Court rule-making procedures, the Court will likely publish the suggested rules for comment in January 2002. If the Court adopts them, they would likely become effective September 1, 2002.

Among the task force's recommended changes adopted by the board for submission to the Court are the following: (a) appoint a chief hearing officer and pay the appointee a small stipend; (b) authorize hearing officers to approve stipulations not involving suspension or disbarment rather than requiring those stipulations to be submitted to the Disciplinary Board; (c) subject hearing officers to conduct standards modeled after the state judicial standards; (d) permit certain dispositive motions and require scheduling orders to keep cases moving timely; (e) do more to recover discipline costs, including updat-

ing the amounts of cost assessed against lawyers receiving discipline and having final unpaid cost orders result in entry of a judgment; (f) modify sanctions to be consistent with the ABA Standards for Imposing Lawyer Sanctions by eliminating the sanction of "censure" and increasing the maximum suspension period from two years to three years; (g) permit, under very narrow circumstances, a lawyer facing discipline to permanently resign (the lawyer must admit the misconduct, arrange for restitution and costs, and will

be considered disbarred); (h) clarify the rules for disability proceedings and provide for limited guardianships in superior court; (i) modify hearing and appellate procedures to conform more closely with civil, administrative and appellate practice; (j) clarify the lawyer's duty to cooperate in disciplinary investigations as to the waivers required and the effect

of attorney/client privilege; (k) provide respondents more efficient means of seeking review of their matters in the system; and (l) rewrite, re-organize, clarify and rename the existing Rules for Lawyer Discipline (with a suggested new name of "Rules for Enforcement of Lawyer Conduct").

The most important task-force recommendation that was not adopted by the Board of Governors was the unanimous recommendation to reduce the number of disciplinary hearing officers to no more than 10, and to pay them a small stipend. The goal sought by the recommendation was to create a small cadre of hearing officers who, by frequently handling lawyer disciplinary proceedings, would develop extensive knowledge and experience in, and familiarity with, lawyer disciplinary issues and procedures. The board's principal stated reasons for rejecting the recommendation were budgetary concerns and uncertainty that payment of a stipend would, in fact, attract the caliber of lawyers sought as hearing officers. The board concluded, however, that in the future it may want to reconsider the recommendation. ☞

In early 2000, the Washington State Supreme Court and the Bar's Board of Governors jointly appointed the Discipline 2000 Task Force.

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.

Correction: In the September and October issues of *Bar News* (pps. 52 and 49), C. Alan Grider was identified as C. Allen Grider. We apologize for the error.

Disbarred

Thomas A. Rutter II (WSBA No. 21627, admitted 1992), of Bremerton, has been disbarred by order of the Supreme Court effective March 12, 2001, following a stipulation. The discipline is based upon his agreement that the Office of Disciplinary Counsel could prove that he signed a judge's name to orders without authorization, and testified falsely at a deposition.

In July 1998, Mr. Rutter agreed to represent a client in a Nevada lawsuit. The client's ex-wife was claiming the client owed \$15,000 in underpaid child support. In July and August, Mr. Rutter told the client that he would get the suit transferred from Nevada to Washington. The client paid Mr. Rutter \$1,750 in fees during the representation. In August, the client was served with an order to appear and show cause, requiring him to appear in Nevada on September 15, 1998. The client immediately delivered this order to Mr. Rutter, who told the client that he had a friend in Nevada who would take care of the hearing. Although the client agreed that the friend could appear for him, Mr. Rutter never contacted the friend and no one appeared at the hearing. Mr. Rutter did not file any pleadings prior to the hearing.

In Nevada, Judge Fondi found the client in contempt and sentenced him to jail, but suspended the sentence on the condition that he immediately increase his support payments to \$250 per month and pay the arrearage. The client received the order by mail and asked Mr. Rutter why his friend had not appeared. Mr. Rutter told the client that his friend had gotten the

wrong judge. Mr. Rutter also told the client he would file a motion to reconsider the decision. In February 1999, Mr. Rutter told the client he had scheduled a conference call with the judge to discuss the reconsideration motion. On the day of the conference call, Mr. Rutter told the client that the judge was not available and would take the matter under advisement. In fact, Mr. Rutter had not scheduled a conference call with the judge.

In early 1999, Mr. Rutter created an undated "order for telephonic hearing," which has an original ink signature similar to Judge Fondi's. In April 1999, Mr. Rutter told his client he had received an order reversing the original decision and ruling in the client's favor. In fact, there was no such order. The client's wife picked up what she believed was a copy of the "order"—bearing a signature similar to Judge Fondi's—from Mr. Rutter's office. When the client contacted the clerk's office in Nevada and asked them to fax the original order, they told the client they did not have an order in the court file. Mr. Rutter filed a motion for reconsideration on May 28, 1999. The motion and declaration are dated January 24, 1999 and bear the client's signatures; however, the client did not sign these documents. The client obtained his original file from Mr. Rutter on June 9, 1999 and discovered the original "order for telephonic hearing" and "order on hearing" in his file.

In his August 9, 1999 deposition, Mr. Rutter testified falsely that he had contacted his Nevada friend about the client's case, and that he had not signed Judge Fondi's name on the two orders or his client's name on the motion and declaration.

Mr. Rutter's conduct violated RPCs 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; and 8.4(d), prohibiting conduct prejudicial to the administration of justice.

Kevin M. Bank represented the Bar Association. Mr. Rutter represented himself.

Disbarred

Daniel S. Wilner (WSBA No. 21690, admitted 1992), of Belfair, has been disbarred

by order of the Supreme Court effective January 30, 2001, following a default hearing. The discipline is based upon his failing to diligently represent and adequately communicate with several clients, charging unreasonable fees, and engaging in conduct demonstrating unfitness to practice law from 1995 through 1999.

Matter 1: On November 23, 1994, Mr. Wilner agreed to represent a client in a fee dispute with an architect. The client paid Mr. Wilner \$250 pursuant to a written fee agreement. Mr. Wilner told the client that he would write a demand letter to the architect and that the client could review the letter before Mr. Wilner sent it. On December 6, the client called Mr. Wilner because he had not received a copy of the demand letter. Mr. Wilner told the client that Mr. Wilner's wife had a copy of the letter at home and that she would bring it to the office. On December 13, the client received a fax of the demand letter, which was dated December 8, 1994. On January 21, 1995, Mr. Wilner told the client that he was not sure whether the letter had been mailed to the architect. In January 1996, the client's case went to arbitration, where the client attempted to introduce the demand letter. The arbitrator refused to admit the letter because the architect and his lawyer both stated that they had never received it. On February 3, the client retained new counsel and requested that Mr. Wilner return his fees. On February 14, 1996, Mr. Wilner returned the client's \$250.

Matter 2: On December 16, 1994, Mr. Wilner agreed to represent a client in a claim against Mason County. The client alleged that the county had taken fill from the client's land without adequate compensation. On February 23, 1995, the client paid Mr. Wilner \$500 as required in the written fee agreement. The client was not able to contact Mr. Wilner about his case from January 1995 through March 1996. On October 24, 1997, the client terminated Mr. Wilner's services and requested a refund. Mr. Wilner did little, if any, work on the client's case and did not refund any of the fees.

Matter 3: On October 2, 1995, Mr. Wilner agreed to represent a client in a Chapter 7 bankruptcy. The client paid Mr. Wilner \$700 as required by the written fee agreement. Mr. Wilner did not file the

client's bankruptcy petition, and the client was not able to contact Mr. Wilner.

On March 26, 1996, Mr. Wilner also agreed to represent the client in a marriage dissolution set for trial on April 2, 1996. Mr. Wilner agreed to handle the case for \$2,000 if it did not go to trial and \$4,000 if it went to trial. The client paid a \$6,000 advance fee deposit. On March 31, the parties agreed to a settlement and the client asked Mr. Wilner to refund \$4,000 of the advance fee deposit. Mr. Wilner did not refund any of the client's payment.

Matter 4: On October 2, 1995, Mr. Wilner agreed to represent two clients in a breach-of-contract claim regarding a house the clients owned. In January 1996, Mr. Wilner prepared a summons and complaint, and in August he told the clients the complaint had been filed and that the title company had contacted him about a possible settlement. In fact, the clients later discovered that as of August 1995, Mr. Wilner had not filed the complaint. Mr. Wilner did return \$1,000 to the clients.

Matter 5: On February 11, 1996, Mr. Wilner agreed to represent a client in a property-damage dispute. The client was not able to contact Mr. Wilner between February and October 1996. Mr. Wilner did not complete any work on the client's case. On March 12, 1997, Mr. Wilner returned the client's documents along with four post-dated checks of \$265 each as fee reimbursement plus interest. The client was able to cash the first check, the second was returned for insufficient funds, and the last two were not negotiable because the account was closed. Mr. Wilner did not replace the checks.

Matter 6: On October 1, 1996, Mr. Wilner agreed to draft wills, a community-property agreement, and a power of attorney for a husband and wife. The clients paid Mr. Wilner \$550 as stated in the written fee agreement, believing that the power of attorney and community-property agreement would be completed within two weeks. On November 18, the clients requested that Mr. Wilner return their existing will and fee. On December 2, 1996, the clients filed a small-claims-court action against Mr. Wilner. Two days prior to the scheduled court hearing, Mr. Wilner delivered the clients' documents and money to their home.

Matter 7: On November 12, 1996, Mr. Wilner agreed to represent a client in a Chapter 7 bankruptcy. The client paid Mr. Wilner \$750 as required by the written fee agreement. Mr. Wilner filed the bankruptcy petition on February 28, 1997. He did not attend an April 22, 1997 meeting of creditors. On May 10, the client received notice that her case had been dismissed. She scheduled an appointment with Mr. Wilner, but when she arrived she was informed he was not available. On November 20, 1997, the client filed a small-claims action against Mr. Wilner for the fees she paid him and for additional charges from another lawyer. Three days prior to the small-claims hearing, Mr. Wilner paid the client \$1,064.

Matter 8: On January 9, 1997, Mr. Wilner agreed to represent a client in a Chapter 7 bankruptcy. The client paid Mr. Wilner \$725 as stated in the written fee agreement. Between January and mid-April 1997, Mr. Wilner told the client that the case was progressing and that he would notify the client of the court date. By mid-April, Mr. Wilner stopped returning the client's calls. Mr. Wilner did not file the client's bankruptcy petition. In late May 1997, the client requested that Mr. Wilner return his retainer. Mr. Wilner promised to return the client's money, but as of the date of the hearing, had not done so.

Matter 9: In July 1997, Mr. Wilner agreed to represent a client who was named as the defendant in a fraud lawsuit filed in the superior court of San Bernardino, California. The client paid Mr. Wilner \$1,500 as an advance fee deposit. In August 1997, Mr. Wilner filed a notice of appearance in the lawsuit, even though he was not admitted to practice in California. Opposing counsel notified Mr. Wilner that California did not use notices of appearance and that the document had no effect. Mr. Wilner filed no other documents and the court entered a default order against Mr. Wilner's client; however, Mr. Wilner did not keep the client informed of these orders. The client terminated Mr. Wilner's services on April 6, 1998 and requested a return of the \$3,200 she had paid in fees. On April 7, 1998, Mr. Wilner wrote to the client that he would return her money if he had not completed her case by April 30, 1998. Mr. Wilner took no action to va-

cate the default orders, did not complete the client's case, and did not return her funds.

Matter 10: On February 25, 1998, Mr. Wilner agreed to represent a client in a quiet-title action. On March 5, 1998, the client paid the \$1,500 nonrefundable retainer as required by the written fee agreement. Between March 1998 and September 1999, Mr. Wilner canceled several appointments with the client, failed to return the client's phone calls, and did no work on the client's case even though he had promised to do so. On November 3, 1999, the client terminated Mr. Wilner's services. Mr. Wilner refunded \$150 and promised to return the remaining \$1,350, but had not done so at the time of the hearing.

Matter 11: On September 21, 1998, Mr. Wilner agreed to represent a client in a Chapter 7 bankruptcy. The client paid Mr. Wilner \$725. The client's mortgage company had advised him that a bankruptcy filing would stop the foreclosure action on his home. Mr. Wilner did not file the client's bankruptcy petition until June 4, 1999. On August 9, the mortgage company filed a motion for adequate protection, allowing it to continue with the sale of the client's home. Mr. Wilner did not inform the client of the motion or file a response. The court granted the motion, and the mortgage company sold the client's home on September 17, 1999.

In February 1999, the client's social security benefits were discontinued. In March 1999, he retained Mr. Wilner for \$200 to represent him on this matter. In April 1999, the client paid Mr. Wilner additional fees for a will and power of attorney. Mr. Wilner did not work on any of these matters, and as of the date of the hearing had not returned the client's money.

Matter 12: On November 3, 1998, Mr. Wilner agreed to represent a client regarding wetlands and zoning matters. On November 5, 1998, the client paid the \$1,500 advance fee deposit required in the written fee agreement, but Mr. Wilner did not deposit the client's funds into his trust account. Mr. Wilner filed a notice of appearance on February 23, 1999 and then failed to appear for two scheduled court appearances. The client was not able to contact Mr. Wilner between February and July

1999 and was not aware that Mr. Wilner had relocated his practice. On July 30, 1999, Mr. Wilner sent the client three \$500 checks as reimbursement for the advance fee deposit. The checks were post-dated, one each week, beginning with August 6, 1999. The first two checks cleared the bank, but the third was returned for insufficient funds. The client retained new counsel on July 30, 1999. As of the date of the hearing, the client had not received the remaining \$500.

Matter 13: On November 11, 1998, Mr. Wilner agreed to represent a couple in a dispute with their building contractor. On November 13, the clients paid Mr. Wilner \$1,500. Subsequently, the clients called and wrote Mr. Wilner, but were not able to contact him. On April 28, 1999, the clients terminated Mr. Wilner's services and asked that their payment be refunded. Mr. Wilner's wife left a message for the clients indicating that Mr. Wilner had moved his office and apologizing for his lack of response to their calls. In August 1999, Mr. Wilner told the clients he would refund their money, but as of the date of the hearing had not done so.

Mr. Wilner's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to promptly respond to clients' reasonable requests for information about the status of their cases; 1.5(a), requiring lawyers' fees to be reasonable; 1.14(a), requiring lawyers to place client funds into an interest-bearing trust account; and RLD 1.1(p), prohibiting conduct demonstrating unfitness to practice law.

C. Elizabeth Williams represented the Bar Association. Mr. Wilner represented himself. The hearing officer was Mark A. Wheeler.

Suspended

Gerald G. Burke (WSBA No. 17773, admitted 1988), of Tacoma, was suspended for 30 days by order of the Supreme Court effective June 12, 2001, following a hearing. Mr. Burke was reinstated on July 12, 2001. The discipline was based on his failure to diligently represent and communicate with three clients between 1993 and 1995.

Matter 1: In September 1993, Mr. Burke agreed to represent a client in a pa-

ternity action. In April 1994, the court entered a summary judgment of paternity and set child support at \$699 per month, reserving the issues of back support and visitation. On July 14, 1994, the arbitrator scheduled the back support arbitration for September 8. On July 18, Mr. Burke wrote a letter to the arbitrator indicating he had a scheduling conflict with the arbitration date. The arbitrator responded with alternate dates, and suggested that Mr. Burke reach a stipulation for a new date, or file a motion to reschedule. Although opposing counsel notified Mr. Burke that some of the arbitrator's suggested dates were acceptable to her, Mr. Burke did not reach a stipulation or file a motion to reschedule.

On August 8, 1994, Mr. Burke wrote the client that he would withdraw from the case if the client did not make a \$1,500 payment by August 15. Mr. Burke knew that the client, who had been on a payment plan for several months, could not make this payment. On August 12, Mr. Burke filed and served a notice of withdrawal that would take effect on August 28, 1994. During a discussion with the client about the withdrawal, Mr. Burke told him that he believed some of the mother's testimony over the client's. The client then agreed that Mr. Burke should not continue to represent him.

The prehearing statement in the arbitration was due August 25, 1994. Mr. Burke did not file or serve a prehearing statement or request an extension of time. On August 16, the opposing party objected to Mr. Burke's withdrawal, indicating that she would agree to continue the arbitration. Mr. Burke then filed a motion to withdraw. On September 1, 1994, the arbitrator wrote to Mr. Burke that he was the lawyer on the case until he scheduled a formal hearing and had been granted leave to withdraw. The arbitrator stated that she would continue with the arbitration on the original date if Mr. Burke did not schedule a hearing on either a motion to withdraw or a motion to continue. Mr. Burke did not schedule either motion. On the day prior to the arbitration, Mr. Burke filed and served a second motion to withdraw, asking in the alternative for a continuance. He did not note this motion. On the same day, another lawyer contacted the arbitrator and the mother's lawyer requesting a con-

tinuance for Mr. Burke's client. The arbitrator granted the continuance. The new lawyer resolved the back support issue without arbitration.

Mr. Burke's conduct violated RPCs 1.1, requiring lawyers to competently represent clients; 1.3, requiring lawyers to diligently represent clients; 1.4, requiring lawyers to keep clients reasonably informed of the status of their matters; 1.7, prohibiting lawyers from representing a client if the representation will be directly adverse to another client or limited by the lawyer's own interests; and 1.15, requiring lawyers to reasonably protect clients' interests upon withdrawal from their matters.

Matter 2: In 1994, Mr. Burke represented a client who was injured while working as a groundskeeper for a self-insured employer. The injury occurred on the premises of a metals business not owned by the employer. Prior to 1994, the employer paid Mr. Burke's client \$30,438. On August 2, 1994, the employer paid the client another \$10,260. Revised Code of Washington (RCW) 51.24.060 et seq states that amounts paid by the employer become a lien against any recovery from the third party (the metals business).

On March 4, 1994, the employer asked Mr. Burke in writing whether the client had elected to pursue the third-party claim himself, and explained that the statute gave the employer a lien on any recovery. On March 7, Mr. Burke requested that the employer send him an election form. On March 20, Mr. Burke mailed the signed election form to the employer, indicating the employee would pursue the third-party claim. The form acknowledged that the client was required by statute to notify the employer prior to any settlement and that the client knew the employer was entitled to recover the amounts already paid.

On June 20, 1994, Mr. Burke settled the third-party claim for \$46,000, but Mr. Burke did not notify the employer that he was settling the claim. The statute states that the settlement can be considered void if not approved by the employer. Mr. Burke disbursed the settlement funds without an order from the Department of Labor and Industries (L&I), which is also required by the statute. Mr. Burke withheld \$15,459 from the settlement to pay for the client's medical expenses.

On August 24, 1994, the employer sent Mr. Burke a letter asking if his client intended to pursue the third-party claim. On August 31, Mr. Burke responded that he had settled the claim. The employer, who retained counsel to protect its rights in the settlement, asked Mr. Burke to provide information about the client's injury, so it could determine whether to approve the settlement after the fact or void the settlement. On January 17, 1995, the employer asked L&I to enforce its lien in the amount of \$22,868. Mr. Burke responded to both the employer and L&I that the problem arose because he had not been notified of the employer's lien rights or sent an election form. He told the employer that the remaining settlement amount was \$15,459.

On February 16, 1995, Mr. Burke agreed to pay \$22,868 to the employer. Mr. Burke paid the employer \$15,459, leaving the client responsible for paying the remaining \$7,500. Mr. Burke did not explain to his client that his own interest in retaining his fee conflicted with his decision to have the client pay the additional \$7,500 owed on the lien.

In August 1995, the employer sent the client a warrant for the amount of the lien. When Mr. Burke received a copy of the warrant, he wrote a letter to the employer indicating the client's agreement to make payments on the amount due. Mr. Burke did not advise the client that the warrant would become a lien on his home. During a refinance in June 1997, the client learned of the lien and paid the amount owed. In August 1997, the Bar Association suggested that Mr. Burke repay \$7,500 to the client, indicating that this amount would be considered in mitigation of the sanction recommendation. Mr. Burke repaid the client after the client signed a three-page declaration stating that the client told Mr. Burke that the employer waived the lien. The client, who stated that he could not read all of the declaration, testified at his deposition that he had not told Mr. Burke that the employer waived the lien.

Matter 3: On April 13, 1995, Mr. Burke agreed to represent a mother in motions for reimbursement of her child's medical expenses, contribution for future orthodontia, and an increase in monthly child support. On June 27, 1995, Mr. Burke filed a motion and arranged for service on the

father. On September 14, 1995, Mr. Burke and the father's lawyer agreed to set child support at \$396 per month; however, the client did not receive a copy of the letter memorializing this agreement.

Mr. Burke drafted an order setting child support at \$379 per month, obtained his client's signature, and sent the order to opposing counsel, who noticed the lower child-support amount, and brought it to Mr. Burke's attention. Mr. Burke entered the order with the court, and mailed a copy of the worksheets and order to the client. When the client saw the worksheets, she made an appointment with Mr. Burke to discuss worksheet errors. During this meeting, Mr. Burke did not notice the lower child-support amount. When Mr. Burke corrected the errors, the child-support amount was adjusted to \$400 per month. Mr. Burke sent the corrected worksheet to opposing counsel, asking her to revise the order. Opposing counsel's associate responded that Mr. Burke should prepare the corrected order and send it to her.

In October 1995, Mr. Burke prepared corrected worksheets and an order setting child support at \$396 and had them signed by his client. Mr. Burke did not send the amended order to opposing counsel or file it with the court. On November 9, the client went to Mr. Burke's office because she had not heard anything about the corrected order. The client discovered that neither the court file nor the Office of Support Enforcement file contained the \$396 order. In January 1996, she filed a grievance with

the Bar Association. A few days later, Mr. Burke filed a notice of withdrawal in the client's case. He did not provide a copy of the notice of withdrawal to the client.

The client also requested that Mr. Burke seek reimbursement of out-of-pocket medical expenses. Mr. Burke did discuss this issue informally with opposing counsel. The father did not object to the request and asked for documentation of the actual expenses, which Mr. Burke sent. Opposing counsel then asked what portion of the expenses had been reimbursed by insurance. The client told Mr. Burke that the insurance company had sent the reimbursement checks to the father, who was the policyholder, and he had cashed the checks and kept the funds. Mr. Burke did not convey this information to opposing counsel or take any other steps to resolve this issue.

Joy McLean and Maria Regimbal represented the Bar Association. Mr. Burke represented himself. The hearing officer was Kenyon E. Luce.

Suspended

Terry L. DeGlow (WSBA No. 13357, admitted 1983), of Spokane, has been suspended for one year by order of the Supreme Court effective May 31, 2001, following a default hearing. The discipline is based on his failure to diligently represent and communicate with a client in 1998 and 1999, failure to comply with a court order, and failure to cooperate with the disciplinary investigation.

In 1995, Mr. DeGlow agreed to represent a client injured in an automobile accident. In 1997, the client believed he had completed his medical treatment and asked Mr. DeGlow to move forward on his case. Mr. DeGlow filed a complaint for damages in May 1998. Between June 1998 and April 1999, the parties exchanged interrogatories. Mr. DeGlow did not return the client's phone calls in April and early May 1999. On May 5, the client left a message indicating that if he did not hear from Mr. DeGlow by May 7, he would assume that Mr. DeGlow was no longer interested in representing him. Mr. DeGlow left the client a message, but did not take any action on the case.

On June 1, 1999, the client terminated Mr. DeGlow's services and requested that his file and an accounting of Mr. DeGlow's bills be sent to him. Mr. DeGlow did not respond to the client's request. In July 1999, the client retained new counsel. Mr. DeGlow sent a partial copy of the client's file to new counsel, but it did not include a summons, complaint or interrogatories. Mr. DeGlow also failed to sign the withdrawal and substitution-of-counsel form provided by new counsel. On September 17, 1999, the court issued an order requiring Mr. DeGlow to "immediately release all materials in his possession or provide documentation that he had no further records," and assessed sanctions. As of the hearing date, Mr. DeGlow had not complied with the court order or paid the sanctions. Mr. DeGlow also failed to comply with disciplinary counsel's requests for information, avoided service of a deposition subpoena, and failed to appear for his deposition.

Mr. DeGlow's conduct violated RPCs 1.3 and 3.2, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep clients reasonably informed about the status of their matters; 1.15(d), requiring lawyers to take reasonable steps to protect clients' interests upon withdrawal; 3.4, prohibiting lawyers from knowingly disobeying obligations under the rules of a tribunal; and RLD 2.8, requiring lawyers to cooperate with disciplinary investigations.

Sachia Stonefeld represented the Bar Association. Mr. DeGlow represented himself. The hearing officer was William H. Nielsen. ✎

Washington State Bar News Extent and Nature of Circulation	Average No. Copies Each Issue During Preceding 12 Months	Actual No. Copies of Single Issue Published Nearest to Filing Date
Total Number of Copies (net press run)	23,050	23,700
Paid/Requested	10,616	11,696
Paid In-County Subscription	10,462	11,612
Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Non-USPS Paid Distribution	0	0
Other Classes Mailed Through the USPS	0	0
Total Paid and/or Requested Circulation	21,180	23,398
Free Distribution by Mail	65	70
Free Distribution Outside the Mail	30	30
Total Free Distribution	95	100
Total Distribution	21,275	23,498
Copies not Distributed	300	450
Total	21,575	23,948
Percent Paid and/or Requested Circulation	100%	100

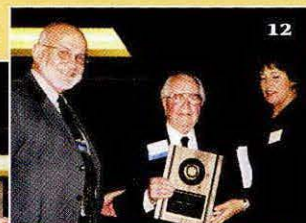
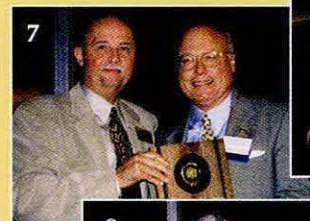
2001 WSBA Award Recipients



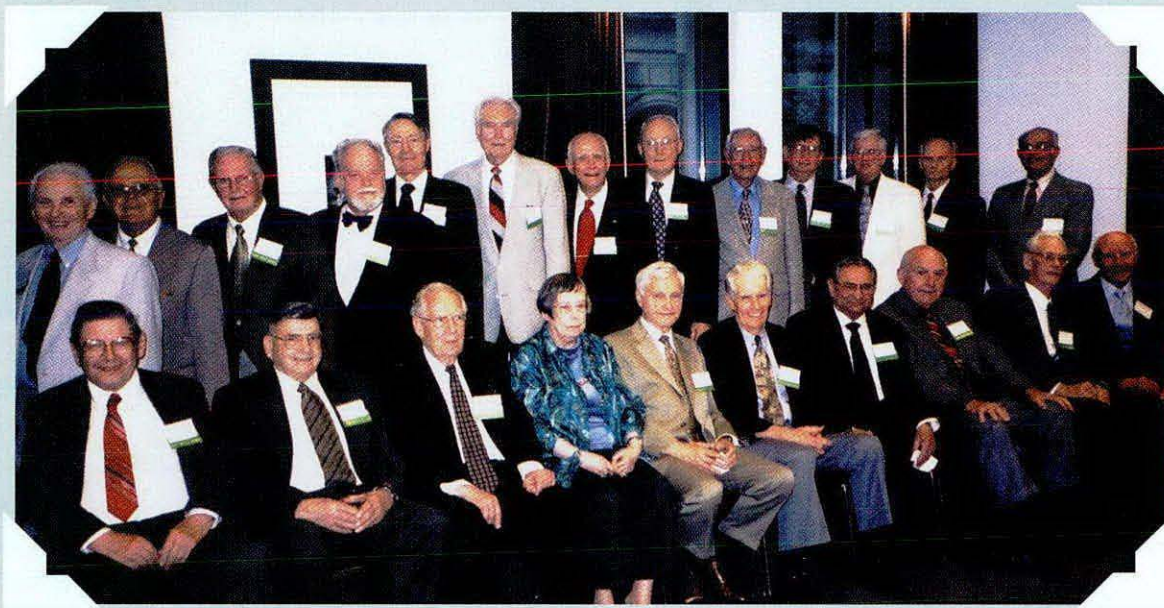
The Board of Governors takes great pleasure in honoring the following individuals who are this year's recipients of the Washington State Bar Association Awards.

- 1 **Award of Merit** – John McKay (left); award presented by M. Wayne Blair
- 2 **Award of Merit** – Rick Nagel (right); award presented by Annasara Purcell and Michael Look
- 3 **Angelo Petrus Award for Lawyers in Public Service** – Narda D. Pierce (left); award presented by Attorney General Christine O. Gregoire
- 4 **Outstanding Judge Award** – Honorable Daniel J. Berschauer (center); award presented by Stephen J. Henderson (left) and Chief Justice Gerry L. Alexander
- 5 **Pro Bono Award** – Team Child; Charlotte Cassady (center) and Kenneth Odza accepting the award presented by Lucy Isaki
- 6 **Courageous Award** – Steven J. Tucker; Nancy Isserlis accepting the award on his behalf; presented by Richard C. Eymann
- 7 **Professionalism Award** – Francois X. Forgette (right); award presented by Stephen T. Osborne
- 8 **Affirmative Action Award** – Rafael A. Gonzales (right); award presented by James E. Deno
- 9 **Affirmative Action Award** – Washington Young Lawyers Division; Sherri L. Jefferson and Thomas P. Quinlan (right); award presented by Daryl L. Graves
- 10 **Excellence in Legal Journalism Award** – Robert C. Pittman (left); award presented by Lindsay T. Thompson
- 11 **President's Award** – Randolph I. Gordon (right); award presented by Jan Eric Peterson
- 12 **Lifetime Service Award** – Joseph H. Gordon Sr. (center); award presented by Dale L. Carlisle and Victoria L. Vreeland
- 13 **Equal Justice Coalition's Champion of Justice Award** – Senator Dow Constantine (right); presented by M. Wayne Blair

Special Recognition Awards were presented to Dean Roland L. Hjorth, who recently retired from the University of Washington School of Law, and John S. Fattorini, the WSBA's director of legislative affairs, who will retire at the end of the year.



Honoring the WSBA's 50-Year Members



The Washington State Bar Association proudly congratulates its 60 members who are celebrating 50 years of membership in the Bar and service to the public this year.

John Alexander Bishop, *Bremerton*
 Paul Frank Bonnell, *Burien*
 J. Kenneth Brody, *Portland, OR*
 John Gray Carroll, *Richland*
 Blythe B. Caw, *Othello*
 Donald James Clark, *Pasco*
 Frank Joseph Conway, *Seattle*
 Clyde Raymond Cory, *Bellevue*
 Richard J. Dolack, *Tacoma*
 Leo J. Driscoll, *Spokane*
 James D. Dubuar, *Seattle*
 Donald K. Fleck, *Seattle*
 Donald Deforest Fleming, *Bellevue*
 Stuart Charles French, *Everett*
 Roger Kell Garrison, *Sunnyside*
 Carroll D. Gray, *Spokane*
 James Russell Gregg, *Vancouver*
 J. A. Hamm, *Longview*
 William C. Harrison, *Spokane*
 William A. Helsell, *Seattle*
 William E. Hennessey, *Spokane*

Henry Isaacson, *New York, NY*
 Robert A. Jacques, *Tacoma*
 Frank Hayes Johnson, *Spokane*
 Zane B. Johnson, *Auburn*
 Levy S. Johnston, *Mountlake Terrace*
 Ralph Burton Kenison, *Moses Lake*
 Jack Schuyler Kurtz, *Bellingham*
 Irwin Carl Landerholm, *Vancouver*
 JoAnn R. Locke, *Seattle*
 Priscilla Townsend Long,
Mercer Island
 Carl Louis Loy, *Yakima*
 Albert Robert Malanca, *Tacoma*
 Emmett E. McInnis, *Seattle*
 Ronald E. McKinstry, *Seattle*
 Rodman Bertley Miller, *Seattle*
 Robert Dale Morrow, *Poulsbo*
 Allan L. Overland, *Tacoma*
 John David Owens, *Ann Arbor, MI*
 Vernon R. Pearson, *Gig Harbor*
 Arthur E. Piehler, *Seattle*

Arnold Bruce Robbins, *Seattle*
 Kermit M. Rudolf, *Spokane*
 Aldo A. Samboni, *Seattle*
 Richard Irving Sampson, *Seattle*
 Leonard Alson Sawyer, *Puyallup*
 Don Sheahan, *Rosalia*
 Robert Wynan Skidmore, *Lakewood*
 Horton Smith, *Seattle*
 Frank Wilson Soderling, *Shoreline*
 Richard Campbell Solibakke,
Arlington, VA
 Paul David Solomon, *Lacey*
 William Lester Stephens, *Olympia*
 Robert Harold Stevenson, *Seattle*
 William A. Stiles, *Sedro Woolley*
 James Donald Sullivan, *Seattle*
 William John Van Natter, *Bothell*
 Walter Edward White, *Tunwater*
 David E. Williams, *Richland*
 Clement Frank Yuse, *Spokane*

Opportunities for Service

Northwest Justice Project Board of Directors

Application deadline: November 15, 2001

The WSBA Board of Governors is accepting letters of interest from members interested in serving a three-year term on the Northwest Justice Project board of directors (two positions). A written expression of interest is also required for any incumbents seeking re-appointment. The three-year term will commence on January 1, 2002.

The Northwest Justice Project is a not-for-profit organization which receives funding through the federal Legal Services Corporation to provide civil legal services to low-income people. Board members must have a demonstrated interest in and knowledge of the delivery of high-quality civil legal services to the poor. Further information about responsibilities is available by e-mailing mac@nwjustice.org. Please submit letters of interest and résumés to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org.

Legal Foundation of Washington Board of Trustees

Application deadline: November 15, 2001

The WSBA Board of Governors is accepting letters of interest from members interested in serving on the Legal Foundation of Washington board of trustees. There is one partial term (January 1-December 31, 2002), which will complete the term of a resigning member.

The Legal Foundation of Washington is a private, not-for-profit organization that promotes equal justice for low-income people through the administration of IOLTA and other funds. Trustees should have a demonstrated commitment to and knowledge of the need for legal services and how these services are provided in Washington. Further information about trustee responsibilities is available by e-mailing bcclark@legalfoundation.org. Please submit letters of interest and résumés to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org.

Opportunities for Nonlawyers

The WSBA Character and Fitness Committee, Disciplinary Board, Lawyers' Fund for Client Protection Committee, and State Board of Continuing Legal Education all include non-lawyer citizen members. The WSBA is always interested in member referrals of nonlawyers to these important committees and boards. Members may suggest individuals to their governor, or interested persons may submit letters of application to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org. Service on these boards is voluntary. Members are reimbursed for travel and related expenses; meetings are generally held at the WSBA office in Seattle; all appointments are for three-year terms.

- **Character and Fitness Committee:** Conducts hearings on Bar applications where there is a significant question as to

the applicant's moral character. Hearings typically involve review of criminal histories, record of academic discipline (cheating and plagiarism), and previous Bar discipline (for lawyer applicants). In addition, the committee considers petitions for reinstatement after disbarment. The committee generally meets two to four times a year on Saturdays.

- **Disciplinary Board:** Reviews all recommendations for suspension or disbarment and is generally responsible for lawyer discipline. The board meets six times a year for full-day meetings. In addition, board members serve on three-person review committees which meet three to four times per year for full-day meetings to review investigation reports and requests for reconsideration of grievances dismissed by the Office of Disciplinary Counsel.

- **Lawyers' Fund for Client Protection Committee:** Considers applications for reimbursement for the dishonest taking of funds or property by lawyers. The committee meets quarterly for half-day meetings.

- **State Board of Continuing Legal Education:** Responsible for the accreditation of approved continuing legal education programs, and for enforcing required compliance by WSBA members. The board meets five to seven times per year for full-day meetings.

Nonlawyer citizen participation on these boards and committees enhances the WSBA's mission and credibility as a self-regulating agency. Citizen members consistently report that the experience is extremely interesting and enlightening, and enhances their understanding and appreciation of lawyers and the legal profession.

Bench-Bar-Press Committee of Washington

Application deadline: December 31, 2001

The Board of Governors of the WSBA is accepting letters of interest from members interested in serving a three-year term on the Bench-Bar-Press Committee of Washington (two positions). A written expression of interest is also required for any incumbent seeking re-appointment. The three-year term will commence on February 1, 2002.

The committee was formed in 1963 to foster better understanding and working relationships between, judges, lawyers and journalists. Its mission is to seek to accommodate, as much as possible, the tension between the constitutional values of free press and fair trial through educational events and relationship-building. The committee is chaired by the chief justice of the Washington State Supreme Court and includes representatives from the legal profession, judiciary, law enforcement and news media. The committee meets as a whole once or twice each year. Subcommittees of volunteers are organized on an ad hoc basis to plan and execute events. Further information about member responsibilities is available by e-mailing wendy.ferrell@courts.wa.gov.

Please submit letters of interest and résumés to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org.

License Fee Payment and MCLE Reporting

Licensing Packets

Licensing packets, which include license fee, trust account and MCLE reporting (C-2 Compliance Affidavit) forms, will be mailed in early December. If you have not received your licensing packet by the first week in January 2002, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or e-mail questions@wsba.org to request a duplicate.

Address Changes

Now is the ideal time to check that the WSBA has your correct address in its database. You can check by going to the online lawyer directory on the WSBA Web site at www.wsba.org/directory. If your address has changed, please notify the WSBA Service Center as soon as possible by e-mailing questions@wsba.org or faxing the change to 206-727-8319.

MCLE Reporting - Group 1

Active WSBA members who are in Reporting Group 1 (active members admitted through 1975; or in 1991, 1994, 1997 or 2000*) will report CLE credits for activities undertaken in 1999, 2000 and 2001.

*Newly Admitted Members

Newly admitted members are exempt from reporting CLE credits during their year of admission and the following calendar year. Thus, if you were admitted in 2000 you will not report this reporting period even though you are in Group 1. You will first report at the end of 2004. (New admittees may earn CLE credits, however, starting from their admission date, and those credits may be applied toward their first reporting period.)

CLE Compliance

If you are in Reporting Group 1, please do the following to meet your CLE requirements:

- 1) Complete approved CLE credits totaling at least 39 general and six ethics for the three-year period (1999 through 2001);
- 2) Submit these credits and attendance to the WSBA either through the sponsor or directly to the WSBA;
- 3) Sign the C-2 Compliance Affidavit certifying attendance of the listed courses; and
- 4) Send the C-2 Compliance Affidavit to the WSBA by February 1, 2002.

Reporting Forms

Your C-2 Compliance Affidavit contains all courses and credits to your record for 2001 CLE activities submitted by sponsors. Please review it carefully and make any necessary changes or additions to this credit information. If you have CLE credits for activities in 2001 that were not earned through live courses, you must enter this information. You must also enter course/credit information for activities undertaken in 1999 and 2000. You must then sign, under penalty of perjury, that the credit information you submit is true and correct.

The New MCLE Credit-Tracking System

In the near future, through a confidential password you will be able to go to your individual record in the MCLE database

and make changes to your personal information, add approved CLE activities, apply for course approval, and make corrections to your credit amounts.

Sponsor Attendance Reports

Remember that although sponsors are now responsible for reporting credits from live seminars, each individual attorney attending such seminars is responsible for informing the sponsor of the amount earned for that seminar. If you do not attend the entire seminar, please inform the sponsor, so the sponsor can submit the correct number of CLE credits you earned.

GR 22 Takes Effect in King County Superior Court

Pursuant to GR22, family law cases (any case filed under RCW chapters 26.09, 26.10, 26.12, 26.18, 26.21, 26.23, 26.26, 26.27, 26.50 and 26.52) will be required to submit a completed Confidential Information Form (CIF) at the time of the initial filing. The CIF and Confidential Financial Source Documents cover sheet are available at no charge at the King County Superior Court Clerk's office Web site (<http://www.metrokc.gov/kcsc>), in the clerk's office, or on the Washington State Courts' Web site (<http://www.courts.wa.gov>). Other family law forms are available at the Washington State Courts' Web site, or may be purchased from the clerk's office.

Legal Help for Victims

ABA President Robert Hirshon has called upon America's lawyers to unite during this difficult time. Lawyers are working with the ABA to provide legal services to victims of the recent disasters. Areas of help include legal assistance for victims, military personnel, and lawyers whose practices were affected; and ABA programs that can provide legal information or referrals and information on how lawyers can volunteer to help or make a donation. More information is available at <http://www.abanet.org>.

ALI-ABA Invites Rawle Award Nominations

The American Law Institute-American Bar Association Committee on Continuing Professional Education (ALI-ABA) is accepting nominations for the 2002 Francis Rawle Award for outstanding contributions to the field of post-admission legal education. The award committee will review all nominations for evidence of exceptional service in post-admission legal education, including publications, lectures and the creation or administration of programs. Nominations are due by March 1, 2002, and should be mailed to Rawle Award Committee, ALI-ABA, 4025 Chestnut St., Philadelphia, PA 19104. For more information, contact Donna Maropis at 800-253-6397, ext. 1612.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in October 2001 is 2.384 percent. The maximum allowable interest rate for November is therefore 12 percent. Compilations of the average coupon equivalent

lent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears at www.wsba.org/barnews/usuryrate.html.

Lawyer Directory Enhancement

The lawyer directory on the WSBA Web site just got better! A link to your Web site can now be included in the WSBA online directory, so people can go directly from your directory listing to your Web site. This will be a significant benefit to you and those seeking information!

The regular fee for this service will be \$75 annually (\$50 if you sign up July 1 or later). But if you sign up before December 31, 2001, you'll pay the charter-member fee of just \$50, which will cover your listing through December 31, 2002.

For more information and a sign-up form, see the WSBA Web site at www.wsba.org/directory/addlink.

Upcoming BOG Meetings

November 30-December 1, 2001 – Tacoma

January 18-19, 2002 – Olympia

April 5-6, 2002 – Walla Walla

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 Lori Lee at 206-727-8244 or [loril@wsba.org](mailto:liril@wsba.org).

Court Rules and Procedures Committee Meeting

When it reconvenes later this fall, the Court Rules and Procedures Committee is scheduled to review the Criminal Rules for Superior Court (CrR) and for Courts of Limited Jurisdiction (CrRLJ). Please send any suggestions for rule changes to the Supreme Court of Washington, Temple of Justice, PO Box 40929, Olympia, WA 98504-0929.

New WYLD Trustees

Congratulations to the following new members of the WYLD board of trustees:

- **Matt Andersen**, of Walstead, Mertsching, Husemoen, Donaldson & Barlow in Vancouver, was unopposed in the Southwest District.
- **Aaron Dean**, from Bullivant Houser Bailey in Seattle, won the King County District race against two other candidates with 70 out of 160 votes.
- **Adam Torem**, of the Office of Administrative Hearings in Olympia, was unopposed in the Pierce County District.

For information regarding the 2002-2005 WYLD trustee elections or the 2002-03 WYLD president-elect elections, please visit www.wsba.org/wyld.htm.

Law Week

Law Week 2002 is an exciting opportunity for lawyers and judges to bring public legal education into the classroom. Each year, Law Week provides an enriching experience to youth through positive interactions with lawyers and judges. Law Week will take place the week of May 1, 2002. To learn more about the program or to participate, please visit www.lawweek.org or contact Lisa KauzLoric at 206-733-5944.

WestCoast Hotels Contribute to LAW Fund

WestCoast Hotels, the WSBA and Legal Aid for Washington (LAW) Fund have created a partnership to raise funds for low-income legal services. Through the end of 2001, WestCoast Hotels will make donations to LAW Fund, based on the number of nights that anyone associated with the WSBA stays at any of the 47 Washington WestCoast Hotels. By simply asking for the WSBA rate, guests will receive a reduced room rate, and LAW Fund will receive \$5 for each night's stay. Contact WestCoast Hotels at 800-325-4000.

Resolution Regarding the Events of September 11, 2001

Whereas the tragic events of September 11, 2001 have taken and will continue to exact an incalculable toll on the people of our communities, our state, our nation and the world;

Whereas the legal profession in our constitutional democracy shoulders the primary and unique responsibility to represent those wishing to resolve a dispute while ensuring the equal application of the laws, the protection of longstanding cherished and fundamental values upon which the nation rests;

Whereas we, as members of the Whatcom County Bar Association, provide civil, criminal and governmental representation to all citizens of Whatcom County;

Now, therefore, be it resolved the members of the Whatcom County Bar Association:

Express our deep and collective sorrow to all who have lost loved ones, family members, colleagues, neighbors and friends in the attacks of September 11, 2001;

Reaffirm our dedication to our nation's founding principles — justice, fairness, due process of law, and respect for the dignity of each individual; and

Urge members of our community to join with us in recognizing that these founding principles do not include targeting or harming others in the aftermath of these tragic events solely because of their race, ethnicity, gender, place of birth, national origin or religion.

*David A. Nelson, President
Whatcom County Bar Association*

Announcements

WILLIAM L. E. DUSSAULT, PS

is pleased to announce that

Yevgeny (Jack) Berner,
Barbara Byram
 and
Susan Spuller

have joined the firm as associates.

With this significant expansion of our firm we will now be available to handle referrals in the areas of personal injury and settlement consulting; special-needs trusts; complex elder law issues; guardianship, wills and trusts; special education; social security/disability law; probates and ADA.

WILLIAM L. E. DUSSAULT, PS
 ATTORNEYS AT LAW
 219 E. Galer Street
 Seattle, Washington 98102
 Telephone: 206-324-4300
 Fax: 206-324-3106
 E-mail: bus@dussaultlaw.com
 www.dussaultlaw.com

EKLUND ROCKEY STRATTON, PS

is pleased to announce that

James T. Derrig, Esq.

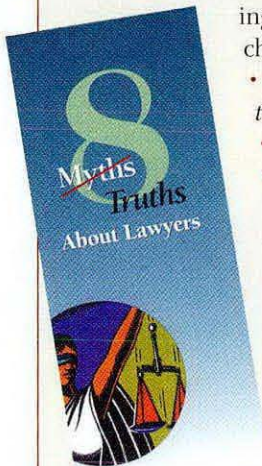
has been named a shareholder of the firm.

EKLUND ROCKEY STRATTON, PS
 1011 Western Avenue, Suite 807
 Seattle, Washington 98104-1083
 Telephone: 206-223-1688
 Fax: 206-223-0946

8 Myths Truths About Lawyers

Help us stamp out some of those myths about lawyers! The new *8 Myths Truths About Lawyers* brochure, developed by the President's Initiative Task Force, is now available for purchase. Think about displaying the brochures in your reception area, or enclosing them with your invoices. The brochure tackles the following myths:

- *The United States has more lawyers than any other country.*
- *Lawyers are selfish and greedy.*
- *Lawyers stir up litigation for their own personal profit.*
- *Huge punitive damage awards are frequent and on the rise.*
- *The McDonald's verdict shows how foolish juries are.*
- *Lawyers who defend criminals are just promoting crime.*
- *When there's an accident, lawyers are among the first on the scene, soliciting business.*



The cost is \$35 per 100 (price includes shipping and handling).

Yes! I would like to order _____ packets @ \$35 per packet (100)

\$ _____

If in Washington, please add WA state sales tax @8.8% \$ _____

Total \$ _____

check enclosed (payable to WSBA)

MasterCard Visa

No. _____ Exp. date _____

Name as it appears on card _____

Signature _____

Please send to:

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

MasterCard and Visa orders may also be placed over the phone by calling the WSBA Service Center at 800-945-WSBA or 206-443-WSBA.

Name _____

Address _____

City _____ State _____ ZIP _____

WSBA office use only: 1-59202-210

date _____ check no. _____ amount _____

The lawyers and staff at
ELLIS, LI & MCKINSTRY PLLC

congratulate
their mentor and friend

Ronald E. McKinstry

for 50 years of service.

THE NATHANSON GROUP PLLC

Attorneys at Law

is pleased to announce
the relocation of its offices as of
October 1, 2001 to:

1520 Fourth Avenue
Sixth Floor
Seattle, Washington 98101
Telephone: 206-623-6239
Fax: 206-623-1738
www.nathansongroup.com

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

Randi S. Nathanson, James L. Spencer,
Amy W. Mahone, Bonnie L. Peterson

Calendar

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

WSBA Bar News Calendar
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330
fax: 206-727-8319
e-mail: comm@wsba.org

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

ARTS & ENTERTAINMENT LAW

Music Without Borders – A Panel Discussion of the Internet and File Swapping, DRM and Music Copyright Issues

November 16 – Seattle. 2 CLE credits pending. By Washington Law-
yers for the Arts; 206-328-7053.

Beyond Creation – How an Intellectual Property Audit Can Help You Figure Out if You Own What You Think You Own

December 13 – Seattle. 2 CLE credits pending. By Washington Law-
yers for the Arts; 206-328-7053.

CONSTRUCTION LAW

Construction Law

November 5-6 – Boise. 8 CLE credits, including 1 ethics. By The Semi-
nar Group; 800-574-4852.

EMPLOYMENT LAW

Employment Law Conference

November 8-9 – Chicago; November 15-16 – San Francisco; Novem-
ber 29-30 – New Orleans; December 6-7 – Washington, D.C. CLE
credits TBD. By National Employment Law Institute; 303-861-5600.

Privacy in the New Millennium

November 28 – Seattle. 7 CLE credits, including 1 ethics. By WSBA-
CLE; 800-945-WSBA or 206-443-WSBA.

Sexual Harassment and Discrimination Issues

December 14 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA
or 206-443-WSBA.

ESTATE PLANNING

46th Annual Estate Planning Seminar

November 5-6 – Seattle. 15.25 CLE credits, including 1.5 ethics. By
WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Estate Planning for Entrepreneurs

December 5 – Seattle; December 14 – Spokane. 3 CLE credits. By
WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethics for Real Estate Lawyers – TeleCLE

November 7 – TeleCLE. 1.5 CLE credits. By WSBA-CLE; 800-945-
WSBA or 206-443-WSBA.

Ethical Dilemmas

November 7 – Spokane; November 14 – Yakima. 3 CLE credits. By
WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Ballad of Halibut Klutz – TeleCLE

November 14 – TeleCLE. 1.5 CLE credits. By WSBA-CLE; 800-945-
WSBA or 206-443-WSBA.

Ethics from the Inside Out

November 16 – Bellevue. 6.5 ethics credits pending. By East King
County Bar Association and King County Bar Association; 206-340-
2578.

Professionals

Ethics for Litigators – TeleCLE

November 28 – TeleCLE. 1.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethics Play

November 28-29 – Seattle. 3 CLE credits each day. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Ethical Communication Workshop

November 29 – Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

Domestic Violence

November 6 – Seattle; November 20 – Kent. 1.25 CLE credits pending. By Unified Family Court; 206-205-2674.

GENERAL

Legal Writing

November 7 – Seattle. 6.75 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Computer Camp for Counselors

November 27-28 – Seattle. 4 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Corporate Counsel Institute

November 29 – Bellevue. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Improving Appellate Practice

November 30 – Kent. 5.75 credits, including 2 ethics pending. By Washington Courts Historical Society; 253-804-2782

Tort Law Update

November 30 – Seattle. 6.5 CLE credits, including 2 ethics pending. By WSTLA; 206-464-1011.

LAW OFFICE MANAGEMENT

The Efficient Law Office: Systems That Increase Productivity

November 16 – Seattle. 6.25 CLE credits. By WSTLA; 206-464-1011.

LITIGATION

Litigation with Pozner and Dodd

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

REAL ESTATE

Real Estate Conference

November 30 – Seattle. 7.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

REAL PROPERTY

RPPT Workouts

November 11 – Seattle. CLE credits TBA. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.



**For information
about advertising in
the Professionals
section of**

**Bar News, please call
Jack Young
at 206-727-8260
or e-mail
jacky@wsba.org.**

MEDICAL MALPRACTICE

**Sidney S. Royer
Kristin Houser
Corrie J. Yackulic**

are available for association or referral on medical malpractice lawsuits, including failure to diagnose, surgical malpractice, medication errors and psychiatric malpractice cases.

SCHROETER GOLDMARK & BENDER
810 Third Avenue, Suite 500
Seattle, WA 98104
206-622-8000
www.schroeter-goldmark.com

APPEALS

**Charles K. Wiggins
&
Kenneth W. Masters**

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

WIGGINS LAW OFFICES, PLLC
241 Madison Avenue N.
Bainbridge Island, WA 98110
206-780-5033
www.appeal-law.com

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).

**CARNEY, BADLEY, SMITH
& SPELLMAN, PS**
701 Fifth Avenue, Suite 2200
Seattle, WA 98104
206-622-8020
E-mail: lobsenz@carneylaw.com

MEDIATION and ARBITRATION

John A. Granger

is available for alternative dispute resolution services in complex actions involving insurance disputes, including bad faith; products liability; and commercial, fire and construction litigation. Will travel at actual cost.

COZEN O'CONNOR
1201 Third Avenue, Suite 5200
Seattle, WA 98104
206-224-1298
E-mail: jgranger@cozen.com

PROBATE TRUSTS ESTATE PLANNING GUARDIANSHIP

Mary Anne Vance, co-author of the chapters on estate planning and probate in Butterworth's *Washington Civil Practice Deskbook*, is available for referrals of matters, both contested and noncontested.

**THE LAW OFFICE OF
MARY ANNE VANCE, PS**
900 Fourth Avenue, Suite 1111
Seattle, WA 98164
206-682-2333
E-mail: maryanne@vancelaw.com
www.vancelaw.com

PHEN-FEN LITIGATION

Bradford D. Myler

is available for consultation and referral of plaintiffs' claims of product liability for Phen-Fen use against health care providers and drug manufacturers.

MYLER LAW OFFICES
1-800-955-4776
E-mail: bmyler@qwest.net

LABOR AND EMPLOYMENT LAW

William B. Knowles

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

206-441-7816

APPEALS

Michael T. Schein

and

Douglas W. Ahrens

are available for referral, consultation, or association on all issues relating to appeals and the appellate process.

MALTMAN, REED, AHRENS & MALNATI, PS
1415 Norton Building
Seattle, Washington 98104
206-624-6271

JOSHUA FOREMAN

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

4500 Ninth Avenue NE, Suite 300
Seattle, WA 98105-4762
206-623-6750
Fax: 206-633-6049
E-mail: DadsLawyer@aol.com

REAL ESTATE and TITLE INSURANCE

Betty J. Schall

is available for consultation; association; or contract work in complex real property transactions, closings and title insurance issues.

206-524-2657
E-mail: bettyschall@uswest.net

ETHICS & LAWYER DISCIPLINE

Leland G. Ripley,

former WSBA chief disciplinary counsel (1987-94), is available for consultation or representation regarding all aspects of professional responsibility or discipline defense.

206-781-8737

MEDICAL or DENTAL MALPRACTICE

John J. Greaney

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

BELLEVUE
425-451-1202
E-mail: jgreaney@qwest.net

LEGAL MALPRACTICE and DISCIPLINARY ISSUES

Joseph J. Ganz

is available for consultation, referral and association in cases of legal malpractice (both plaintiff and defense), as well as defense of lawyer disciplinary and/or grievance issues.

2101 Fourth Avenue, Suite 2100
Seattle, WA 98121
206-448-2100
E-mail: jganzesq@aol.com

CALIFORNIA JUDGMENT COLLECTION & COMMERCIAL LITIGATION

BRIAN H. KRİKORIAN
Krikorian & Krikorian

Over 14 years' experience in CA. Available for association or contract in employment actions, attorney fee and judgment collection, and all business-related litigation in CA and WA.

999 Third Avenue, Suite 321
Seattle, WA 98104
206-621-0099
E-mail: bhkrik@bhkllaw.com

APPEALS

TALMADGE & STOCKMEYER
PLLC

Philip A. Talmadge

Former justice, Washington Supreme Court; fellow, American Academy of Appellate Lawyers

Cleveland Stockmeyer

Former law clerk, Washington Supreme Court

Available for consultation or referral on state and federal briefs and arguments.

18010 Southcenter Parkway
Tukwila, WA 98188-4630
206-574-6661
Fax: 206-575-1397

APPEALS

Margaret K. Dore

Counsel for appellant in landmark child custody case, *Lawrence v. Lawrence* (Wn. App. 2001)

Former law clerk to the Washington State Supreme Court and the Washington State Court of Appeals

Passed CPA exam in 1982

206-624-9400
206-907-9066
www.margaretdore.com

Classifieds

SPACE AVAILABLE

Downtown Redmond: New ground-floor office with private access and support-staff station available. Two blocks from courthouse/City Hall. Shared conference, law library, kitchen, reception, fax, copier; free covered parking. 425-885-4066 or julin@julin-mcbridelaw.com.

Mercer Island view office: Class-A building; excellent easy-access location. Share amenities including clerical space, copier and fax with one other attorney and CPA. Call Jim at 206-275-0770.

Fully furnished downtown Seattle office space and adjacent secretarial and paralegal spaces available for sublet. Class-A, elegantly appointed space. Subtenant's rent includes reception service, coffee service, kitchenette, mail delivery, use of excellent law library and two conference rooms, janitorial, and all necessary amenities. Other services at cost: copier, fax, telephone/voice-mail, postage and parking. For additional details, call Brenda at 206-624-1933.

Downtown Seattle: View office plus staff space in a small suite at 520 Pike, 15th floor. Includes receptionist, storage, copier, fax, phones, kitchenette, conference room with small library, and DSL; wired for network. Parking available. Reasonable offers considered. Call David at 206-622-2573.

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

Business office space available: Convenient location at 2120 State St. NE in Olympia. Perfect professional and business office for both fledgling and growing enterprises. Small economical office and suites available; \$275 and up. Perks: large reception area, conference room, complete law library, adequate parking, and access to copier and fax. Full-time receptionist available for additional charge. Call David Bateman at 360-786-0601.

Downtown Seattle office-sharing: \$200 per month. Also, full-time offices available on 32nd floor, 1001 Fourth Avenue Plaza. Close to courts. Furnished/unfurnished suites, short-term/long-term lease. Receptionist, legal word processing, telephone answering, fax, law library, legal messenger and other services. 206-624-9188.

Historic Pioneer Square — on carefree Occidental Mall: Four window (operable) offices in law firm's elegant custom-designed

Reply to *WSBA Bar News*
Box Numbers at:

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

Positions available are also
posted by telephone at:

206-727-8261
and online at www.wsba.org

penthouse suite include wrap-around deck with views. Lease as a group or individually. Secretarial stations, library, conference rooms, kitchen/break room, reception, phone/fax/copy/postage, word processing, DSL, computer network, Internet access. Walk to courthouse, ferry, transit center, stadiums, great restaurants. Sole practitioners welcome. Up to 3,200 square feet additional space available on lower floor. Call Joe Cornett, 206-357-2021 or hjc@space-solutions.com.

POSITIONS AVAILABLE

Opportunity for association and acquisition of suburban general-practice firm. Well-established two-person firm with estate planning, probate, commercial, real estate and family law practice seeks one or two general practice lawyers for orderly transfer of firm over five-month period. Terms negotiable. Contact Jerry Tuttle at 425-392-1220.

Marten Brown Inc., a firm specializing in environmental law, is seeking a senior litigation attorney in practice for at least 12 years, with "first-chair" experience, and the proven ability to manage cases and a team. Environmental experience is preferred but not essential. This is an excellent opportunity for a motivated person to join the Northwest's leading environmental law firm. We require outstanding academic and pro-

fessional credentials, excellent oral and written communication skills, and a commitment to client service. Please send résumé to: Robert G. Stevens, Chief Executive, Marten Brown Inc., 1191 2nd Ave., Ste. 2200, Seattle, WA 98101; e-mail rstevens@martenbrown.com.

Litigation: 10-attorney firm in downtown Seattle (AV-rated) is seeking a full-time associate with a minimum of two years' experience, and a contract attorney skilled in legal research and writing. The firm's practice is high-level commercial and white-collar criminal litigation, largely in federal court. We enjoy what we do; value a respectful work environment; and want an energetic, well-rounded attorney to share our practice. For more information regarding our firm, please see our Web site at <http://www.yarmuth.com>. Please send résumé and cover letter to: Richard Yarmuth; Yarmuth Wilsdon Calfo PLLC; 1201 3rd Ave., Ste. 3080, Seattle, WA 98101.

Seeking a medical malpractice plaintiffs' attorney: We need a talented individual with team experience. Send résumé with salary requirements and a writing sample to: Keith S. Douglass & Associates; Attn: Patrick Fannin, 1321 W. Broadway, Spokane, WA 99202; pfannin@ksdlaw.com.

Associate attorney: Busy downtown Seattle firm with real estate, bankruptcy and collections practice seeks an associate attorney. We prefer someone with experience in evictions and/or litigation involving real estate lenders and other credit grantors, etc. Foreclosure and title insurance background is also desirable. We have a friendly and teamwork-oriented work environment, and our compensation is competitive. Please respond to: Hiring Partner; Bishop, Lynch & White PS; 720 Olive Way, Ste. 1301, Seattle, WA 98101;

TO PLACE A CLASSIFIED AD:

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

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

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

Questions? Please contact Amy O'Donnell at 206-727-8213 or amy@wsba.org.

admin@bishopolynchwhite.com (Word format only, please).

Safeco (Seattle) personal injury trial attorney: We are seeking a personal injury trial attorney with at least seven years' insurance defense experience, and minimum of two trials to verdict in the last two years. Candidate must have expertise in complex medical-damage analysis. Position requires excellent supervisory, mentoring and coaching skills on teamed cases, as well as ability to work independently on cases. Candidate must be an excellent relationship-builder with claims staff, attorneys, nonattorney staff and clients. Excellent organizational skills are needed. Position requires effective use of Microsoft Office Suite products and ability to quickly learn other automation tools currently used in the office. We are seeking an enthusiastic, creative problem-solver with a positive attitude who thrives in a dynamic office environment. Qualified candidate must currently be admitted to practice in Washington. Please send cover letter and résumé (e-mail only) to bobsto@safeco.com by Nov. 21, 2001.

Small Tacoma firm looking for experienced family law attorney to practice primarily in Pierce, but also in south King County. Salary DOE, plus benefits. Fax résumé and cover letter with salary requirements to 253-471-7778.

The Seattle Office of Reinisch, Weier & Mackenzie PC is seeking a full-time associate attorney to represent employers in workers' compensation matters. At least one year's workers' compensation and/or general litigation preferred. Please send cover letter, résumé and writing sample to Michael Weier via fax at 206-622-5902, or e-mail michaelw@reinischweierlaw.com.

Make a difference, tap into the future of wireless, and find time to explore a life of your own. AT&T Wireless is currently seeking the following professional in Redmond: corporate counsel; opportunity # 01-0005428-AD. This lawyer will work with the legal team which supports new consumer products; and offer development and implementation, customer care, direct marketing and marketing communications. The attorney will be responsible for working with the internal client organizations through all stages of the development and implementation of new offers to ensure that clients comply with appropriate laws, rules and regulations. Also responsible for reviewing mar-

keting materials created to support the offers. JD and state Bar license in good standing. Minimum two years' relevant experience in law firm or corporate legal department. Ability to deal with numerous complex and unrelated issues; excellent verbal and written communication skills; strong interpersonal skills; working knowledge of and competence with online research tools and word processing; proven ability to function with a minimum of administrative support; working and efficient knowledge of Word, voice-mail and e-mail systems; communications, technology, consumer and/or credit law background. We offer competitive compensation and an outstanding benefits package, including an employee wireless phone and airtime, and an employee stock-purchase plan! To apply for this position, please indicate opportunity number on your résumé. E-mail text to jamie.dodge@attws.com, or mail on white paper using plain fonts to: AT&T Wireless, PO Box 97073, Redmond, WA 98073-9773. For more information on this opportunity or to apply online, please visit our Web site at <http://www.attwireless.com/jobs>. We are an equal opportunity employer.

Administrative appeals judge, State of Washington Environmental Hearings Office, Lacey, WA. Salary range: \$70,000 to \$78,000. Contact Robert Jensen, director; robertj@eho.wa.gov.

Less stress? General practice firm in coastal border town of Blaine, WA, looking for attorney to work on salary or percentage basis. Experience preferred, but less important than commitment to quality representation of clients from wonderfully diverse social and cultural backgrounds. (We're only 20 minutes from Bellingham and 35 minutes from Vancouver, B.C.) Our modest office has view of Drayton Harbor, the Peace Arch and White Rock, B.C. Will also consider office-share arrangement with specialized attorney. Please forward résumé and writing sample to: Law Office of Roger L. Ellingson PS, PO Box 1258, Blaine, WA 98234-1258; fax 360-332-6677.

Small IP and commercial litigation firm in downtown Seattle seeks one to four lawyers with partner-level practices. We are a collegial, well-organized and forward-looking firm with excellent resources, an unusually interesting practice, and elegantly furnished spaces in a class-A building. Send inquiries, which will be kept strictly confidential, to PO Box 1297, Seattle, WA 98111.

Smyth & Mason PLLC seeks an associate with a minimum of two years' litigation experience. Excellent academic qualifications required, commensurate with other firm members. Send résumé to: 701 Fifth Ave., Ste. 7100, Seattle, WA 98104, Attn: L. Petorak; e-mail lindap@smythlaw.com.

Associate attorney: Busy Seattle firm practicing family law seeks associate attorney. Applicant must have a desire to work directly with clients, at least two years' litigation experience, and computer literacy. Our work environment is friendly and our compensation competitive. Please send résumé and cover letter to: Hiring Attorney, Goldberg & Jones PLLC, 2200 6th Ave., Ste. 1200, Seattle, WA 98109.

Join the world's largest law firm, the Army JAG Corps! The Army Reserve needs a "few good lawyers" to serve as judge advocate officers in Seattle, Spokane, Tacoma and Vancouver. Become part of a 225-year tradition of providing legal counsel to commanders and soldiers. One weekend a month and two weeks a year provide supplemental income, low-cost life insurance and dental benefits, commissary and exchange privileges, a defined-benefit retirement plan, travel opportunities, continuing legal education, and personal and professional development. Prior military service is preferred but not required. Idaho and Oregon attorneys and law students are welcome to apply. Visit our Web site at <http://www.jagcnet.army.mil>. Send cover letter and résumé to: Commander, 70th Regional Support Command, Attn: AFRC-CWA-JA (Staff Judge Advocate), 4570 Texas Way W., Fort Lawton, WA 98199-5000.

Litigation associate: AV-rated boutique litigation firm in downtown Seattle is seeking an associate with a minimum of three years' experience who is anxious to assume case-management responsibilities. Strong writing, oral advocacy, and analytical skills are essential. An interest in or experience with construction disputes is desirable. The position is available immediately. Send résumé and cover letter to: Ken Yalowitz, 1191 2nd Ave., Ste. 2110, Seattle WA 98101.

Safeco is one of the most respected, diversified financial services companies in America. Our family of companies provides annuities, asset management, property and casualty insurance, life insurance, retirement services and surety bonds. Counsel: If you are an individual with at least three years' life and health insurance law and employee-

benefits experience, your talents are needed to provide legal advice to Safeco Life's group insurance department. You will advise on employee benefits and legal aspects of the department's underwriting, claims and administrative practices. Other duties include drafting and advising on insurance contracts, agency contracts and licensing, and assisting the legal department's vice president and associate general counsel. A successful candidate will possess a law degree, and be licensed to practice law in Washington. You must be a team player who is technologically adept with the Internet, MS Office and electronic research; able to work with a broad range of internal clients; and possess excellent writing and communication skills. E-mail your résumé to hrlife@safeco.com and include HAR/Atty. in the subject line. You can also contact Safeco through our Web site at <http://www.safeco.com/jobs> or send your résumé to: Safeco Life & Investments, Attn: HAR, 5069 154th Pl. NE, Redmond, WA 98052; fax 425-376-5737. As a Safeco employee, you will enjoy benefits including health/dental/life insurance, retirement plans and 401(k), training and development, college tuition assistance, work/life resources and more. We are an equal opportunity employer committed to employing a diverse workforce. Jobline 800-753-5330.

Attorney – corporate legal: Safeco Corporation is seeking an experienced corporate attorney to join its in-house legal staff. Candidate should have a minimum of five years' experience in general corporate law, executive compensation issues, ERISA and employee-benefit plans. We require excellent academic credentials and references, strong analytical skills, as well as excellent oral and written communication skills. WSBA membership preferred. Salary dependent upon qualifications. Please submit a cover letter and résumé outlining qualifications to: Safeco Human Resources, T-17, Attn: JS, Safeco Plaza, Seattle, WA 98185; fax 206-925-0165, e-mail jensha@safeco.com. Safeco is an equal opportunity employer committed to employing a diverse work force.

Quality attorneys sought to fill high-end permanent and contract positions in law firms and companies throughout Washington. Contact Legal Ease, LLC by phone 425-822-1157, fax 425-889-2775, e-mail legalease@legalease.com, or visit us on the Web at <http://www.legalease.com>.

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

Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim LLP is actively and aggressively expanding our business and real estate/land use practices in our Tacoma and Seattle offices. Tax, ERISA, securities and banking experience preferred. Send résumé to: Executive Director, 1201 Pacific Ave., Ste. 2200, Tacoma, WA 98402; or e-mail thoml@gth-law.com.

SERVICES

Experienced Central Washington litigation attorney: Available for contract or part-time legal services in civil and/or criminal law. Will consider full time under the right circumstances. Will negotiate compensation. Call 509-949-3694.

Minzel and Associates, Inc. is a temporary and permanent placement agency for lawyers and paralegals. We provide highly qualified attorneys and paralegals on a contract and/or permanent basis to law firms, corporations, solo practitioners and government agencies. For more information, please call us at 206-328-5100 or e-mail mail@Minzel.com.

Contract attorney at your service! I perform legal research and writing, and organize trial documents for Washington lawyers. Many satisfied clients. Elizabeth Dash Bottman, 206-526-5677; e-mail bjelizabeth@qwest.net.

Have CD Brief, LLC will put your appellate brief on CD-ROM. Submit your appellate briefs on CD-ROM with hyperlinks to the cases and the record, as suggested by the Washington Supreme Court. Contact us for more information or a free demo. 206-232-4002; <http://www.cdbrief.com>.

Fine jewelry appraisals since 1979. The Northwest's leading independent gemological laboratory. Insurance, estates, dissolutions, bankruptcies. Expert testimony, audit reviews. Northwest Gemological Laboratory, 425-455-0985.

Cash now vs. payments over time: We purchase all types of debt instruments including real estate notes, business notes, structured settlements, lottery winnings and in-

heritances in probate. Please contact us regarding the current cash value of your receivable. Wes-Com Funding, 800-929-1108; Sam Barker Esq., president; <http://www.webuynotes.com>.

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

Experienced appellate attorney: 20 years' state and federal experience, civil and criminal. Former deputy prosecutor. Superb writer. Robert A. Weppner. Telephone 206-728-9332; e-mail raw_law@earthlink.net.

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

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

Oregon accident? Unable to settle the case? Associate an experienced Oregon trial attorney to litigate the case and share the fee. OTLA member; references available; see Martindale, AV-rated. Zach Zabinsky, 503-223-8517.

Asset searches/people located: Licensed investigations. Postjudgment, prelitigation, confidential and reliable. PAL, Professional Asset Locators, 800-537-6900; fax 800-206-6096; e-mail pal@intellex.com; <http://www.4pal.com>.

MISCELLANEOUS

Escape to Oregon's magnificent northern coast: Beautifully designed beach house on hillside in scenic village of Oceanside. Panoramic view – five blocks to beach. Three bedrooms, three baths, four decks, gourmet kitchen, master suite includes king bed and spa tub with view. Crabbing in nearby Netarts Bay. 75 miles from Portland; four-and-a-half-hour drive from Seattle. \$250 weekend, \$500 week, \$60 weekday. Call Michael at 503-478-1280.

If you're in a jam, we know a good banker...

Pacific Northwest Bank has a fast approach to the setup and disbursement of IOLTA and Client Trust Accounts. We have custom revolving credit lines with subledgers that allow you to segregate and track costs associated with major cases. In addition, we provide the convenience of a courier service and most importantly, we understand how to help bring a little order to your accounts.



**Pacific
Northwest
Bank**

55 Financial Centers throughout Washington.
Please call or stop by your local Pacific Northwest Bank.

Equal Opportunity Lender. Member FDIC.

FindLawTM
www.findlaw.com

Linking lawyers & potential clients.

38,000,000 page views a month.

120,000 links from other sites.

2,000,000 unique users a month.

Is your Washington practice ready for FindLaw?

West Group, your trusted legal information partner for over 100 years, can put you there with these FindLaw services:

- **West Legal Directory[®] Profile** — Your firm's resume, front and center before the largest number of the most qualified seekers of legal services
- **Sponsorship and Directory TopSpot[™] Listing** — Your firm in the top visibility position before potential clients who are looking specifically for the legal services you offer in their geographic area
- **West FirmSite[™]** — Your firm's custom website — designed, built, hosted, promoted by West Group — and integrated with the FindLaw.com marketing machine

Trust West Group to handle all of your professional online needs.

To contact your Washington West Group representative, phone (800) 762-5272 or e-mail Washington@westgroup.com

www.findlaw.com

The world's most widely used law-related Web site.



A THOMSON COMPANY