

Washington State

BarNews

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If at First You Don't Succeed...

Turning a Judgment Against a Recalcitrant Tortfeasor into Cash

New Legislation of Interest to
Attorneys: 2001 Highlights
p. 27


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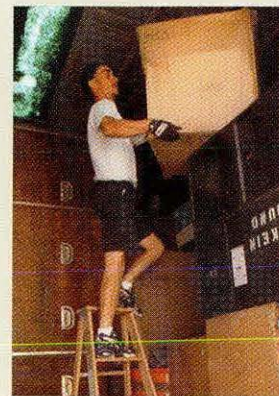
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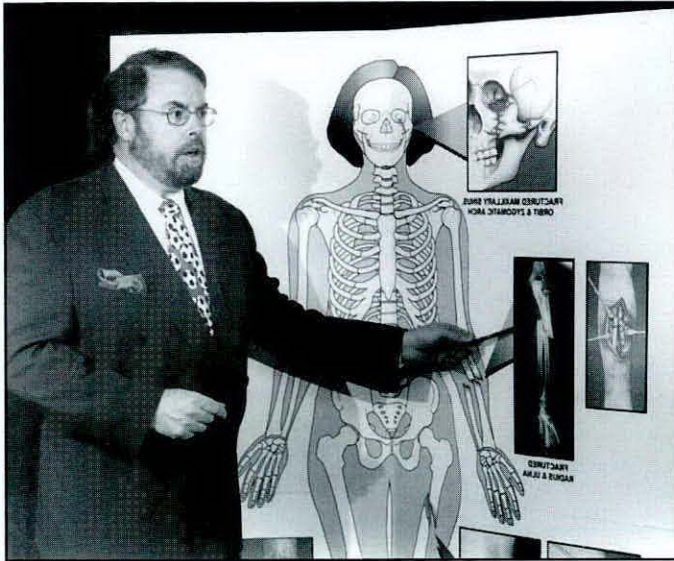
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Besides Paul's many general memberships, his invitational legal memberships include: the *America College of Trial Lawyers*, the *American Board of Trial Advocates*, the *International Society of Barristers*, the *International Academy of Trial Lawyers*, the *Damage Attorneys Round Table*, the *American Bar Foundation*, and the *American Society of Barristers*.

Mr. Stritmatter is past president of the Washington State Bar Association, the Washington State Trial Lawyers Association, and the Damage Attorneys Round Table. He served as chairman of the Access to Justice Board, Northwest Justice Project, and served on the Board of Directors for the Washington State Trial Lawyers Association Foundation, the International Academy of Trial Lawyers, LAW Fund, and the Washington State Head Injury Foundation.

Paul Stritmatter received his law degree from the Willamette University College of Law (Magna Cum Laude) in 1969. He received a degree in economics from the University of Washington in 1966.

Paul was in private practice in Hoquiam, Washington, with his father, Lester O. Stritmatter, from 1970-1982. He currently practices law with Keith L. Kessler, Paul W. Whelan, Michael E. Withey, Kevin Colluccio, Brad J. Moore, Garth L. Jones, Ray Kahler, Peter O'Neil and Reed Schifferman with offices in Hoquiam and Seattle.



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Letters

Support of President's Proposal

Editor:

I wholeheartedly concur with Jan Eric Peterson's editorial on the healing power of the apology. I've been working on the defense side of litigation and claims resolution since 1978, the last 11 years with Washington Mutual. At the risk of making admissions against interest, I have been issuing apologies for years on behalf of the bank in cases where I have felt that our customer had legitimate grounds to feel that she could have been treated better. The apologies have gone a long way toward diffusing anger and resolving the problem. I hope your suggested evidence rule is adopted.

*Phil Mortenson
Seattle*

Happy to Be a Lawyer

Editor:

Here's a little something I wrote and often think about.

Asked, "Who is the rich man?" Epicurus replied, "He who is content."

I was in court yesterday with clients on the criminal calendar. I was smiling and happy and as usual enjoying myself and my surroundings. Clearly the judge thought this most inappropriate as was indicated by the scowling look and the stern glaring from the bench. I thought to myself, "Give it a break, Judge; if you want to know why I'm happy, just ask. I'll be glad to tell you." There are lots of reasons I'm smiling — here are just a few:

- I'm not wearing silver bracelets and orange coveralls. Life has been good to me, and I'm a lot more fortunate than many people I come in contact with, certainly many of my clients.
- I'm not poverty-stricken or drug-addicted; I have a loving home and functional family. I am not an accused, or one of the spectators in the gallery watching a son or daughter being sentenced to jail. For this I am happy.
- I'm smiling because I truly like my job. Being a lawyer is fun — you get paid to talk! It's every chatty Irishman's dream. Simply amazing. Not only that, but look at the people I work with. By and large, my fellow lawyers are smart, well-educated and compassionate people. They are witty, and fun to talk to; in general they are professional and articulate. Heck, some of

them even know how to play golf. Every day I wake up and actually look forward to seeing and talking with the people I work with. Because of this, I am smiling, Your Honor.

- I am smiling, Judge, because just like you, I am an attorney, a counselor at law. I am a very powerful person; I have learned the law and legal process. I have the ability to truly do good in today's world, to help others, to prevent injustice. Yes, like Superman, we lawyers can indeed fight for truth, justice and the American way. Lawyers have historically been powerful people

in society, working to right wrongs, fight for those less fortunate, and make the world a better place. To be allowed to follow that tradition makes me happy, and that, Your Honor, is why I'm smiling.

*Jim Foley
Olympia*

More Than Mediation Involved in Negotiated Settlements

Editor:

In their article examining the impact of longevity on divorce settlements (*Bar News*, May 2001, p. 21), Cam Hall, Jan Reha and



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Lisa Peters present what is clearly a well thought out and reasoned analysis. My comments focus on the implication contained within the article that reasonable and effective spousal maintenance arrangements for the lower-earning spouse are vulnerable to being given short shrift in a mediated settlement.

The authors make the following observations with respect to the spousal support negotiating process: "Too little thought is given to what happens when the maintenance terminates and medical coverage

ends, except that the wife is expected to have a job by then and pay her own bills. This is especially true in mediations when the amount and length of maintenance often becomes an easy target for a negotiated limitation."

Parties who participate in the mediation of their dissolution case typically engage in one of two distinct processes: (1) they meet together with a professional mediator in joint session (typically without legal counsel present) to discuss and resolve their issues, or (2) they attend a pretrial

settlement conference/mediation conducted by a professional mediator, where they do not typically meet jointly, where counsel is present, and the mediator "shuttle mediates." In the first scenario, a competent mediator will always strongly suggest that the parties have access to legal counsel, as well as any other professional (such as a career counselor or financial advisor) who can provide them the advice and guidance they need to make informed decisions. In the second scenario, it is possible the parties have availed themselves of input from various sources. Of course, counsel is present for immediate consultation during this mediation process.

If a lower-earning or financially disadvantaged spouse participates in either of the above mediation processes, and he/she ends up negotiating a spousal support or financial settlement that does not appear to serve the party's long-term financial needs, wherein lies responsibility? Should the attorney who represented or advised the party have been better prepared or more aggressive? Did the higher-earning spouse improperly influence or strong-arm the settlement? Did the mediator falter in not providing a settlement environment that fairly empowered both parties? Did the parties themselves seek proper advice and guidance from reasoned professionals? Or did the party simply agree to the deal to get the case over with following many months of court hearings, discovery and negotiations? How many times does the above scenario play itself out where negotiations have occurred primarily between legal counsel, and settlement is reached without the parties participating in mediation? How different would answers to the above questions be if one or both parties were, for whatever reason, not represented by an attorney?

Many factors play a part in a negotiated settlement. If a mediated spousal support or financial package appears to fall short of the mark, it is wise to look at everything that could influence the result.

*Don P. Desonier
Bellevue*

What Have We Become?

Editor:

While flipping through *Bar News* (May 2001) the advertisements of Mr. Luvera and Fury Bailey were, to me, striking. The main

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content were dollar figures of recent awards. Thoughts of driving past billboards in Palm Springs and Las Vegas came to mind. There, law firms advertise in such a way that I feel momentarily embarrassed to be an attorney. I was always glad that at least the lawyers in *my* state were not like that. There is so much more to being a good lawyer who serves his or her clients than just dollar amounts. I feel that type of advertising cheapens our value rather than enhances it. In the early days, lawyers (as the clergy) were "above" charging for their time. Has this profession fallen so far that we are only about money? Are we but glorified bill collectors? Maybe I am naive, but this type of advertising leaves a bitter taste in my mouth no matter how much respect I have for the particular law firms involved.

*Jeffrey C. Mirsepasy
Seattle*

LFW Trustees, Not Supreme Court, Grant IOLTA Funding

Editor:

In reference to Roger Ley's letter concerning IOLTA (May 2001, p. 8), he is incorrect when he states that the Supreme Court provided funding for Columbia Legal Services. In fact, the Supreme Court, along with the governor and the Board of Governors of the Washington State Bar Association, each appoint three trustees to the board of the Legal Foundation of Washington, the recipient of IOLTA funds. It is the duty of the trustees to make all grant decisions. The trustees made grants to 34 organizations throughout Washington state for 2001, including to 24 local bar-supported pro bono programs.

Mr. Ley also referred to a decision by the 9th Circuit in *Washington Legal Foundation v. Legal Foundation of Washington* that IOLTA is an unconstitutional taking. The decision of the three-judge panel in that case is not precedent in the 9th Circuit, as the court has granted our petition for rehearing en banc, which will occur on June 21, 2001 in San Francisco.

We welcome this opportunity to have the case reheard en banc, as the 9th Circuit chooses to rehear cases en banc in fewer than one percent of the thousands of cases it decides each year.

*Barbara C. Clark
Seattle*

Minority Positions on the BOG

Editor:

The recent attempts by the Board of Governors to create minority positions is one more half-baked idea by a departing Bar president. This is not the first. Remember when the board tried to start our own insurance company and make us all join. Remember just a few years ago when the board, in the thrall of the access to justice folks, wanted to suggest to the Legislature that the B&O tax be raised, but just on lawyers, to support the program. When it was pointed out that we would rather not

have our own trade association ask for a tax increase, this idea passed on. Now, we have some half-baked idea from the 70s which won't seem to go away, even though the person who proposed this is no longer the president. The board seems to be living in fear that someone will call them insensitive or racist if they recognize that this is really a stupid idea, probably illegal, and not supported by the membership. I suggest they stop worrying about their image and do their job. The board's current position seems to be that we are all a bunch of insensitive racists and the only way to rem-

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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>

edy this is to create these new positions. I am offended by this position, and I suspect I am not alone.

Is there really a problem? I have seen no evidence. We are actually a rather small association. Any member can run for the board. Most of us do not because we cannot afford the time commitment or the loss of income involved. I have served on Bar committees and on the executive board of the Litigation Section, and I understand that Bar leadership is time-consuming, and that many busy lawyers simply do not have the time or interest to serve on the Board

of Governors. There is no evidence that minorities are excluded from the workings of our Association. The only African-American person I can recall running for the board was Lem Howell, and he won.

I have a suggestion. If this is such an important issue, let the members of the Association vote on the question. Unless the board is afraid of a little democracy, this is not a problem. If they are not willing to do that, let's recognize this for the window-dressing it is and move on.

*Gregory J. Wall
Port Orchard*

Partisan Viewpoint Protested

Editor:

In the May 2001 issue (p.15), the *Bar News* editor makes fun of the Bush administration for excluding the American Bar Association from prior secret review of federal judicial nominees. This is partisan politics, and *Bar News* should stop doing it.

The WSBA is an administrative agency controlled by the state Supreme Court. It is a government agency. The WSBA is not supposed to engage in partisan politics. *Bar News* is the agent of the WSBA and is subject to every restriction the WSBA is subject to.

The bias in the editorial is obvious. Editor Panitch accuses the Bush administration and "its collective psyche" of having lost touch with reality. Not a matter of disagreement, but of having lost touch with reality. He points out that Mr. Bush, according to the editor, did not win the popular vote, and implies that he did not win the electoral vote either. He says considering the ABA too liberal is "preposterous — and absolutely predictable." That is, those cretin Republicans are absolutely predictable in their preposterous opinions. Strong stuff. Mr. Panitch's final line is "God save the United States of America" (from the evil George Bush and his politically tested judges).

Now I admit I exaggerate a tiny bit. Mr. Panitch did not call George Bush evil. But everything in his editorial is partisan. It could come from a position paper of the Democratic party.

As far as the ABA itself is concerned, there are plenty of responsible people, such as the *Wall Street Journal* editors, who think the ABA is indeed the functional equivalent of the Democratic party. This is a live issue, not a matter of anyone's fantasy.

I suspect that eleemosynary institutions attract ideologically charged people, so it is likely that an organization such as the ABA would have an ideological, not a charitable, focus.

As far as secret review by the ABA or anyone else is concerned, this is not a good idea either. Our government is based on the principle of open discussion of candidates for office. That enables the people, not the members of an aristocratic committee at the ABA, to evaluate the candidates, and that makes our society more

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A surreal, textured painting of a man in a suit standing in a cave. The cave walls are covered in large, stylized faces of animals, including a bear on the left and a horse on the right. A bright light source from above illuminates the man, who is holding a briefcase and a cane. The overall style is expressive and painterly.

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democratic. The fact that the press and some politicians sometimes trumpet irrelevant information is not a reason to walk away from this principle of democratic government. The Bar Association should stop being a partisan force.

Roger B. Ley
Seattle

Editor:

I write to offer a special contribution of two pennies to the Association to repay Mr. Panitch for his May "Two Cents' Worth"

column which, I fear, was greatly overvalued even at that meager sum.

I read *Bar News* for discussion of issues and events of general interest to the membership of our Association. I do not expect to have to wade through a partisan jeremiad bewailing the decision of the Bush administration to terminate the ABA's vetting of proposed federal judges. I suspect that there are quite a few members of this Association who have terminated or not renewed their ABA memberships due to the proclivity of its leadership to take positions on

political and social issues, and to do so in a manner that reflects a partisan slant.

Therefore, while there is certainly room to differ on the wisdom of the administration's decision, I see no evidence that such a decision is "preposterous" — a term clearly reflecting the editor's belief that his point of view is revealed truth and that any contrary view cannot possibly be based on a reasonable difference of opinion and is, therefore, unassailably the product of the basest sort of political pandering.

The editor's own political position is made quite clear by his leap into the fray over the Florida vote count and the Supreme Court decision thereon, and his description of the administration "making new enemies at every turn, and even offending people who want to be friends." It's pretty obvious that Mr. Panitch is not a "new" enemy.

The editor of the *Seattle Times* can take whatever editorial position he wishes because subscription or purchase of the newspaper is strictly voluntary and an offended reader can simply cancel or not buy the paper. However, *Bar News* is supported by dues imposed as a mandatory charge for the privilege of practicing law in this state. Since that is the case I don't want to read about Mr. Panitch's political theories and beliefs in a publication I am required to subsidize. If he wishes to beat up on the national administration, let him hire a hall or publish at his own expense, and not in a publication that is supposed to serve the interests, and reflect the values, of this entire Association.

James A. Cathcart
University Place

Editor:

You have overstated the value of your article "Two Cents' Worth" in the May 2001 edition of *Bar News*. Instead of demonstrating that the American Bar Association should retain a role in judicial nominations, it only reveals some of your own prejudices.

The ABA has lost its role in judicial nominations because it is not a mainstream organization. Even a cursory review of the ABA's advocacy issues on a wide variety of issues demonstrates it is hardly a mainstream organization. The ABA has a 71-page, single-spaced, two-column publica-

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tion listing the 1,200 positions it has taken on a wide variety of issues. It reveals the ABA supports taxpayer-funded abortions, supports schools who choose to bar military recruiters, takes advocacy positions regarding government funding of various programs, advocates new federal firearm restrictions, and supports race and gender-based affirmative action. With respect to affirmative action, it is worth noting the ABA specifically encourages affirmative action in judicial selections.

These positions hardly reflect the mainstream of American political thought. The fact that the ABA is outside the mainstream does not change because the president of the ABA belongs to a large law firm. Indeed, how many of Martha Barnett's partners actually belong to the ABA themselves? Instead of proving your point, your gratuitous comments about Holland & Knight demonstrate your own prejudices. There is simply no basis for your assumption most of the partners voted for President Bush. Furthermore, your immediate segue into calling these presumed Bush voters "robbers" amply demonstrates your dislike for both President Bush and large law firms.

The ABA claims it evaluates judges on

the issues of "integrity, judicial temperament and professional competence." According to the ABA, the court system should implement affirmative-action programs. According to voters in Washington and California, the government should not implement such programs. In evaluating a judicial candidate, the ABA can either hypocritically ignore its own positions, or it can determine a state supreme court justice who declines to implement such programs does not have the right "temperament" and "competence" for appointment to the federal bench. Regardless of the path it chooses, the ABA has no role in determining who should be appointed to the bench.

*Tom Donahue
Bellevue*

Comments on May Issue

Editor:

Some reactions to columns in the *May Bar News*:

President Peterson's encouragement of litigant apologies was a gust of fresh air into the stale and often nasty realm of civil litigation. I support his proposed amendment of ER 408 to say that evidence of an apol-

ogy would be inadmissible to prove liability or fault for civil wrongdoing. Run with this, Jan!

On the other hand, I oppose the notion floated by Jan Michels that it may be "time to add a lay member to the Board of Governors." Asking whether the "time" has come to do this suggests that it is a good idea, an eventuality just waiting to come to fruition. To this I respond: No, no, a thousand times no. Our profession gets more than enough lay advice from newspaper editorials and letter writers, talk radio, legislative committees and lobbyists, citizen study groups, etc. It's not as though these voices are not heard by Bar Association policymakers. Let's not further dilute our governing board by adding people whose focus may be other than the best interests of our membership.

I wish to comment also on the "Two Cents' Worth" column, in which Editor Mark Panitch was shocked that the Bush administration thinks the ABA is too liberal and will ignore the ABA's judicial candidate evaluations. Here's a flash for you, Mr. Panitch: The ABA is a liberal organization; or at least, its public policy stances are. That the current ABA president comes

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"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.

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from a gargantuan Florida firm hardly proves that she, or the ABA, is conservative. I can name you any number of liberal lawyers from big firms.

Here are a few of the official positions the ABA has taken over the years:

- supporting affirmative action over merit hiring and selection;
- advocating strict gun controls;
- calling for a moratorium on the death penalty and recommending measures making its implementation more difficult;
- opposing a constitutional amendment barring flag burning;
- endorsing the Supreme Court's discovery of a right to privacy in *Griswold v. Connecticut* and *Roe v. Wade*;
- urging increased funding for the Legal Services Corporation;
- opposing the Vietnam War.

More to the point here, the ABA opposed the Supreme Court nomination of Judge Robert Bork, who had strong personal and professional qualifications, and could only have been challenged on ideological grounds. And the ABA opposed the nomination of Clarence Thomas, whom conservatives generally supported.

Whether or not one agrees with the ABA's positions on the issues (I happen to agree with some but not all), the fact is that those positions are identifiably liberal. They are anathema to most conservative voters and groups. It's no wonder, then, that the Bush administration is not interested in what the ABA has to say about federal judicial nominees.

Finally, it should be noted that this development on the federal level is no different from what has been happening here in Washington, where recent state governors appointing appellate judges have often ignored the approved list of candidates screened by the WSBA's Judicial Recommendation Board.

*Mark H. Adams
Gig Harbor*

Members Must Petition for Referendum on Adding Underrepresented Seats to BOG
Editor:

As of May 18, 2001 there were 22,138 active members of the WSBA with an anticipated increase to about 22,438 by August 4, 2001.

If the members desire a referendum on

whether to add two "underrepresented seats" to the Board of Governors, 1,122 active members must petition for such a referendum in accordance with WSBA Bylaws, Article VII, Section I. No fax petitions accepted, however, individual letters/petitions to the WSBA requesting that the board action in May of amending the Bylaws to provide for two additional seats for underrepresented groups be put to a vote of the membership should suffice. These petitions should be to the WSBA before August 1, since there is a 90-day window according to the Bylaws.

It would be interesting to hear the feelings of the members.

*Craig M. Liebler
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., July 10 for publication in the September 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.

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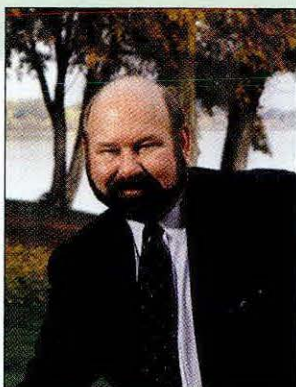
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The President's Initiative

by Jan Eric Peterson

WSBA President

In reviewing my last two columns in this space, I realize I have been a bit of a scold and, as my mother would say, too darn preachy. I called for apologies and truthfulness — ideas consistent with my initial proposition last fall that we must re-establish the respect due our proud profession by earning it. I proposed a campaign of professional pride. So let me report what we have been doing to help you be proud to be a lawyer.

Like all presidents with a half-baked idea, the first thing I did was (what else?) form a task force! Most unimaginatively, I called it the President's Initiative Task Force, or my PIT crew. I had two goals: 1) internally, to re-instill pride in our members; and 2) externally, to tell the public the good news about lawyers. The task force's job was to figure out how to achieve the goals, and then do the work.

I called on **Randy Gordon**, who has authored many columns on the theme of professional pride for the King County *Bar Bulletin* using his motto, "No more lawyer jokes." His energy, enthusiasm, inspiration and effort sparked the task force. Working with WSBA Communications Director **Judith Berrett**, this is what we are doing:

Most of the work is being done with volunteer time and effort by you, but we need more help. If you have interest, talent and time to devote to making us proud to be lawyers, please join the PIT crew.

Professionalism Initiatives

Professionalism initiatives in the works, especially under the leadership of **Steve Henderson**, **Harry McCarthy**, **Randy Gordon**, **Don Logerwell** and **Mary Fairhurst**, are described below.

- Implementing third-year class *orientation fairs* in conjunction with the Bar exam and licensing presentations at the three Washington law schools (Gonzaga University, Seattle University, University of Washington). These fairs introduce the specialty and minority bars, and the variety of opportunities for professional service and involvement to lawyers-to-be.
- Promoting *model swearing-in ceremonies* to welcome new lawyers and instill pride in our profession from day one (including your president giving the "proud to be a lawyer" speech at least six times in King County alone). The goal is to offer local bar associations a model program to implement in partnership with their own courts, similar to those in Spokane and Thurston counties.

- Writing new *oaths for admission* to the Bar and for bar leaders taking office. That will remind us of what an honor and an obligation it is to be a professional servant of the law. Governor **Lindsay Thompson**, a master craftsman of the language, has joined me in this effort.

- Establishing *Lawyer-to-Lawyer*, a program designed to bridge the gap between law school and the "real life" practice of law. Lawyer-to-Lawyer will provide an opportunity for each new member of the Bar to develop a relationship with an experienced lawyer in his or her area of practice. If you're an experienced lawyer interested in volunteering, please con-

tact **Pete Roberts** at 206-727-8237 or peter@wsba.org, or **Julie Griffiths** at 206-733-5914 or julieg@wsba.org.

- Adopting and disseminating the *creed of professionalism* developed by the Professionalism Committee and so welcomed by judges.
- Working toward the creation of *mandatory first-year CLEs* emphasizing professionalism and survival skills. Montana has a program called "Rookie Camp" that provides training they don't teach you in law schools on what to do and how to act in a professional setting. LOMAP, the WSBA CLE Department, and the Professionalism Committee are working to do better by our new lawyers. The WSBA Young Lawyers Division (WYLD) has proposed an ambitious effort to coordinate new lawyer development.

Pride Initiatives

- Officially adopting the Celebration 2000 theme as the *WSBA positioning statement* (motto): Working Together to Champion Justice. This was adopted from the theme "champion justice" developed by the 1998 ad hoc Communications Committee under the leadership of **Kathryn Ross**.
- *Honoring local heroes*: As the Board of Governors meets around the state, and as I make appearances at other associations such as Washington Women Lawyers and the Loren Miller Bar Association, we make it a point to honor a local hero whose life and practice embody what makes us proud to be lawyers. We celebrate the best of us, and invite local press and bar associations to celebrate these lawyers with us. This

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program, headed by Tom Campbell, began in the Tri-Cities by honoring Francois Forgette for his exemplary professionalism, including multiple community service commitments. Mr. Forgette was subsequently selected "Tri-Citian of the Year."

- Profiling attorneys in the "Proud to Be a Lawyer" column of *Bar News*. With the help of Jay Flynn, this feature gives our membership examples of lawyers whose lives in their communities reflect so well on our profession.

- Updating daily the "Proud to Be a Lawyer" feature on the *WSBA Web site* (www.wsba.org). It includes quotes, stories and historical notes that remind us why we should be proud.

- Revitalizing the *speakers bureau* under the leadership of WSBA Communications Specialist Allison Parker. Mailings promote the revitalized speakers bureau to community clubs, schools, senior centers and community centers around the state, offering lawyers who will provide free public legal education.

- Expanding *Law Week* under the direction of Ron Bemis and WSBA staff liaison Lisa KauzLoric. In May, over 500 lawyers and 66 judges spoke to almost 20,000 Washington students. It is our fervent belief that the more exposure to lawyers we can give to kids, the better off we will all be.

- Developing *The Truths About Lawyers* pamphlet, under the guidance of Carl Carlson, to explode eight myths about lawyers and the justice system. This colorful and informative pamphlet is designed for distribution by lawyers to their clients, and as a handout for speakers bureau engagements and other presentations.

- Implementing a *print media campaign* by recommending the purchase from the Virginia Bar Association of five award-winning ads emblematic of lawyers helping people. For example, one depicts an elderly person's face and the script:

The nursing home takes away his
dignity.

A lawyer has their license revoked.

His family doesn't want him to live
alone.

A lawyer says he doesn't have to.

Medicare won't cover him.

A lawyer sees to it that they will.

His finances are a mess.

A lawyer organizes them.

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The nursing home took away his dignity.

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• Producing *The Law Book* in a joint venture with the Horvitz community newspaper chain (*Eastside Journal*, *South County Journal*, *Northshore Citizen*, *Mercer Island Reporter* and *Snoqualmie Valley Record* — papers reaching more than 80,000 households). *The Law Book*, a consumer guide to the legal system, was printed as a 12-page supplement in these papers. It contains articles on legal subjects such as jury duty, what to be aware of when buying or selling a home, and the basics of parenting plans — all supported by legal advertising. Horvitz contributed \$1,000 of advertising revenue to the Council on Public Legal Education. It is a pilot project that we hope to repeat.

• Conducting the “good works survey” to gather data on the pro bono and public service our members do, from nonprofit boards to volunteer legal clinics. From this statistical analysis we can make the case for the good works of true professionalism by our members in free community service.

• Implementing the *KING-TV Media Project* in a joint venture with KING Broadcasting (KING-5 TV, KONG TV, and Northwest Cable News Network). We are planning to produce segments to be broadcast in conjunction with news hours. In these segments, lawyers will help reporters address legal issues of public interest such as employment rights, school discipline, boating laws and living wills. We will also develop a ready-response team of lawyers for news-reporter resources and on-screen comment. This project was spearheaded by Spokane lawyer and former newsman **John Allison**, and lay member

of the crew **Mary Elizabeth Stritmatter**.

This is some of what we’re up to at your Bar Association. I particularly want to thank those mentioned above and the other members of the PIT crew who are carrying on the campaign for a proud profession: **Sal Mungia**, **Patrick Sheldon**, **Mark Honeywell**, **Sherri Lynn Jefferson**, **Stella Rabaut**, **Daniel Hannula** and lay member **Patt Schwab**.

Most of the work is being done with volunteer time and effort by you, but we need more help. If you have interest, talent, and time to devote to making us proud to be lawyers, please join the PIT crew. Contact Judith Berrett at 206-727-8212 or judithb@wsba.org to volunteer, and I’ll stop preaching and start praising.

Thanks in advance for your help. ✍

Courtrooms to Classrooms

by Lynn Mattson-Eul

“The goal of the Snohomish County Prosecutor’s Office is to keep kids away from behavior that leads to the criminal justice system. Having deputy prosecutors teach kids decision-making skills and consequences helps them make the right choices when faced with peer pressure and other tough life decisions. Preventing violence and self-defeating behavior, like drug and alcohol use, starts with having the right tools to make the best choice. Courtrooms to Classrooms is designed by prosecutors and educators as an early prevention tool.”

James H. Krider
Snohomish County Prosecutor

Courtrooms to Classrooms, a fifth-grade curriculum, has been designed to support current research related to reducing destructive behaviors such as substance abuse, dropping out of school, truancy and violence. In 1999, the Snohomish County Prosecutor’s Office acquired an existing curriculum and adapted it to the needs of fifth graders in Snohomish County. This curriculum continues to be revised as the office approaches the third year of teaching the program. The feed-

back and recognition of this successful program has been phenomenal.

Research suggests that individuals who grow up in environments that promote protective factors are less likely to engage in destructive behaviors. Courtrooms to Classrooms supports the research in promoting protective factors by:

- encouraging youth to lead healthy, productive and legal lifestyles;
- emphasizing civics and the many roles in the justice system;
- highlighting accomplice liability, problem-solving and decision-making;
- providing opportunities for positive risk-taking;
- placing a high value on education;
- reinforcing strong attachments to school and community; and
- bonding to positive role models.

During the 2000-2001 school year, 60 volunteers accumulated approximately 1,000 hours of service. The program, with a current waiting list of 35 classrooms,



serves 1,250 students in 40 classrooms across six school districts in Snohomish County. Courtrooms to Classrooms emphasizes a five-lesson plan that includes: Who’s Who in the Justice System; The Justice System at Work; Groups, Individuals and Consequences; Mock Trial Preparation; and the “Trial of Goldilocks.”

The program is funded by a Juvenile Accountability Incentive Block Grant and is currently in the second year of its grant period. The grant pays for printing, training, curriculum materials, and the coordinator’s salary. The only cost for the participating school is the field-trip transportation to the courthouse. For more information about the Courtrooms to Classrooms program, contact Lynn Mattson-Eul at 425-388-3361. ✍

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Your IOLTA Account

by **Barbara C. Clark**
Guest Columnist

This month, Barbara C. Clark, executive director of the Legal Foundation of Washington, explains why the recent 9th Circuit opinion on IOLTA does not affect your trust account.

January 2001 was an eventful month at the Legal Foundation of Washington (LFW). It marked the end of our 15th year of funding legal services to low-income people through the Interest on Lawyers Trust Account (IOLTA) program in Washington. It was also the fourth anniversary of our IOLTA program's lawsuit with the Washington, D.C.-based Washington Legal Foundation. Finally, on January 10, 2001, a three-judge panel from the 9th Circuit Court of Appeals ruled that interest on IOLTA accounts was the property of clients, and that there was a taking of this property by the IOLTA program.

The Court of Appeals remanded the case back to U.S. District Court Judge John C. Coughenour for a finding on whether any compensation is due. The Legal Foundation of Washington submitted a petition for a rehearing en banc to the 9th Circuit, which has been set for June 21, 2001 in San Francisco.

The 9th Circuit ruling did not undo either of the IOLTA rules (RPC 1.14 and/or APR 12), and lawyers and limited practice officers (LPOs) should continue to follow them.

The principle behind IOLTA has always been that if a client can benefit from the interest on funds placed in a trust account, he *must*. Attorneys and LPOs should always consider the size of the client's funds and the length of time they will be held before deciding where to put them. If the client can gain a positive net return, the funds should be placed in a separate account for the client. If there is no net benefit for the client, then the funds must be placed in an IOLTA account.

There is no magic figure to guide you in deciding exactly how much money would con-

stitute a positive net return for your client. This has always been up to the judgment of individual attorneys and LPOs, who must determine how much it would cost to account for the funds, complete an IRS Form 1099 for the client, submit it to the Internal Revenue Service, and cover bank fees.

Even with the most careful attention to how client funds are accounted for, a lawyer or LPO may make a mistake. If you have mistakenly placed client funds in an IOLTA account, move the funds to a separate account as soon as you learn of it, and then contact the Legal Founda-

tion of Washington. You may request a refund in writing of the interest paid by the bank to the Foundation. LFW staff will work with you and your bank to ascertain the exact amount of interest earned and any bank fees paid on the account.

We continue to work closely with financial institutions

If the client can gain a positive net return, the funds should be put in a separate account for the client. If there is no net benefit for the client, then the funds must be placed in an IOLTA account.

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Bank of America	contact your local branch	2.00%	6.00
Coastal Community Bank	425-257-1656	2.25%	no fees
Cowlitz Bank	360-423-9800	2.80%	8.33
Farmers State Bank	509-996-2244	3.00%	10.00
First Community Bank	360-459-8300	2.00%	no fees
Olympia Federal Savings & Loan	360-754-3400	2.50% - 3.50%	5.00
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Social & Health Federal Credit Union	360-946-7676	3.00%	no fees
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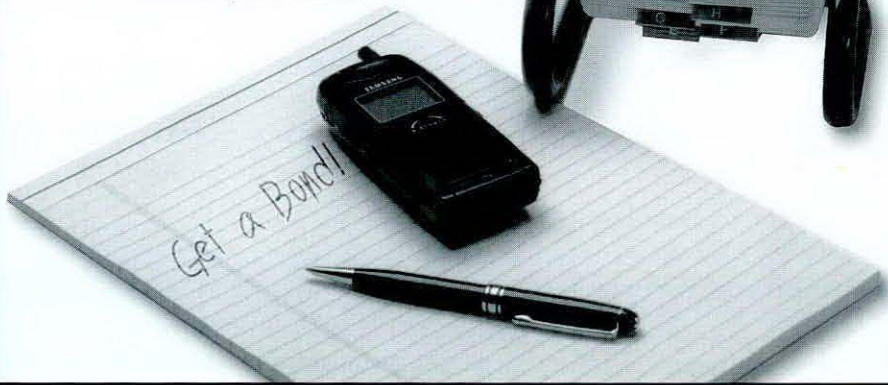
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Wells Fargo remains the outstanding bank in Washington, paying four percent interest on IOLTA accounts; Bank of America and US Bank have also taken leadership positions. US Bank charges no fees on IOLTA accounts, and Bank of America pays two percent interest.

We solicit your support to move your IOLTA account to one of these banks, or ask your bank to match what these banks are doing. It will make a tremendous difference to the pro bono and legal services programs in your community.

Questions and Answers

Q: My bank has offered me "earnings" credits on my account. All I have to do is open two accounts: an IOLTA account and a noninterest-bearing disbursing account. All client funds are initially placed in the IOLTA account, and then are quickly moved to the noninterest-bearing disbursing account in order to generate extra earnings credits to buy special bank services. Is this permissible?

A: No, according to Formal Opinion 193. (See the WSBA Web site at www.wsba.org/c/rpc/fo/193.htm.)

Q: A bank has offered to provide me with extensive banking services, including the purchase of computers and software, if I will move my IOLTA account to their bank. They will pay the Legal Foundation of Washington a lesser interest rate than on regular IOLTA accounts that do not get the special extensive banking services. Is this permissible?

A: The practice is permissible only when the Legal Foundation is not paid a lesser amount because of your actions. In this case, because the account earns less than other IOLTA accounts at the same bank, it would not be permitted. See Informal Opinion 1591. For a copy of the opinion, call the WSBA Ethics line at 206-727-8284 and leave a message including your e-mail address. ✍

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Percolating Issues

by Jan Michels

WSBA Executive Director

At any one time in the "WSBA world" there are many initiatives and new approaches to old issues being discussed. In my experience these new ideas percolate a few months before surfacing in any formal way in committees, town meetings or other forums. It is a common organizational mechanism for thoughts and ideas to be sounded out informally, discussed casually, and distributed for response and comment well before they appear on any agenda. What's unusual about the WSBA is that we're so big! Ideas are percolating all the time, all over the place. Sometimes ideas coalesce in committees, local or specialty bar associations, or simply gain momentum by word of mouth. Since the WSBA staff are like a file server for noticing and routing all kinds of information around the Bar and among the multiple "hubs," I note here some of the ideas I think of as "percolating." The Board of Governors has not taken positions or acted on any of these issues, and this list is neither exhaustive nor prioritized in any way.

It is a common organizational mechanism for thoughts and ideas to be sounded out informally, discussed casually, and distributed for response and comment well before they appear on any agenda.

Further Cooperation Among Washington, Oregon and Idaho (perhaps including Utah)

After our success with tri-state CLE accreditation and reciprocity planning, Washington, Oregon and Idaho (perhaps to be joined by Utah) are starting to look for other ways in which tri-state or broader common planning can make the practice of law easier and less complicated for our members. Could we ever reconcile our RPCs? Would parallel pro hac vice rules help? Could admittees take the bar exam where it was closest to them geographically? Could we take a common approach to developing issues?

Member Web Site Connections Through the WSBA

Another thought percolating is the possibility of including a link to a member's or firm's Web site on the member directory of the WSBA Web site (www.wsba.org/directory). The WSBA is building a business plan and cost estimates to extend the Web-link concept to include the construction and maintenance of member Web sites.

Lay Membership on the Board of Governors

Recent developments have set this idea re-percolating. Lay members on the Disciplinary Board, Lawyers' Fund for Client Protection, and Character and Fitness Committee have proven themselves very valuable, both for their insight and for the appearance of objectivity. The Access to Justice Board has added lay members. If and when the WSBA becomes the regulator of nonlawyer practice, might this idea make sense?

Proactive Guidance on Internet Practice and the "Information Age"

Internet practice is here — not only using the Internet to supplement current law practice, such as legal research or advertising and referrals, but for actual Internet practice where client contact, substantive advice-giving, and form preparation occur over the Net. Practicing law via the Internet is qualitatively different. Members want help sorting it out, thinking it through, and taking advantage of a way of life that more and more clients are coming to expect, and even demand. In this topic area, it's more the shock and cry for guidance that's percolating, and it's picking up steam!

WSBA Facility Planning

The lease will terminate at our current downtown office space in 2006, creating both an opportunity and a challenge in considering a new location. A committee chaired by Governor Brooke Taylor to examine proximity needs, possibilities and costs welcomes comments and observations.

Conclusion

Presently, there doesn't appear to be critical mass for action on these issues. People are talking about them, and opinions are being expressed and vetted. Please share your opinions through local bar associations, special study groups, committees and sections. Let your district governor in on your thoughts. In the completion of my analogy, "We all drink the brew we create with the percolating process." Send us your input! ☞

If at First You Don't Succeed. . . .

Turning a Judgment Against a Recalcitrant Tortfeasor into Cash

by Yvonne Kinoshita Ward

Early one summer morning, several men broke into a nightclub. After checking various entrances, one picked the side-door lock. They pushed the door open and targeted high-priced items. They hauled out computers, sound equipment and locked safes.

Another burglary? Not quite. The men pilfering the spoils were uniformed deputies of the King County Sheriff's Office. They were armed with a court order authorizing the invasion, and accompanied by a locksmith and moving van.

Collection does not arise frequently in personal-injury work, since there is usually an insurance company, employer or government entity to pay judgments. In addition, one of the obvious factors in selecting cases is collectibility, so claims with "judgment-proof" defendants are usually rejected.

The situation may arise, however, where the collection problem does not surface until after litigation arises. If the facts are so egregious, such as in torts for criminal conduct, that it is necessary to obtain a judgment for the good of the victim, no one is served (except the defendant) by ignoring a judgment. Seizing property is not only a good way to collect payment from

If the facts are so egregious, such as in torts for criminal conduct, that it is necessary to obtain a judgment for the good of the victim, no one is served (except the defendant) by ignoring a judgment.

recalcitrant defendants, it can also be extraordinarily therapeutic to an injured plaintiff — almost surreally cathartic to know that sheriff's deputies have physically removed a defendant's cash and property. If it is clear that defendants will not pay, then plaintiffs' attorneys must act forcefully and unequivocally.

A Profile of Rape

On July 30, 1994, a young college student went with friends to DV8, an underage dance club formerly known as "Oz." The club had erected tarps around the dance floor to make it look more crowded and hence, more popular. The tarps created vast areas of pitch-black, unsupervised space.

A young soldier asked the student to dance. As he led her along the edge of the dance area, he quickly pulled her behind the tarps and began beating her. As the deafening music drowned out her screams, the man raped the student and left her near an exit door — nude, bloodied and hysterical. She was not found until a manager went to the exit to prepare it for closing.

While at first there was no way to identify the assailant, who was unknown to the victim, the police found a set of keys near the crime scene. Later that night, when a

soldier arrived at the manager's office to claim the keys, an interview with the soldier led police to the assailant.

The state charged the man with second-degree rape. He admitted having sexual intercourse with the victim, but claimed it was consensual. His explanation of the victim's multiple injuries was that he assaulted her after the sex. He entered an Alford plea (where the defendant does not admit guilt, but concedes to conviction) to third-degree rape, and the court imposed an exceptional sentence.

A Civil Claim

A year later the victim came to me to explore a civil claim. While the assailant was held accountable through a criminal conviction, the club had gone on with "business as usual." The tarps remained, and the club had not made safety changes. The victim feared that what happened to her could happen to others.

While contemplating a civil claim, we initially included the assailant as a defendant, because the two-year statute of limitations for intentional torts was quickly approaching. After reviewing recent Supreme Court decisions, we felt confident that intentional tortfeasors could not be considered empty chairs under joint and several liability; therefore we dismissed out the assailant. Our focus was on the club's negligence in maintaining the premises. We later moved successfully for summary judgment to ensure that defendants could not allocate fault to the assailant.

We proceeded to trial on a premise liability theory. A recent Washington Supreme Court decision held that businesses owe a duty to business invitees to protect

Mover loading sound equipment onto a truck outside the DV8 club.

Photo by P-I staff photographer, Phil H. Webber. Copyright *Seattle Post-Intelligencer*. Reprinted with permission.

them from reasonably foreseeable criminal harm (*Nivens v. 7-11 Hoagy's Corner*, 133 Wn.2d 192, 205 (1997)). We established foreseeability through an outstanding expert, Dr. Daniel Kennedy, and the club's records of misconduct on the premises.

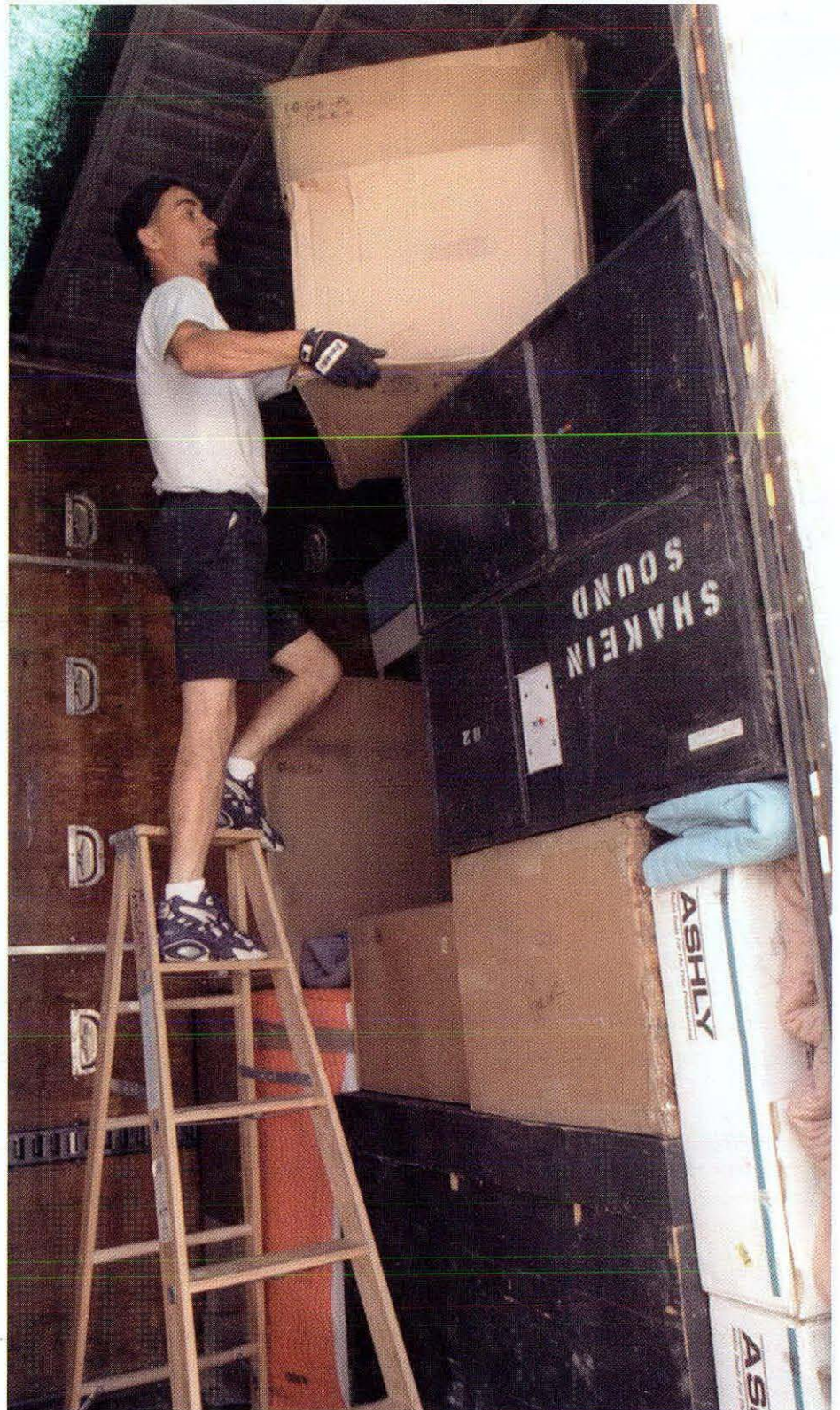
Dr. Kennedy, a security expert and criminologist, testified that when assessing safety measures, a business must take into account the demographics of the customers. Because the highest victim rate for females is age 16-20, and the highest perpetrator rate for males is age 18-22, mixing these two groups in a sexualized atmosphere without standard conduct inhibitors (for example, the presence of parental figures) requires additional precautions to prevent crimes.

Dr. Kennedy testified that the club had poor lighting, poor lines of sight for security guards, deafening noise, and nooks and crannies ripe for "crimes of opportunity... all over the place." Although the defendant had no known prior sexual assaults, the court held:

The assault against the Plaintiff was reasonably foreseeable. Assaults and other forms of misconduct had previously occurred and were foreseeable; in fact, the club anticipated and attempted to deal with such acts by patrons.

There is no important difference between a general assault and rape as to foreseeability. A sexual assault is an assault. Moreover, the club created a sexualized environment, appealing to young people who were drawn to the club to engage in "mating" behavior. The sexual assault was in the general field of danger reasonably foreseeable to the defendants. . . .

The layout of the club, including the darkness and size of the unmonitored areas, provided an attractive place for a person of evil intention to commit misconduct. The defendants breached their duty to use reasonable care to protect the plaintiff, therefore causing the plaintiff's damages.



The Judgment and the Defendants' Appeal

The court entered a judgment for over \$100,000. The defendants appealed, but did not post a supersedes bond; therefore, we could have attempted collection immediately. However, given the burden of collection and our unfamiliarity with the pro-

cess, we attempted to negotiate with the defendants during the appeal, but they would not return calls.

The Court of Appeals eventually dismissed the defendants' appeal, stating: "It is plain appellants are not seriously pursuing this appeal," and the club "appears to be using the appeal mainly as a means to

avoid paying the judgment.” We had been preparing to execute on the judgment regardless of the appeal. The Court of Appeals’ finding that defendants were avoiding judgment was further affirmation that execution was necessary.

The defendants had behaved evasively for years. They canceled a mediation early in the lawsuit, threatened bankruptcy several times, and were sanctioned four times by the court for other misconduct.

The Collection

To prepare for collection, my law clerk, Ryan Foltz, analyzed the statutes and drafted the necessary pleadings. Once my review confirmed his analysis, Ryan went to ex parte and presented a writ of execution, a praecipe for execution, and an order to break and enter. We then secured a bond, sent a letter of instruction to the sheriff, contacted a locksmith, and arranged for a bonded transportation and storage company. The costs were \$20 for the writ of execution, \$570.85 in deputy sheriffs’ fees, \$500 for bonds, \$197.67 for the locksmith, and \$1,246 for the moving van and storage, totaling just over \$2,500.

On Friday, August 13, 1999, sheriff’s

As counsel who had secured the writ of execution, I supervised the event, directing the deputies and movers to the high-ticket items — specifically, sound and lighting equipment, computers and safes.

deputies prepared to conduct a till tap (seizure of cash) on the club. At 2:00 a.m., 10 deputies backed by Seattle Police Department officers entered the club with a writ of execution, and seized almost \$10,000 in cash. As teenagers fled the building, I watched from across the street. The deputies conducted the asset seizure the following Monday. As counsel who had secured the writ of execution, I supervised the event, directing the deputies and movers to the high-ticket items — specifically, sound and lighting equipment, computers and safes.

Four hours into the seizure, the club’s attorney filed for Chapter 13 bankruptcy, noting an emergency temporary restraining order (TRO) hearing scheduled in bankruptcy court the next day. I attended the hearing with research I completed the night before, admitting to the judge that I knew little about this area of law. Once I

had determined that the purpose of the hearing was for the defendants to attempt to retrieve their equipment and continue operating their club, I stated: “I don’t know much about bankruptcy law, but if the defendants are saying they need the equipment I took to re-open, here’s a videotape of the defendants telling the press

they did *not* need the equipment I took to re-open.” At that point the judge turned to opposing counsel and ruled, “I’m not granting you the TRO.” Immediately thereafter, the parties worked out a settlement and payment plan. Because, upon default, I could reinstate the writ of execution and start seizing cash and assets again, the defendants made all their payments on schedule, and sometimes early. They also promised to make safety improvements to the club.

Breaking It Down

The collection process is not too complicated, and it is a powerful tool once a judgment is obtained. When we began, we had no idea how collection worked, but we learned it and used it effectively. The law is an ally, as any judgment is subject to execution: “When any judgment of a court

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of this state requires the payment of money or the delivery of real or personal property, it may be enforced by execution.¹ Personal property may be levied or taken into custody.²

Property Subject to Seizure. The law allows collection against almost all forms of property; all nonexempt personal and real property of the judgment debtor is subject to execution;³ homestead exemptions may apply to real property;⁴ and personal property exemptions also apply.⁵ Nonjudgment debtors claiming an interest in property seized must file an adverse claim under RCW 6.19 et seq. The statute and court rules provide a process to ascertain the location and extent of a judgment debtor's property.⁶

Stays of Execution. By court rule a party may execute upon a monetary judgment five days after the judgment is entered, and execution is stayed 14 days upon filing a notice of appeal.⁷ If an appeal is filed, a party may obtain a stay of enforcement by filing a supersedeas bond in the trial court.⁸

The bond must include the amount of the judgment; interest likely to accrue during the pendency of the appeal; and attorney fees, costs, and expenses likely to be awarded on appeal.⁹ A party may object to the sufficiency of the debtor's surety or the form or amount of the supersedeas bond.¹⁰

If there is a challenge to the bond, the objecting party must file a motion in the trial court within seven days after that party is served with a copy of the bond and supporting documents.¹¹ Trial court decisions on supersedeas bonds are appealable by motion to the appellate court.¹² A stay may also be obtained by statute under RCW 6.17.040, which requires that a bond double the amount of the judgment and costs. The stay periods vary, depending upon the amount of the judgment and the court in which the judgment exists.¹³

Time Period of Execution. A party may collect upon a judgment any time within 10 years from its entry.¹⁴ For judgments entered after June 9, 1994, the period may be extended an additional 10 years. To obtain an extension, a party must apply to the court within 90 days before expiration of the original 10-year period, pay a civil-action filing fee, and submit a current and updated judgment summary.¹⁵

The Process. Execution on personal property is a multistep process. The first step is to file with the court ex parte a praecipe for execution. The court clerk will prepare an original and one copy of a Writ of Execution. The second step is to present for entry an Order Authorizing the Sheriff to Break and Enter, which is needed to break into a closed business. The third step is to deliver to the sheriff a letter of instruction and all necessary court documents. They must include the name of debtor, his or her address, a description of what is to be seized, and the time and date of operation.

The sheriff requires the original writ of

execution with three copies, the sheriff's fee, and an indemnity bond in the amount of two times the judgment or two times the value of the property to be seized. The cost of the bond is \$10 per \$10,000. If the sheriff's office will seize property when the business is closed, the judgment creditor will have to arrange for a locksmith to pick the locks.

After providing all necessary documents, the fourth step is to coordinate a time with the sheriff's office. There is no requirement to give notice to the judgment debtor, so one may speak freely with the involved agencies (sheriff's office, movers, bonding



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companies, locksmith, etc.). Once everyone has the necessary paperwork, the sheriff may proceed.

Counsel must work closely with the sheriff's department, since deputies will be the ones executing on the judgment. I urge attorneys to first call the sheriff's office and find out what practical considerations must be addressed to execute. For example, when collecting against DV8, its hours of operation were three evenings a week, while the King County Sheriff's hours of operation for asset seizures were Monday through Friday, 7:00 a.m. to 3:00 p.m. We therefore made special arrangements to pay for over-

time, and worked closely with their office to secure a 2:00 a.m. till tap. The sheriff's office in turn alerted the Seattle Police Department for backup as needed.

The fifth step is to execute. The sheriff can seize cash and personal property. Bonded locksmiths, movers and storage companies conduct the actual physical seizure. Deputies supervise the seizure and handle all inquiries. All seized property is subject to a sheriff's sale, with the proceeds going to the judgment creditor.

An optional step, depending on the type of tort, is alerting the media. Our case was front-page news in the *Seattle Post-*

Intelligencer and was covered by KING 5-TV. This was helpful for three reasons. First, when the defendants moved for a TRO (return of the property we seized so they could continue operation), I gave the judge a video of the defendants' statement to the press claiming they did not need the seized equipment to resume operations. Second, the defendants were losing a lot of business when word spread they had been shut down, providing a strong motive to settle, retrieve their equipment, and resume operation. Third, the plaintiffs' bar looked very good, advocating for a crime victim with direct, not just monetary, action.

Conclusion


The law provides a process to enforce judgments for our clients. It is learnable and doable. The system allows us to turn a distressful situation — an unpaid judgment — into a cathartic and healing process. Once it is clear that a judgment will not be paid, it is time to use the power of the system to enforce the judgment and attain justice for our clients. My client felt empowered by the process, and relieved when the public was made aware of the club's failure to provide a safe environment, and by their promise to make the club safe.

The moral is "don't give up." If a defendant won't mediate, go to trial. If they appeal, stick it out. If they drag you into bankruptcy court, call their bluff. Fight the whole way. It's just a matter of endurance. ♣

Yvonne Kinoshita Ward is a civil rights lawyer in Auburn, Washington. She is the past president of the Asian Bar Association of Washington and was named a "Rising Star 2000" by Washington Law & Politics. She is a member of the National Crime Victim Bar Association.

NOTES

1. RCW 6.17.070.
2. RCW 6.17.160 (2).
3. RCW 6.17.090.
4. RCW 6.13 et seq.
5. See e.g., RCW 6.15 et seq.
6. See RCW 6.32 et seq. (supplemental proceedings); CR 69 (b).
7. CR 62 (a).
8. RAP 8.1(b)(1).
9. *Id.*
10. RAP 8.1(d).
11. *Id.*
12. RAP 8.1(h).
13. RCW 6.17.040 (1).
14. RCW 6.17.020 (1).
15. RCW 6.17.020(3).




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God Bless,
Robin Anders

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New Legislation of Interest to Attorneys: 2001 Highlights

by **Senator Adam Kline** • *Chair, Senate Judiciary Committee*
and **Senator Stephen L. Johnson** • *Member, Senate Judiciary Committee;*
Republican Deputy Leader

The February 28 earthquake left the Capitol Dome and nearby office buildings shaken, but it solidified legislative efforts to address important legal issues in a bipartisan fashion. For over two months, the 2001 Regular Legislative Session was conducted from very cramped, temporary quarters in the Cherberg and O'Brien buildings. While this made the jobs of legislators, staff, lobbyists and the public a little more difficult, it clearly fostered a spirit of camaraderie.

The Senate Judiciary Committee worked well with the House Criminal Justice and Corrections and House Judiciary committees to conclude a productive session that resulted in a wide variety of bills that should be of interest to

For over two months, the 2001 Regular Legislative Session was conducted from very cramped, temporary quarters in the Cherberg and O'Brien buildings. While this made the jobs of legislators, staff, lobbyists and the public a little more difficult, it clearly fostered a spirit of camaraderie.

the Bar. Subjects included criminal, family, traffic, business, civil and probate laws, as well as other court-related issues. Law students are likely to celebrate simplification of the rule against perpetuities.

This article focuses primarily on legislation considered by the Senate Judiciary Committee and passed by the Legislature. Because the Senate Judiciary Committee is but one of 14 standing committees in the Senate, it may be beneficial to check the legislative Web site (<http://www.leg.wa.gov>) for bills that passed through other committees, or to obtain more detailed information on any bill that was considered by the Legislature. All bills described in this article will be effective July 22, 2001, unless otherwise noted in the de-

scription. The Senate Judiciary Committee staff can be contacted at 360-786-7462 or PO Box 40466, Olympia, WA 98504-0466.

As in past years, a full description of all bills that passed the 2001 Legislature can be obtained by ordering the *2001 Final Legislative Report*, available for approximately \$10, by contacting the Legislative Information Center at 360-786-7573 or PO Box 40482, Olympia, WA 98504-0482.

Criminal Law

ESSB 5013: Clarifying the Definition of "persistent offender"

Prime sponsor: Senator McCaslin (similar bill: SHB 1039, Representative Ballasiotes)

- Under the persistent offender "two strikes, you're out" law, all federal, out-of-state, and prior Washington convictions for sex offenses are considered as "strikes" if they are comparable to those offenses currently listed as "strike" offenses.

SSB 5015: Modifying the definition of "border area"

Prime sponsor: Senator Morton

- A percentage of the excess funds in the liquor revolving fund is distributed to "border areas" according to a specific formula to fight border-related crime.
- The definition of "border area" is expanded to include any unincorporated area within seven miles of the Washington-Canadian border.

ESSB 5017: Restricting the sale of ephedrine, pseudoephedrine or phenylpropanolamine

Prime sponsor: Senator Franklin

- It is a gross misdemeanor to sell at retail more than three packages of products containing ephedrine compounds or a single package containing more than three grams in a single transaction.
- It is a gross misdemeanor to purchase more than three packages of products containing ephedrine compounds or

a single package containing more than three grams in a 24-hour period.

- It is a gross misdemeanor to possess more than 15 grams of ephedrine compounds, except for pharmacists, practitioners, manufacturers, wholesalers, retailers or shippers, or unless the compounds are stored in a home or residence under circumstances consistent with legitimate uses.
- Local ordinances not consistent with this law are pre-empted, but local governments may act against a violator's local business license.

ESSB 5449: Prohibiting identity theft

Prime sponsor: Senator Prentice

- Businesses that have information relating to identity theft must provide, upon written request of the victim, copies of all information relevant to the identity theft. If businesses do not provide information to victims, they may be in violation of the Consumer Protection Act.
- A collection agency may not initiate oral contact with a debtor more than one time in 180 days in order to collect on debts created because of an identity theft. The Consumer Protection Act applicable to current collection-agency prohibited practices applies.
- Section 5, regarding prohibited practices

by collection agencies, will take effect April 1, 2004.

SSB 5896: Providing for additional DNA testing of evidence

Prime sponsor: Senator Constantine (similar bill: SHB 1889, Representative Lovick)

- On or before December 31, 2004, a convicted felon who is currently imprisoned may submit a request for post-conviction DNA testing to the prosecutor of the county where the conviction was obtained.
- If it is determined that testing should occur, and the evidence still exists, the prosecutor must request testing by the Washington State Patrol crime lab. A person denied a request for DNA testing may appeal to the Office of the Attorney General.
- After January 1, 2005, DNA issues must be raised at trial or on appeal.

ESSB 5942: Increasing penalties for crimes against dog guides and service animals

Prime sponsor: Senator McAuliffe

- Criminal penalties are established for interference with the use of a dog guide or service animal, and for causing the injury or death of a dog guide or service animal.
- It is theft in the first degree to wrong-

fully obtain or exert unauthorized control over a dog guide or service animal.

- A person will be ordered to make full restitution for all damages incurred by the dog guide or service animal user and the dog guide or service animal when convicted of a violation of any of the above offenses.

ESSB 5970: Revising provisions for probation orders

Prime sponsor: Senator Hargrove

- When a defendant who has been given a suspended or deferred sentence fails to appear as directed in district or municipal court, the defendant's probationary period stops running and does not start until the defendant can be found and brought before the court.

SHB 1091: Changing sexual misconduct laws with regard to school employees

Prime sponsors: Representatives Lambert and Sommers

(veto message: full veto, 5/15/01)

- New alternative methods of committing sexual misconduct offenses are: (1) sexual misconduct in the first degree, which occurs when there is sexual intercourse between a school employee and a student over 16 years of age who is not married to the employee; and (2) sexual misconduct in the



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second degree, which occurs when there is sexual contact between an employee and a student over 16 years of age who is not married to the employee.

- These new alternative methods of committing sexual misconduct offenses do not require proof that a perpetrator who was a school employee had direct supervisory authority over the victim or abused a supervisory position.

SHB 1174: Authorizing vacation of records of conviction for misdemeanor and gross misdemeanor offenses

Prime sponsor: Representative Hurst (similar bill: SSB 5323, Senator Kline)

- Persons convicted of some misdemeanor or gross misdemeanor offenses can have one conviction vacated under certain conditions if at least three years have passed since completion of the terms of sentence.
- Persons convicted of domestic-violence offenses which constitute misdemeanors or gross misdemeanors can have one conviction vacated under certain conditions if at least five years have passed since completion of the terms of sentence, and if the applicant has not had a prior domestic-violence conviction.
- Convictions of sex offenses or motor-vehicle offenses involving drug or alcohol use can never be vacated.
- Once a conviction is vacated it cannot be used as criminal history, and the applicant is allowed to state for all purposes, including housing and employment applications, that he or she has not been convicted of that crime.

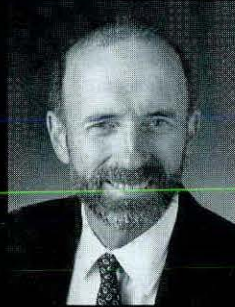
HB 1227: Changing provisions relating to escaping from custody

Prime sponsor: Representative Ballasiotes

- Under current common law, persons act with knowledge when they are aware that their acts could result in a criminal offense.
- A knowledge element is codified for the crimes of escape and bail jumping, and provides an affirmative defense when uncontrollable circumstances exist.
- The act modifies the process under the Uniform Criminal Extradition Act for parole, probation or bail violations.
- This act is effective July 1, 2001.

HB 1895: Creating the crime of theft of motor vehicle fuel

Prime sponsor: Representative Esser (similar bill: SB 5955, Senator Constantine)



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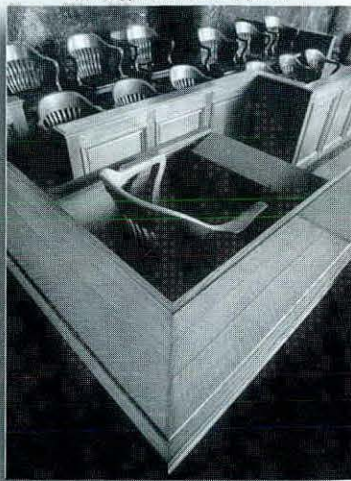
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- A person who refuses to pay or evades payment for motor vehicle fuel that is pumped into a motor vehicle is guilty of theft of motor vehicle fuel, a gross misdemeanor.
- The license, permit or nonresident driving privilege of a person convicted of theft of motor vehicle fuel must be suspended by the court for a period of up to six months.

Probate

ESSB 5052: Making technical corrections to trust and estate dispute-resolution provisions

Prime sponsor: Senator Johnson

- The Trust and Estate Resolution Act is modified to make various clarifications and technical corrections to the act.
- The process for appointing a qualified and independent person as a special representative to represent the interest of minors, unknown persons or incompetents is clarified.
- The process for filing an arbitrator's decision, notice to parties, and appeal procedures to superior court are set forth.
- If a nonjudicial binding agreement has been entered into, and a special representative has also been appointed, the agree-

ment may not be filed with a court for 30 days without the consent of the special representative.

HB 1361: Simplifying excise tax application and administration

Prime sponsor: Representative Jackley

- Provisions of the state's Probate and Trust Code (Title 11 RCW) are updated to ensure that all references to the federal Internal Revenue Code signify the IRS Code as amended on January 1, 2001.
- This section of the bill is effective July 1, 2001.

SHB 2046: Validating trusts created for the benefit of nonhuman animals

Prime sponsor: Representative Haigh

(veto message: technical only)

- A new chapter under the probate and trust title is created to legally recognize trusts for the care of one or more animals. "Animal" means a nonhuman animal with vertebrae.
- The specific duties and obligations of the trustee are set forth.
- This act will take effect October 1, 2001.

Debtor/Creditor

SSB 5187: Updating debtor/creditor personal property exemptions

Prime sponsor: Senator Johnson

(veto message: full veto, 5/14/01)

- Currently, state statutes provide that certain personal properties (subject to dollar limitations) are exempt from legal process such as attachment and garnishment. This bill increases the dollar limitations for such properties as motor vehicles, household goods, cash and securities.
- Additional exemptions are created for child support, professionally prescribed health aids, personal injury awards, and loss of future earnings.

SB 5331: Modifying collection of business-to-business debts by collection agencies

Prime sponsor: Senator Kline

(similar bill: HB 1126, Representative O'Brien)

- In the case of commercial claims, a collection agency may attempt to collect collection costs and fees authorized by written agreement between the debtor and creditor, as long as the total collection costs charged do not exceed 35 percent of the amount of the original claim.

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Civil Law

SB 5054: Modifying the rule against perpetuities

Prime sponsor: Senator Johnson

- The rule against perpetuities is modified to set a specific time limit within which transfers of property by trust and certain other methods must become distributable or vest.
- The time limit is changed from "21 years after any life, whether in being or conceived" to 150 years after the effective date of the trust or distribution document.

SSB 5255: Exempting certain information on criminal acts from public disclosure

Prime sponsor: Senator Kastama (similar bill: SHB 1187, Representative Haigh)

- Those portions of records of public agencies containing specific vulnerability assessments or response plans intended to prevent criminal acts of terrorism are exempt from public inspection and copying if the public release has a substantial likelihood of threatening public safety.

HB 1062: Modifying provisions pertaining to the certification of peace officers

Prime sponsor: Representative O'Brien (similar bill: SB 5180, Senator Costa)

- As a condition of continuing employment, all Washington peace officers must obtain and retain certification as peace officers from the Criminal Justice Training Commission (CJTC).
- If a peace officer was convicted of a felony before being employed as a peace officer and the circumstances of the conviction were fully disclosed to his or her employer before being hired, the CJTC may revoke certification only with the agreement of the employing law-enforcement agency.
- This act will take effect January 1, 2002.

SHB 1135: Modifying power-of-attorney provisions

Prime sponsor: Representative Lantz

- The power-of-attorney statute is updated and modernized. The authority of a person and the instances in which they have a power of attorney are specified. The statute clarifies the circumstances where a third party can rely on a power of attorney, and sets forth procedures to resolve disputes in court.

HB 1216: Investigating sudden unexplained deaths of children

Prime sponsor: Representative Lambert

- Training for the investigation of sudden unexplained deaths of children under the age of three is required for city and county law enforcement officers and emergency medical personnel certified by the Department of Health.
- The Forensic Investigation Council (FIC) must develop a protocol for autopsies of children under the age of three whose deaths are sudden and unexplained. Pathologists who are not certified forensic pathologists and who are providing autopsy

services to coroners and medical examiners must use the FIC protocol.

- A county is reimbursed for autopsies of children under the age of three when the deaths were sudden and unexplained if the death-scene investigations and autopsies were conducted under the protocols, and the autopsies were done at a facility designed for the performance of autopsies.

EHB 1530: Providing for the appointment of an agent to receive claims against local government entities

Prime sponsors: Representatives Lantz and Carrell



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- Each local government entity must appoint an agent to receive claims for damages. The identity of the agent must be recorded with the county auditor.

SHB 1591: Revising requirements for service of orders in harassment matters

Prime sponsor: Representative Esser

- The notice of hearing for anti-harassment orders must be the same whether it is

personally served or served by publication.

- If the respondent has been served with the temporary order and fails to appear at the hearing, the respondent need not be served with the final order as long as the terms have not changed and the temporary order was personally served.

HB 1611: Modifying missing persons record-retention policies

Prime sponsor: Representative Schindler (similar bill: SB 5697, Senator Roach)

- The Washington State Patrol dental identification system is no longer required to delete dental records of persons who were reported as missing but were later found.

HB 1613: Providing a time limit for the transmittal of unidentified persons information

Prime sponsor: Representative Romero (similar bill: SB 5698, Senator Patterson)

- Within 30 days after an unidentified body is found, the county coroner or medical examiner must conduct a dental examination and must forward the results of that examination to the dental examination section of the Washington State Patrol.

SHB 1643: Limiting liability of volunteers

Prime sponsor: Representative Lantz

- A volunteer of a nonprofit organization or governmental entity is not personally liable for harm caused by an act or omission on behalf of the organization or entity if certain specified conditions are met.
- The limitation on the personal liability of volunteers does not affect the nonprofit organization's or governmental entity's direct or vicarious liability for the harm caused by the volunteer, nor does it affect the ability of the organization or entity to bring a cause of action against the volunteer.

SHB 1793: Revising court filing fees for tax warrants and recovery of state agency overpayments

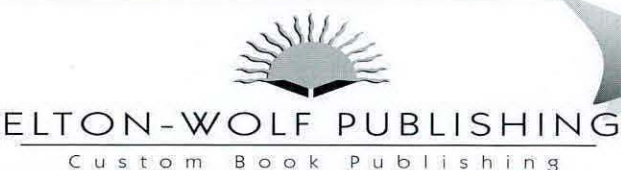
Prime sponsor: Representative Hatfield

- After July 1, 2003, fees for filing tax warrants for unpaid taxes or recovery of overpayments of benefits by any state agency will be raised to \$20.
- 46 percent of the first \$5 collected is directed to the Public Safety and Education Account.

ESHB 1995: Revising provisions relating to civil forfeitures of property and convening a workgroup to evaluate civil forfeiture laws

Prime sponsor: Representative Dickerson (veto message: partial veto, 5/7/01)

- A claimant who substantially prevails in a forfeiture proceeding to recover his or her seized property is entitled to reasonable attorney's fees.

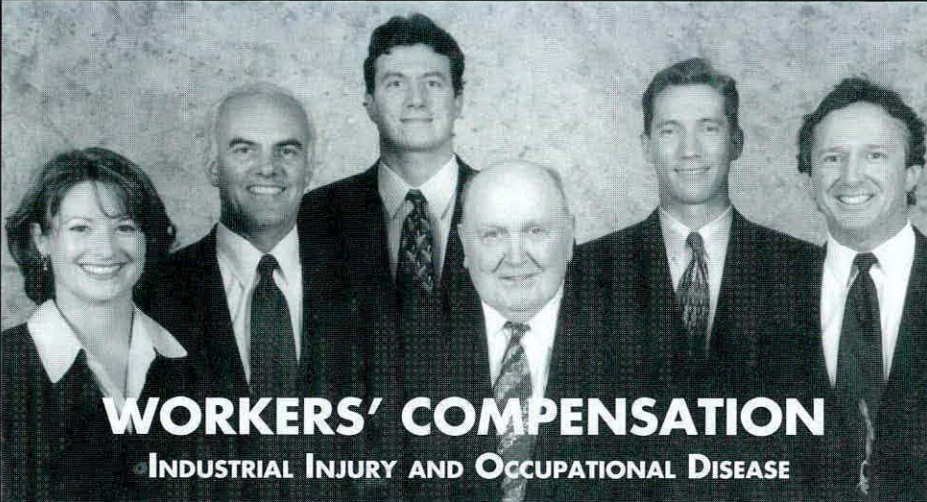


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- In all cases, the burden of proof is on the seizing agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.
- A joint House and Senate workgroup is convened to evaluate Washington civil forfeiture laws and practices.

Courts

SSB 5241: Changing provisions relating to venue

Prime sponsor: Senator Johnson

- In both superior and district courts, a lawsuit involving a claim for injury to a person or property can be brought where the injury occurred, regardless of the cause of the injury.
- In district courts, a civil action regarding unlawful issuance of checks or drafts can be brought either where the defendant resides or where the check was issued or presented as payment.

SB 5252: Expanding venue for local courts during emergencies and when the defendant appears electronically from a location outside the district

Prime sponsor: Senator McCaslin

- In the event of a natural, civil or technological emergency, temporary venue in courts of limited jurisdiction matters may be had in a court district not impacted by the emergency.
- Criminal actions for violations of local ordinances may be heard before the court of limited jurisdiction if the hearing takes place by electronic means approved by the Supreme Court.

SB 5389: Adjusting small claims jurisdiction

Prime sponsor: Senator Gardner

- The jurisdictional amount in small claims court is increased from \$2,500 to \$4,000.

SSB 5472: Changing provisions relating to termination of municipal courts and service contracts

Prime sponsor: Senator Johnson (similar bill: HB 1264, Representatives Esser and Lantz)

- The current requirement that a city may not re-establish a municipal court or department for a 10-year period if the city has elected to eliminate its municipal court services and contract with a district court for court services is repealed.

- Any city that has contracted for court services with the county must notify the county legislative authority of its intent to terminate the agreement not less than one year prior to February 1 of the year in which all district court judges are subject to election.
- A county that wishes to terminate an agreement with a city for court services must give the city written notice not less than one year prior to the expiration of the agreement.

SB 5491: Revising small claims proceedings


Prime sponsor: Senator Kline (similar bill:

HB 1273, Representative Esser)


- The process to appeal a decision of a small claims court to the superior court is modified.
- Currently, superior courts conduct an entirely new trial proceeding when a case is appealed from small claims court. Under the provisions of this bill, appeals of small claims lawsuits to superior court are to be based on the record of the case in district court.

ESJR 8208: Amending the constitution regarding the use of judges pro tempore

Prime sponsor: Senator Kline (similar bill: HB 4205, Representatives




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Lantz and Carrell)

- In addition to those persons currently authorized to be judges pro tempore in superior court, any sitting elected judge may serve as a judge pro tempore in superior court without the approval of the litigants, as provided by Supreme Court rule.
- The rule must take into consideration assignments of judges pro tempore based on the experience of such judges, and must provide for the right, exercisable once during a case, to a change of a judge pro tempore.
- The bill will be effective January 1, 2002 if approved by the voters at the general election in November 2001.

SHB 1117: Providing procedures for enforcement of court-ordered restitution obligations in courts of limited jurisdiction

Prime sponsor: Representative Carrell (similar bill: SB 5175, Senator Kline)

- Restitution obligations ordered as a result of conviction in a court of limited jurisdiction may be enforced in the same manner as civil judgments without taking the order to superior court.
- Restitution ordered by a court of limited jurisdiction may only be extended for an additional 10 years if the court finds that the offender has not made a good-faith attempt to pay.

- Liens on real property entered pursuant to a district court judgment are filed, and satisfaction of the liens are entered, in the same manner as judgments of the superior court.

**Family Law/Domestic Violence
SB 5348: Updating the Uniform Child Custody Jurisdiction and Enforcement Act**

Prime sponsor: Senator Costa

- The Uniform Child Custody Jurisdiction Act is replaced with the Uniform Child Custody Jurisdiction and Enforcement Act.
- State law is made consistent with federal law for determining jurisdiction of interstate child-custody orders including giving jurisdictional priority to the child's home state.
- A process is provided for enforcing other states' child-custody orders.

SB 5392: Changing provisions relating to emancipation of minors

Prime sponsor: Senator Long (similar bill: HB 1274, Representative Lantz)

- A minor who is 16 years of age or older and a resident of the state may petition the superior court for a declaration of emancipation. This bill amends the statute governing the procedures for a minor to obtain a declaration of emancipation by clarifying that court commissioners, as well as judges, may hear such petitions.

2SHB 1041: Allowing protection orders for unlawful harassment to restrain persons under the age of 18

Prime sponsor: Representative Ballasiotes

- A parent may petition a court for a protection order restraining a person under the age of 18 from contact with his or her child only when the person to be restrained has been adjudicated of an offense against the child protected by the order, or is under or has been under investigation for such an offense.
- The court may require the person restrained in the order to attend a different school from the person protected by the order. However, the court must also consider certain circumstances involved in requiring the person restrained in the order to attend another school.

EHB 1745: Making child support technical amendments regarding medical support

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Prime sponsor: Representative Lambert (veto message: full veto, 5/11/01)

- The Department of Social and Health Services (DSHS) is authorized to use the National Medical Support Notice to enforce a parent's obligation to provide health insurance for a dependent child.
- Limitations are placed on the authority of DSHS to promulgate rules regarding this notice.

EHB 1864: Revising information requirements in family law court files

Prime sponsor: Representative Dickerson (veto message: partial veto, 4/17/01)

- All petitioners in dissolution, non-parental, family court, child support, parentage or child custody court actions must complete a confidential information form. The contents are specified.
- Parties to administrative child support orders are also required to complete and update a confidential information form. The Division of Child Support adopts rules governing the collection of the data in these forms, as well as the collection of the children's confidential information.
- This act will take effect October 1, 2001.

Traffic/Alcohol

SSB 5558: Clarifying penalty procedures for alcohol violators

Prime sponsor: Senator Rossi

- Courts are prohibited from suspending the requirement that a person drive only a vehicle equipped with an ignition interlock device when a driver is required by statute to have one.

ESB 5790: Revising provisions relating to vehicular assault

Prime sponsor: Senator Kline

- The crime of vehicular assault is committed by: (1) driving a vehicle in a reckless manner and causing substantial bodily harm to another; (2) driving a vehicle while under the influence of alcohol or any drug and causing substantial bodily harm to another; or (3) driving a vehicle with disregard for the safety of others and causing substantial bodily harm to another.
- Vehicular assault by driving with disregard for the safety of others is ranked at seriousness level three for purposes of sentencing.
- Vehicular assault is defined as a "most serious offense" when it is committed while under the influence of alcohol or any drug,

or by driving in a reckless manner.

HB 1040: Authorizing crime victims' compensation benefits in hit-and-run vehicular assault cases

Prime sponsor: Representative Ballasiotes

- The Crime Victims' Compensation Program (CVCP) provides benefits to innocent victims of criminal acts. Vehicular assault is considered a "criminal act" for purposes of obtaining CVCP benefits if a conviction was obtained, if the defendant died while committing the vehicular assault, or is otherwise unable to stand trial because of a physical or mental infirmity.

- In the case of injury caused by vehicular assault, if the perpetrator is unascertainable because he or she fled the scene of the accident (hit-and-run), CVCP may authorize benefits if it can establish by a preponderance of the evidence that a vehicular assault was committed.

HB 1243: Changing provisions relating to the admissibility into evidence of a refusal to submit to a test of alcohol or drug concentration

Prime sponsor: Representative Hurst (similar bill: SB 5557, Senator Kline)

- Under the state's current implied con-


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sent law, every driver in the state has impliedly agreed to submit to a test of his or her breath or blood in order to determine the alcohol concentration or presence of any drug when lawfully stopped for driving under the influence (DUI).

- The fact of a person's refusal to submit to a drug test under the implied consent law is now admissible in a criminal trial.

HB 1280: Increasing the seriousness ranking for hit-and-run death

Prime sponsor: Representatives Simpson and Ballasiotes

- The seriousness level of the crime of hit-

and-run where death results is increased from level eight to level nine on the felony sentencing grid.

- Hit and run resulting in death is punished at the same level as vehicular homicide involving intoxication. This statutory change will eliminate the incentive for persons who commit vehicular homicide to leave the scene in order to obtain a lesser sentence.

HB 1419: Requiring a notation in the driving record when a driver is required to use an ignition interlock or other biological or technical device

Prime sponsor: Representative Hurst (similar bill: SB 5260, Senator Kline)

- For any offense involving the use, consumption or possession of alcohol that is committed while driving, the court may order that an ignition interlock system be installed on any car the person is to drive.
- This bill requires the Department of Licensing to attach or imprint a notation on a person's driving record who is restricted to driving only a motor vehicle that is equipped with an ignition interlock or other biological or technical device.

SHB 1649: Including striking the body of a deceased person within hit and run

Prime sponsor: Representative Kessler

- A motorist who fails to stop after striking a person who is already deceased is guilty of a gross misdemeanor.

Business/Corporation/Partnership ESB 5053: Making corrections to Article 9A of the Uniform Commercial Code


Prime sponsor: Senator Constantine

- Technical changes and corrections are made to the Uniform Commercial Code, Article 9, which deals with secured transactions. These corrections supplement the significant updates and changes which were enacted during the 2000 legislative session.
- This act is effective July 1, 2001.

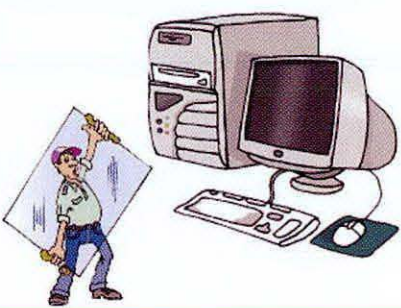
SHB 1545: Regulating nonprofit organizations

Prime sponsor: Representative Lantz

- The Nonprofit Miscellaneous and Mutual Corporations Act is amended to allow directors to be indemnified by the corporation for negligent acts. Directors and officers are released from liability to the corporation and shareholders unless articles of incorporation provide otherwise. A standard of practice and care for officers and directors is specified.
- Electronic participation at meetings is authorized. Consumer cooperatives are defined and have a lesser quorum requirement than other corporations governed by this act. The rights of the dissenting shareholders are restricted. ☞



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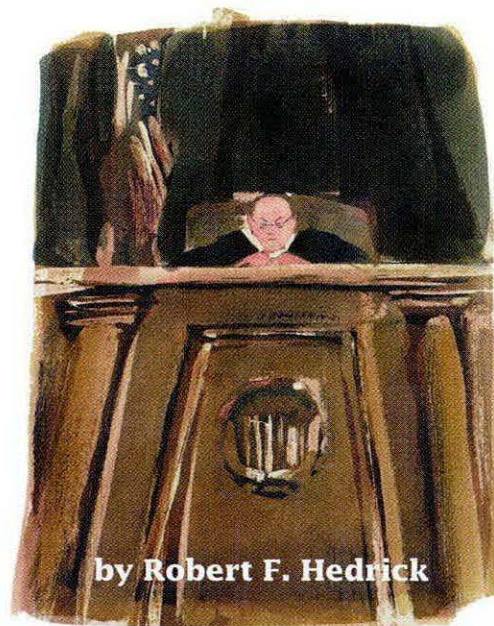
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Alaska Airlines Flight 261 Plaintiffs Prevail on Damage Issue



by Robert F. Hedrick

In a strong victory for plaintiffs in the Alaska Flight 261 crash litigation, San Francisco Federal District Court Judge Charles Legge has ruled that plaintiffs have the choice of either state or federal maritime law remedies in determining recoverable compensatory damages. The Plaintiffs' Steering Committee chose general maritime law, which the judge agreed to apply. In addition to broad recoverable compensatory damages, general maritime law also allows punitive damages. However, since the accident occurred during an international flight, the Warsaw Convention¹ precludes punitive-damage claims against Alaska Airlines, but not against the remaining defendants.²

The defendants sought to limit the types of recoverable damages. Alaska Airlines filed motions to (1) dismiss punitive damages, (2) dismiss emotional distress claims, (3) preclude application of general maritime law, and (4) apply the domicile law of each passenger to damage claims. Based on the Warsaw Convention, the first motion was granted. The remaining defendants also brought motions to dismiss the claims for punitive damages, which were denied because of the application of general maritime law.

Punitive Damages: Alaska Airlines

Since Flight 261 was an international flight, the Warsaw Convention and related instruments and agreements govern the punitive-damage claims against Alaska. Judge Legge dismissed punitive damage claims because the clear weight of authority prohibits those damages under the Warsaw Convention. Three federal circuits have ruled that punitive damages are not recoverable under

the Convention,³ and no circuit has ruled otherwise.

Article 17 of the Convention states that the airline "shall be liable for damage sustained in the event of the death or wounding of a passenger...." The language "damage sustained" is recognized by the courts as being compensatory rather than punitive, which would be consistent with most countries' domestic law in 1929 when Warsaw was approved. In addition, courts have recognized that the minutes and notes of the Convention's drafters indicate punitive damages were not considered.

This result is consistent with the newly approved Montreal Convention,⁴ which expressly prohibits punitive damages. Once in force, the Montreal Convention will overhaul the outdated Warsaw regime.

Judge Legge dismissed punitive damage claims because the clear weight of authority prohibits those damages under the Warsaw Convention.

Punitive Damages: Other Defendants

The other defendants' motions for partial summary judgment seeking dismissal of punitive damages were denied. With the application of general maritime law (discussed below), punitive damages are available in survival actions.⁵ It remains to be seen, however, whether the facts will rise to the level of conduct "which manifests reckless or callous disregard for the rights of others,...or gross negligence or actual

malice criminal indifference"⁶ that is required to recover punitive damages.

Emotional Distress Damages

Alaska sought to strike preimpact emotional distress damages based on the Warsaw Convention and a U.S. Supreme Court decision, *Eastern Airlines v. Floyd*,⁷ which holds that purely emotional distress damages are not recoverable under the Convention. Plaintiffs argued that *Floyd* was not controlling, because it did not involve any physical injury, and was limited to its facts: loss of engine power, a smooth descending glide toward the ocean, and the aircraft regaining engine power and flying back to the airport. There were no physical injuries or abrupt aircraft movement, but the anticipated ditching at sea caused emotional distress to many passengers.

Judge Legge agreed that *Floyd* is distinguishable and therefore not controlling. Alaska's motion for judgment on the pleadings was denied without prejudice because the plaintiffs pled physical injuries accompanied by emotional distress. However, the judge recognized that proof of physical injury might require expert witness testimony, in which the *Daubert* standard would apply.⁸ Judge Legge expects Alaska to raise the issue again in summary judgment after additional discovery.

The judge's concerns about expert opinion stem from evidence submitted by plaintiffs. A mechanical engineer and an aeromedical physician submitted supporting declarations. The engineer, who reviewed the flight data recorder information and

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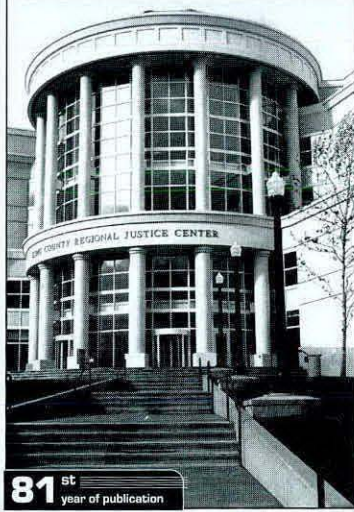
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other facts, opined that during the last descent the aircraft experienced extreme acceleration and motion forces. The aircraft rapidly pitched nose down, and uncontrollably rolled and yawed as the pitch changed. The aircraft was in a dive, upside down, and spinning out of control. The passengers experienced negative three Gs and lateral (horizontal) G forces.⁹ Unsecured items such as laptop computers, books, backpacks and briefcases were likely thrown violently throughout the passenger compartment, especially during the final descent.

The aeromedical physician opined that the first descent would have psychologically and physiologically desensitized the passengers, and that the second final descent was much more severe. In his opinion, in addition to the obvious emotional trauma, all of the passengers would have sustained physical injury due to the multiple forces on their bodies, including high G forces in lap-belt areas, and from the impact of unsecured items being thrown about the cabin.

Maritime Law Held to Determine the Types of Recoverable Damages

Alaska brought two motions regarding the applicable law. The first was a motion for judgment on the pleadings seeking to strike application of maritime law. The second requested application of the damage law of the domicile state of each passenger. In addition, in an effort to dismiss punitive damage claims, the defendants argued that maritime law did not apply, and that either Washington or California law applied, neither of which allow punitive damages under the circumstances.¹⁰ Judge Legge disagreed, and held that general maritime law was applicable.

Alaska argued that the U.S. Supreme Court holding in *Executive Jet Aviation v. Cleveland*¹¹ precluded application of maritime law. *Executive Jet* involved a charter flight from Cleveland, Ohio, to Portland, Maine. The aircraft flew into a flock of seagulls immediately after takeoff from an airport located on the shore of Lake Erie (a navigable water). The plane descended, striking a fence and a pickup truck before coming to rest in the lake. The Supreme Court held that the mere fact that the accident occurred on navigable water was not sufficient to confer maritime jurisdiction. The Court held that the following test must be met for admiralty jurisdiction to apply:

(1) The wrong occurred on or over navigable waters, and (2) the wrongful conduct must "bear a significant relationship to traditional maritime activity."¹² Since the second element was not met (travel between Cleveland and Portland was not traditionally performed by vessels), and therefore lacked a relationship to traditional maritime activity, the Court held that there was no maritime jurisdiction. In dicta, the

One distinguishing factor, the defendants argued, is that without aviation, the transportation could have been performed on land.

Court suggested that other flights over water, including transoceanic flights, would be sufficient for maritime jurisdiction.

Since Flight 261 crashed on navigable waters, the issue before Judge Legge was whether the transportation by air of passengers from Puerto Vallarta to San Francisco had a sufficient maritime nexus to invoke admiralty jurisdiction. In other words, was the flight more similar to a flight between two mainland destinations with an incidental relationship to maritime activity, as in *Executive Jet*, or was it more like a transoceanic flight traditionally performed by ocean-going vessels?

Defendants argued that since the departure and destination were both on the same continental mainland, *Executive Jet* was controlling. Defendants cited the land relationship between the two cities. There are 17 major road and highway crossings between the U.S. and Mexico. Nearly four million trucks and 85 million passenger vehicles entered the U.S. from Mexico in 1998. There are a total of 45 border crossings, with estimates of around 278 to 351 million persons legally crossing the border from Mexico to the U.S. in 1998. Defendants also noted the history and significance of rail transportation between the two countries. One distinguishing factor, the defendants argued, is that without aviation, the transportation could have been performed on land. Further, defendants claimed that a significant part of the scheduled flight route was over land, and therefore crashing in the ocean was fortuitous, similar to *Executive Jet*.

Plaintiffs presented evidence establish-

ing the history and strength of the shipping industry, which was historically a dominant means of transportation between the West Coast of the United States and Puerto Vallarta. Maritime historians submitted declarations which reflected that prior to air travel, Puerto Vallarta was primarily (if not exclusively) reached by ship. It was noted that many shipping lanes run north and south along the West Coast of the U.S. and Mexico, and the location where Flight 261 crashed was in a shipping lane. Further, of the 1,006 miles traveled by Flight 261, more than half (533 miles) were over water. The accident site was also located in the Channel Islands National Marine Sanctuary.

Judge Legge was persuaded by the plaintiffs' position, holding that a string of maritime cases "stand for the proposition that admiralty jurisdiction [exists] if, but for aviation, the journey would have been conducted by sea."¹³ Judge Legge wrote:

In this respect Puerto Vallarta is more like Hawaii than [Maine] — the destination of the Executive Jet aircraft. Traditionally, and but for air travel, passengers primarily traveled to and from Puerto Vallarta by sea. ... While there is no disputing the existence of road and rail alternatives to such ship travel, there is little evidence that they are the dominant means of transportation. Executive Jet and its progeny do not preclude admiralty jurisdiction just because the departure and arrival cities are both on the mainland.

The defendants' fallback argument was that even if admiralty jurisdiction applied, *Yamaha Motor Corp. v. Calhoun*,¹⁴ a 1996 U.S. Supreme Court decision, mandates application of state law to wrongful deaths that occur in state territorial waters. In *Yamaha*, the parents of a girl who died while jet skiing in the territorial waters of Puerto Rico filed suit in Pennsylvania, invoking Pennsylvania wrongful death and survival statutes. *Yamaha* brought a motion for partial summary judgment seeking application of federal maritime wrongful death law.¹⁵ In affirming the Court of Appeals for the 3rd Circuit, the Supreme Court held that federal maritime law does not provide the exclusive remedy in cases involving deaths of nonseamen occurring in territorial waters. The Court recognized that general mari-

time law wrongful-death remedies look to the extension of relief, and not the restriction of it.¹⁶

Even though *Yamaha* allowed application of state law, Judge Legge ruled that the case does not mandate such application. Pursuant to the *Morange v. States Marine Line, Inc.*¹⁷ decision, "state remedies remain applicable and exist concurrently with the remedies available under maritime law for deaths occurring in territorial seas," Legge wrote.

But the *Yamaha* case was concerned with expanding remedies, not limiting them as defendants seek to do here. The implication of *Yamaha* is that plaintiffs may choose a state remedy, but they are also free to choose a federal one if they wish. If admiralty jurisdiction exists, as it does here, *Yamaha* does not compel the application of state law. Plaintiffs have made their selection of maritime remedies in these motions.

Dicta

In an apparent effort to encourage settlement, Judge Legge took the next step by suggesting the types of damages that are recoverable under general maritime law. Both wrongful death and survival actions are available. Pecuniary and nonpecuniary damages are recoverable. Pecuniary damages include: loss of past earnings, future loss of earning capacity, loss of services, loss of support, and funeral expenses. Nonpecuniary damages recoverable by the beneficiaries include loss of consortium and loss of society. In addition, damages recoverable in a survival action are predeath pain and suffering, emotional suffering and distress (fear of impending death), and loss of future wages. Last, as discussed above, punitive damages are available against all defendants except Alaska.

With regard to Flight 261's crew members, Judge Legge commented that they are entitled to recover against Alaska under the applicable state workers' compensation law and under general maritime law if allowed under state law. Under Washington law, workers injured in maritime activity can pursue both modes of recovery against their employers.¹⁸

Conclusion

Judge Legge ordered that the parties commence discovery, including depositions,

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which might also encourage settlement. He noted that he will be retiring from the bench on June 30, 2001, and scheduled a status conference for September 7 before the newly assigned judge.

As the dust clears from Judge Legge's decision, so does the result: plaintiffs win round one with the application of general maritime law and its broad recoverable damages, including punitive damages against all defendants, save Alaska. Boeing and McDonnell Douglas have filed a motion for certification for interlocutory appeal (which Alaska supports), but it has not yet been ruled upon. ✎

Seattle attorney Robert F. Hedrick practices aviation law with the Hedrick Law Firm, and represents parties involved in aircraft accidents. His e-mail address is hedrick@air-law.com. He has been reporting to Bar News readers on developments in the Alaska Airlines Flight 261 air-crash litigation.

NOTES

1. Convention for the Unification of Certain Rules Relating to International Transportation by Air, October 12, 1929, 49 Stat. 3000, T.S. No. 876 (1934). Reprinted in 49 U.S.C. App. § 1502 note.
2. In addition to Alaska Airlines, Alaska Air Group, Boeing and McDonnell Douglas, the other defendants are Peacock Engineering, Trig Aerospace, Nortek, MPDC, Derlan Industries, Equilon Enterprises and Shell Oil Company.

3. In re Korean Airlines Disaster of September 1, 1983, 932 F.2d 1475, 1485-90 (D.C. Cir. 1991), cert. denied 502 U.S. 994 (1991); In re Air Disaster at Lockerbie, Scotland on December 21, 1988, 928 F.2d 1267, 1284 (2d Cir. 1991), cert. denied 502 U.S. 920 (1991); Floyd v. Eastern Airlines, Inc., 872 F.2d 1462, 1483 (11th Cir. 1989), *revid on other grounds*, 499 U.S. 530 (1991).
4. The Montreal Convention was approved on May 28, 1999. It will enter into force on the 60th day following the date of deposit of 30 instruments of ratification and will become effective as between those states that have ratified it. Montreal Convention of 1999, Ch. VII cl.6. There are six official language texts of the Montreal Convention: English, French, Chinese, Russian, Spanish and Arabic.
5. Evich v. Connelly, 819 F.2d 256, 258 (9th Cir. 1987).
6. *Id.* at 258, 259, quoting *Protectus Alpha Navigation Co., Ltd. v. North Pack Grain Growers, Inc.*, 767 F.2d 1379, 1385 (9th Cir. 1985) (quotations and citations omitted).
7. 499 U.S. 530 (1991). In order to be admissible under the Daubert standard, the expert testimony must be based upon relevant and reliable scientific theory. "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." *Id.* at 588 (quoting F.R.E. Rule 702).
8. *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993); see also *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999).
9. One G is equal to the force acting on an object caused by the gravitational pull of the earth. Two Gs (positive) is twice the earth's gravitational pull (a person would weigh twice as much). Zero G is weightlessness. Negative one G would be similar to hanging from your seat upside down (with seatbelt on) assuming normal earth gravity pull. Negative three Gs (to the points of suspension) would be equivalent to hanging upside down and holding a barbell with your weight on it.
10. There was an issue with regard to the recoverability of punitive damages under California law, which was not resolved by Judge Legge because of his holding that general maritime law applied.
11. 409 U.S. 249 (1972).
12. *Id.* at 268.
13. *Citing Offshore Logistics v. Tallentire*, 477 U.S. 201, 209 (1986); *Williams v. United States*, 711 F.2d 893, 896 (9th Cir. 1983); *Roberts v. United States*, 498 F.2d 520, 523 (9th Cir. 1974); *In re Air Disaster near Honolulu*, 792 F. Supp. 1541, 1543 (N.D. Cal. 1990).
14. 516 U.S. 199 (1996).
15. See *Morange v. States Marine Lines, Inc.*, 398 U.S. 375 (1970).
16. *Citing Morange, supra*. "[I]t better becomes the humane and liberal character of proceedings in admiralty to give than to withhold the remedy, when not required to withhold it by established and inflexible rules." (quotation and citations omitted).
17. *Supra* at note 15.
18. See RCW 51.12.100; *Chan v. Society Expedition, Inc.*, 39 F.3d 1398, 1402 (9th Cir. 1994) (holding that under Washington law (RCW 51.12.100) a suit under maritime law can be maintained despite acceptance of workers' compensation benefits).

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The Board's Work

by **Mark A. Panitch**
Bar News Editor

Wenatchee – June 8

Long-time bar activist **J. Richard Manning** was named WSBA president-elect; he will serve as 2002-03 president. Manning has been president of the King County Bar Association and a WSBA governor. He serves as co-chair of the WSBA Discipline 2000 Task Force. In addition, he has been active in Law Week and access to justice programs. Manning is a sole practitioner who spends approximately 60 percent of his time in alternative dispute resolution practice.

In his letter of application, Manning cited the WSBA's relevance to its members as a major challenge to the organization. He also cited strategic planning, fiscal policy and diversity as important challenges to the Bar Association.

Manning also pointed to several important issues facing the profession which he said he would try to address during his presidency. Among these are affordable legal services for all, the image of lawyers, access to justice and IOLTA, member services, and the cost of legal education.

There were no other applicants for the position. Manning was elected by voice vote without objections or abstentions.

Holocaust-Era Insurance Claims

The BOG discussed a written request from Senator **Adam Kline** to urge attorneys not to do business with insurance companies that are in violation of the state's Holocaust Survivors Insurance Claims Act. In his letter, Kline pointed out that of the 34 carriers licensed in Washington to sell attorneys' professional liability insurance, five are associated with European companies that have refused to provide information on their Holocaust-era policy holders. The European companies are Allianz, AXA, Generali, Winterthur, Royal & SunAlliance, Employers Reinsurance and Zurich. According to Kline's letter, the five Washington-licensed companies are Westport Insurance Corporation (GE Capital Group [Employers Reinsurance]), Security Insurance Company of Hartford (Royal & SunAlliance), Design Professionals Insurance Company (Royal & SunAlliance), Chicago Title Insurance Company (Allianz) and

American Guarantee and Liability Insurance Company (Zurich).

General Counsel **Bob Welden** questioned whether the WSBA was authorized by GR 12 to respond, on the grounds that Kline might be asking the Association to take a "political position." At the same time, he noted there was nothing to stop individual members from raising the question with their insurance carriers.

Kline noted in his letter that "the Holocaust was not merely the worst mass murder in history; it was also the worst robbery." He urged members to respond to the "theft of insurance claims" by not "doing business with the perpetrators."

Bar Convention

Governors dipped their metaphorical toes in the murky waters of the Bar-convention pond. A memo from WSBA Executive Director **Jan Michels** suggesting basic criteria for a future convention sparked a heated debate over the need or desirability for another convention following Celebration 2000.

Governor **Jim Deno** opposed the idea, saying, "It's just too expensive and takes too much staff." However, other governors, including **Lindsay Thompson** and **Ken**

Davidson, voiced a willingness to investigate the idea.

Governors **Steve Henderson** and **Bill Hyslop** both argued that a convention served a useful purpose for the Bar. "There is a great benefit to lawyers meeting face-to-face in a nonadversarial forum," Henderson said. Hyslop noted that "meetings between attorneys and judges advance professionalism. Money should not be the last question." Governors **Jenny Durkan** and **Lindsay Thompson** agreed that members should be polled.

Other Matters

The BOG agreed by voice vote to "sunset" the WSBA Corrections Committee. Governors were concerned that the prison population has grown dramatically as have issues related to corrections such as drug-crime sentencing. However, noting a "lack of interest" on the committee, they agreed to end its existence. They also agreed to "sunset" the Consumer Protection Committee in 2003 by merging it into a new Practice of Law Board (PLB), which will be created following Supreme Court announcement of new rules defining the practice of law.

The next BOG meeting will be July 27-28 in Winthrop. ☞

Consumer-Information Pamphlets Available

Provide a valuable service to your clients by offering them consumer-information pamphlets! Published by the WSBA as a public service, these pamphlets educate consumers about their legal rights and responsibilities, answer frequently asked questions, and explain basic aspects of Washington laws. The information, of course, is general and not intended as legal advice or as a substitute for a lawyer's services. Pamphlets available are:

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To place an order, please call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA, or send an e-mail to questions@wsba.org. Prices include shipping and handling, but do not include 8.8% state sales tax. Payment may be made by check, MasterCard or Visa.

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LOMAP: Taking the Mystery Out of Law Office Administration for the Solo and Small-Firm Practice

by Peter D. Roberts • Advisor, WSBA Law Office Management Assistance Program

LOMAP is Your Program

It is both symbolic and convenient that the WSBA Law Office Management Assistance Program (LOMAP) occupies office space in the same building in Seattle that hosts the Department of Revenue, where attorneys can file for Master Business Licenses.

LOMAP began in 1997 as a steering committee of interested lawyers drawn from private practice, augmented by support from WSBA staff lawyers; the Law Practice Management & Technology Section; and the Bar liaison of the Association of Legal Administrators, Puget Sound Chapter.

The program resides in the WSBA Lawyer Services Department and has no connection to discipline.¹ A Board of Governors' standing committee provides guidance and support to the program. The LOMAP committee's inaugural chair was Lew Zieske, a solo practitioner in Chehalis. Dave Gordon, the present chair, practices with a partner in Gig Harbor. The committee meets quarterly.

A Board of Governors' standing committee for LOMAP provides guidance and support to the program.

Going by the Book

In 1998, after nine months of preparation, the original steering committee released a comprehensive guide for lawyers in Washington called *Up & Running, Operating Instructions for the Small Law Office*. It covers business planning, facilities, operations, client relations, financial management, technology, ethics and staff management. This loose-leafed guide, which is designed for periodic updates, was recently augmented with a new chapter describing issues that can occur in the "life cycle" of a

staff person, from recruitment to termination of employment.

Supporting the WSBA's Strategic Goals

LOMAP supports several of the goals in the WSBA's Long-Range Strategic Plan.

Strategic Goal 1

Provide services and benefits to members in response to their needs and desires.

Members often tell us they wish that LOMAP had existed

when they began practicing law. They are willing to pay a modest hourly rate for services, which are discreet, efficient and confidential.

Strategic Goal 3

Improve the professional development of new lawyers.

Prevention is a guiding principle of LOMAP. We seek to collaborate with the Washington Young Lawyers Division (WYLD), as well as with Washington's three law schools.

Strategic Goal 8

Promote the use of technology for the benefit of members, the courts and the Bar.

LOMAP has a computer lab where members can try out software programs, and review books and materials. Consultations emphasize training on software applications to enable the best use of software in the lawyer's possession, helping to avoid unnecessary purchases of new software.

Primary Functions and Programs

The mission of LOMAP is to assist solo and small-firm practitioners in the delivery of the highest quality legal services. The program seeks to keep up with the chang-



LOMAP's services helped him gain peace of mind.

ing administrative environment by reviewing a range of periodicals, Web sites, and other resources for appropriate information for the LOMAP resource archive. Technology is changing fast, and we keep a particular eye on these emerging issues. Practicing lawyers have little time to review this kind of literature, so we hope to benefit you with this service.

Some of the internal activities of the program are:

- conducting consultations;
- responding to telephone and e-mail inquiries from members;
- mailing requested materials to members;
- cultivating speaking opportunities;
- planning and conducting the annual LOMAP "Roadshow";
- maintaining resource materials;
- updating the resource database;
- administering the lending library;
- updating the LOMAP pages on the WSBA Web site (www.wsba.org/lomap);
- researching vendor resources;
- attending appropriate conferences and exhibitions;
- distributing the self-audit checklist to members;
- researching law office management periodicals;

- selling WSBA and ABA materials;
- writing articles for *Bar News*; and
- acting as liaison with the ABA LPM Committee and other state Bar programs.

Most law schools have not provided exposure to the business side of managing a law practice. While this is beginning to change, there is a large gap of knowledge and expertise in these matters. Lawyers in a small setting do not normally have access

to staff trained to handle a practice's business and administrative aspects. If a practice is growing, these matters take on much more urgency. Therefore, the program seeks to:

- expand professional competence;
- improve client services;
- increase management skills;
- avoid or reduce errors;
- prevent situations from resulting in grievances; and
- reduce stress and improve quality of life.

Achieving Its Goals

Goals are pursued by performing "general maintenance reviews" of a practice and its systems; performing consultations on specific identified issues, problems and procedures; providing reference materials and teaching tools on a wide variety of subjects; and referring practitioners to commercial consultants and vendors.

Vendors are told explicitly that there is no endorsement or WSBA "stamp of approval." Before making referrals, LOMAP undertakes to identify consultants and vendors who show appropriate evidence of good service and experience working with lawyers.

The program can provide information and answer questions about the various matters that surface in the areas of:

- business planning;
- financial management;
- technology;
- personnel management;
- operations management;
- facilities management; and
- client relations.

The work of LOMAP is confidential. The program charges members a sliding-scale hourly rate for its consultation services, based on years of practice. Each engagement begins with an extensive questionnaire to help focus attention on the primary areas of need.

You may request this questionnaire free of charge as a tool for assessing your practice by calling 206-727-8237 (or 800-945-WSBA, ext. 8237) and stating your request, name and Bar number. (The Bar number allows easy lookup and label printing of your address. There is no reporting of contact names by LOMAP to any other WSBA department.)

Ethical Guidelines

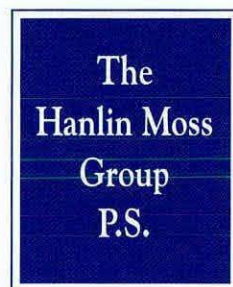
You may wonder whether the WSBA has "official guidelines" for various matters such as closing a practice or file destruction. No such guidelines exist. The Rules of Professional Conduct govern the minimum conduct that a Washington lawyer must follow. The program cannot give legal advice or ethical opinions, and each engagement includes a disclaimer recommending that a lawyer in need of further advice secure private counsel. We also recommend that

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practitioners contact the WSBA's professional responsibility counsel, who confers regularly with the LOMAP advisor about office-management issues tangential to possible ethical dilemmas.

Outreach

LOMAP's outreach consists of four components:

- consultation;
- education;
- law schools; and
- developing early partnerships.


Consultations bring on-point assistance to the practitioner. Lawyers participating in consultations are added to a confidential e-mail list to receive occasional practice tips.

Education offers opportunities such as public-speaking engagements to spread the word about LOMAP; other WSBA member services, WSBA-sponsored CLEs and available products. LOMAP staff is often invited to speak to county and specialty bar associations and other law-related groups, and the annual "LOMAP Roadshow" is well-received. The National Association of Legal Support Professionals (NALS) has been supportive in providing speaking opportunities and recruiting lawyers, alongside their own membership, to attend these presentations. In addition, we look forward to contacting the many county and specialty bar associations throughout the state to offer topics and invite ideas for presentations.

LOMAP wants to build strong ties with

our state's three *law schools* to help educate students about the business side of a law practice. We seek to provide baseline information about how to start a practice, as well as introduce students to the range of self-help resources available. Gonzaga University School of Law and Seattle University School of Law held career workshops for this purpose earlier this year. LOMAP provided a panel of lawyers and specialists, prepared the handouts, and moderated the panels.

LOMAP focuses on *developing early partnerships* by collaborating with the WYLD, and promoting membership in the WSBA's Law Practice Management & Technology Section, a useful networking resource through its Web discussion group and its Web site links.

LOMAP looks forward to broadening its impact and continuing to be responsive to the solo and small practitioner's needs. Call 206-727-8237 or e-mail peter@wsba.org for more information. 

Pete Roberts joined the WSBA staff in 1999, bringing 18 years of law-office administration experience from both coasts. He earned his MBA from the College of William and Mary, and recently completed Webmaster certification from the University of Washington.

NOTE

1. An RLD amendment is pending at the Supreme Court that directs the LOMAP advisor to follow guidelines for discipline under certain circumstances.

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The Washington State Bar Association Annual Awards Dinner & Business Meeting

Thursday, September 13, 2001

W Seattle Hotel

Reception 6:00 p.m. (no-host bar)

Dinner/Program 7:00 p.m.

To make a reservation, please use the form on page 59 of this issue of *Bar News*.

Changing Venues

Honors and Awards

Nat Washington, former state senator and first Grant County PUD attorney, has received the Henwood Award from the National Hydropower Association. The award celebrates a lifetime of achievement for responsible hydropower development. As counsel for Grant County PUD, Mr. Washington was instrumental in gaining the approval and financing for the Priest Rapids and Wanapum dams. As a state senator, he was chairman of the Ecology Committee, and played a leading role in creating the Washington Environmental Policy Act.

The King County Bar Association has elected the following officers and members to its Board of Trustees: **Ralph Maimon**, president; **Caroline D. Davis**, first vice-president; **Thomas E. Kelly Jr.**, second vice-president; **Camden M. Hall**, secretary/trustee; **Gary A. Maehara**, treasurer; **Eileen M. Concannon**, central district trustee; **Gregory M. Miller**, central district trustee; and **Douglas W. Harris**, east district trustee.

The District and Municipal Court Judges' Association has elected the following officers: Judge **Christopher Culp**, Okanogan County District Court, president; Judge **Dirk Marler**, Yakima County District Court, president-elect; Judge **Sara Derr**, Spokane County District Court, vice-

president; and Judge **Eileen Kato**, King County District Court, treasurer.

The Washington State Board for Judicial Administration (BJA) has elected Kitsap County District Court Judge **James M. Riehl** member-chair. He is the first district court judge in state history to co-chair the BJA in cooperation with the Chief Justice of the Supreme Court.

The Washington State Trial Lawyers Association presented the following awards: King County Superior Court Judge **Robert Alsdorf**, Superior Court Judge of the Year; Snohomish County District Court Judge **Stephen Dwyer**, District Court Judge of the Year; Lewis County Superior Court Judge **David Draper**, 20-Year Service; and Cowlitz County Superior Court Judge **Don McCulloch**, 20-Year Service.

Montesano lawyer **Vini Samuel** is one of 13 Asian-American elected officials in the nation selected for a leadership academy in Washington, D.C. Ms. Samuel was nominated by State Representative Sharon Tomiko Santos for her extensive community involvement.

Cheryl Boal has received the annual Liberty Bell Award from the Whatcom County Bar Association. She was honored for her work in coordinating pro bono legal services in Whatcom County as executive director of Law Advocates.

Barbara C. Clark, executive director of the Legal Foundation of Washington, has received the Law Medal from Gonzaga University School of Law. The award honors an attorney who makes exemplary contributions to the legal profession in keeping with the ideals of Gonzaga University. Ms. Clark received the medal in recognition of her dedication to providing legal representation to low-income people.

Movers and Shakers

David Tellekson (member of the Minnesota and Illinois state bars) has been named

managing partner in the Seattle office of Merchant & Gould. He has been in the firm's Minneapolis office since 1987, and is a trial lawyer focusing on complex patent disputes.

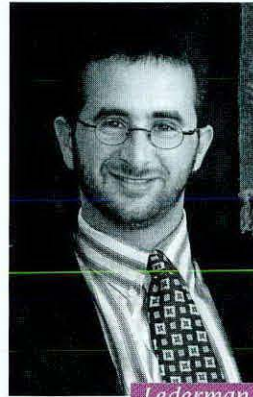
Thomas H. Fryer and **Jeffrey A. Thigpen** have joined the Bellingham firm now known as Nelson, Brinson, Thigpen & Fryer PS. Mr. Fryer practices criminal, personal injury and municipal law. Mr. Thigpen focuses on personal injury litigation, insurance claims and criminal defense.

Kevin Lederman has been named managing director of the Seattle firm MacDonald, Hogue and Bayless. He continues to practice business immigration law.

Brian D. Hulse has joined the Seattle office of Heller Ehrman White & McAuliffe LLP as a lateral shareholder. He works with the firm's financial services national practice group on financial services, real estate and insolvency matters.

Karen R. Bertram has been named principal in the Seattle office of Garvey, Schubert & Barer. Her practice emphasizes trusts and estates, including estate planning and estate litigation. **Michael Brick** has joined the firm as an associate, focusing on corporate and international law. **Sevilla C.P. Claydon** has also joined the firm as an associate, concentrating on labor and employment matters. **Kerry E. Radcliffe** has rejoined the firm as a principal. Her practice emphasizes corporate law and commercial transactions.

Peter Offenbecher has become a shareholder in the Seattle firm Skellenger Bender. His practice includes criminal defense in state and federal court, appellate advocacy, civil litigation and professional disciplinary matters. **Elizabeth J. Berns** has joined the firm as an associate. Formerly in private practice, she focuses on family law, intellectual property protection, estate planning and probate, business succession planning, and business law. ☞



Lederman



Clark

Speak Out!

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

For more information, call Amy O'Donnell at the WSBA Speakers Bureau
206-727-8213



Disciplinary Notices

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.

Clarification

Attorney John P. Walsh (WSBA No. 12437, admitted 1984), Law Offices of John P. Walsh, is to be distinguished from John A. Walsh (WSBA No. 20603, admitted 1991), whose notice of censure was published in the June *Bar News* (p. 52).

Disbarred

Jonathan T. Zackey (WSBA No. 21657, admitted 1992), of Bellevue, has been disbarred by order of the Supreme Court effective December 12, 2000, following a default hearing. The discipline is based on his disbursing client funds to himself and

others, failing to diligently represent several clients, and failing to cooperate with the Bar Association.

Matter 1: In July 1996, Mr. Zackey agreed to represent a client injured in a fall at a motel in California. Medicare paid \$10,326.05 of the client's medical bills and notified Mr. Zackey of its statutory reimbursement right.

In May 1999, Mr. Zackey settled the client's claim for \$50,000. He requested that the client sign a release and told him he was negotiating with the lien holders. The client signed the release, and Mr. Zackey received and deposited the settlement funds into his trust account. The same day, he wrote a \$10,000 check to his general office account designated as "partial fees client v. Motel 6."

Beginning in May 1999, Mr. Zackey stopped responding to his client's requests for information. After May 25, 1999, Mr. Zackey disbursed the client's remaining funds to himself and third parties unrelated to the case. As of the date of the hearing, Mr. Zackey had not paid the client or the lien holders.

In September 1999, Mr. Zackey disbursed \$1,000 from the client funds des-

ignated as "cost reimbursement." Mr. Zackey did not contemporaneously notify the client of these disbursements.

Matter 2: In 1996, Mr. Zackey agreed to represent a client injured in an auto accident. In late 1998 or early 1999, Mr. Zackey settled the client's case for \$4,316. In January 1999, Mr. Zackey deposited the settlement funds into his trust account. Sometime after this date, he disbursed the funds to himself and third parties unrelated to the case. Mr. Zackey did not pay the client or the lien holders.

Matter 3: Mr. Zackey agreed to represent a client injured in an auto accident. In 1997 or 1998, Mr. Zackey settled the claim. On April 26, 1998, Mr. Zackey sent the client an accounting indicating he would disburse \$25,829.61 to her and \$1,992.50 to her insurance company. Mr. Zackey paid the client, but not the insurance company. As of the date of the hearing, Mr. Zackey had not paid the insurance company.

Matter 4: Mr. Zackey represented a client in a personal injury claim. The client received chiropractic treatment, and the provider notified Mr. Zackey of his lien. In May 1998, Mr. Zackey settled the client's



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case for \$26,000. In January 1999, Mr. Zackey disbursed funds to the client, but did not pay the chiropractic lien. As of the date of the hearing, Mr. Zackey had not paid the lien and had removed the money from his trust account.

Matter 5: Mr. Zackey failed to respond to several written requests for information from disciplinary counsel. He also failed to attend a deposition after being served with a subpoena. In February 2000, disciplinary counsel filed a petition for interim suspension of Mr. Zackey's license based on his failure to provide requested trust account records and failure to account for client funds.

Matter 6: In May 1997, Mr. Zackey agreed to represent a client in a claim for injuries he sustained in an auto accident. The contingent-fee agreement indicated that Mr. Zackey would receive 33.33 percent of all amounts received by the client, less pre-existing PIP payments and medical or insurance liens. The case settled in December 1998 for \$66,000. According to the fee agreement and *Mahler v. Szucs*, 135 Wn.2d 398 (1998), the portion of attorney's fees paid by the insurer attributable for recovery of its subrogated claim belonged to the client.

In February 1999, Mr. Zackey called the insurance company stating that he was entitled to those fees. In support of his claim Mr. Zackey sent a copy of a fee agreement purportedly between himself and the client. This fee agreement did not include the "less pre-existing PIP payments and any medical or insurance liens" language. Mr. Zackey sent \$30,472.47 to the client, and notified him that he claimed \$6,800 in fees and \$100.32 in costs from the amount due the insurance company. Later, Mr. Zackey removed the remaining funds from his trust account.

Matter 7: In May 1996, Mr. Zackey agreed to represent a client in a claim for damages as a result of a fall in Ohio. In July 1996, the same client retained Mr. Zackey to represent her for injuries she sustained in a car accident. Mr. Zackey failed to file suit on either claim prior to the expiration of the statute of limitations.

Matter 8: Between May 1998 and October 1990, Mr. Zackey used approximately \$82,000 in client funds from his trust account to pay his personal obliga-

tions and to pay other clients.

Mr. Zackey's conduct violated RPCs 1.1, requiring lawyers to competently represent their clients; 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to keep their clients reasonably informed of the status of their matters and to promptly comply with reasonable requests for information; 1.5(c)(1), requiring lawyers to provide written disbursement statements in contingent-fee cases, explaining the amount remitted to the client and how that amount is calculated; 1.14(b)(3), requiring lawyers to maintain complete records of all client funds and property in the lawyer's possession and provide accountings when requested; 8.4(b), prohibiting lawyers from committing criminal acts (RCW 9A.56.030) that reflect adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Maria Regimbal represented the Bar Association. Mr. Zackey represented himself. The hearing officer was Geoffrey G. Revelle.

Disbarred

Zachary A. Kinneman (WSBA No. 19443, admitted 1990), of Lakewood, has been disbarred by order of the Supreme Court effective September 1, 2000, approving a stipulation. The discipline is based on his practicing while suspended, abandoning his practice without notice to his clients, and removing client money from his trust account.

Suspension: In 1998, Mr. Kinneman failed to file the required compliance report demonstrating compliance with the Continuing Legal Education (CLE) requirements for 1995 through 1997. On February 1, 1999, The Supreme Court suspended Mr. Kinneman's license to practice law in Washington for failure to comply with the CLE requirements.

On February 17, 1999, by certified mail, disciplinary counsel notified Mr. Kinneman of his duties upon suspension including the requirement that he file an affidavit of compliance within 25 days of the suspension. Mr. Kinneman does not recall receiving this notice. As of the date of the stipulation, Mr. Kinneman had not

completed the required CLE credits or filed the affidavit of compliance regarding his suspension.

At the time of his suspension, Mr. Kinneman was counsel of record for the plaintiffs in a lawsuit. Mr. Kinneman did not notify his clients, opposing counsel, or the court that his license had been suspended and that he could no longer represent them. On April 14, 1999, Mr. Kinneman signed a stipulation in the case allowing the defendants to amend their answer.

Abandonment of Practice: In early 1999, Mr. Kinneman closed his law office without providing notice to his clients, opposing counsel or courts. He allowed his phone line to be disconnected with no forwarding information, and did not provide a forwarding address to clients or the Bar Association. At this time, Mr. Kinneman represented several clients who were affected by his actions.

Matter 1: In September 1996, Mr. Kinneman agreed to represent clients in a dispute with the personal representative (PR) of their aunt's estate. The clients believed that the PR had sold a parcel of real property at below-market value. Mr. Kinneman assisted the clients in removing the PR and obtaining a \$20,000 distribution of estate assets.

On September 30, 1998, Mr. Kinneman told the clients that the case was set for trial on February 15, 1999, and that he believed they could recover the entire value of the property. The clients were not able to contact Mr. Kinneman after this date.

Matter 2: In April 1998, Mr. Kinneman agreed to represent two condominium residents in a dispute with the management company. The clients believed that the management company employees had made defamatory statements about them. The clients paid a \$1,000 retainer, which Mr. Kinneman agreed would cover commencing a lawsuit. Mr. Kinneman drafted a declaration based on the clients' letters, but took no further action. The clients were not able to contact Mr. Kinneman.

Matter 3: In September 1997, Mr. Kinneman agreed to represent a client who was one of several defendants in a real property case. The plaintiff's case had settled, but there was a cross-claim pending against Mr. Kinneman's client

On June 12, 1998, the court entered a

judgment against the client on the cross-claim. Mr. Kinneman agreed to appeal the judgment. A month later, the client had not heard from Mr. Kinneman and was unable to contact him. The client's lawyer in another matter did contact Mr. Kinneman, and he told her that he had filed the appeal and would send copies of the documents. Mr. Kinneman did not file the appeal and the time period for filing expired. The judgment creditor aggressively pursued collecting the judgment, and the client was forced to file a petition for relief in bankruptcy.

Matter 4: In August 1997, Mr. Kinneman agreed to represent a residential construction company in a suit to enforce a claim of lien against a property owner. The construction company had performed remodeling work for the homeowner and had not been paid. In August 1997, Mr. Kinneman filed the lien, and his client notified him that he had misspelled the lien holder's name. Mr. Kinneman stated that he had refiled the lien under the correct name and had served the lien by certified mail. On October 8, 1997, the last day to file the lien, the client contacted Mr. Kinneman to verify that the lien had been properly filed. Mr. Kinneman did not respond to the client's inquiry. In November 1997, the client retained new counsel. Because Mr. Kinneman could not establish that the homeowners had received the lien, the client agreed to settle his claim for less than the value of the original lien.

Matter 5: In June 1997, Mr. Kinneman agreed to act as closing and escrow agent in a mortgage refinance transaction. Mr. Kinneman properly disbursed the loan fee and proceeds, but failed to pay off three prior mortgage lenders or obtain reconveyances of the prior deeds of trust. Mr. Kinneman did not account for approximately \$125,000 of the funds. He used approximately \$30,000 of these funds to pay his personal debts. It appears that, contrary to the escrow instructions, Mr. Kinneman disbursed the remaining funds to an unrelated third party.

Believing that the underlying mortgage had been paid off, the property owner stopped paying the monthly payments on the original loans. The prior mortgage lenders commenced trustee's foreclosure proceedings on the properties involved. The

property owner lost one property in non-judicial foreclosure proceedings and stopped the remaining proceedings by filing for bankruptcy relief.

Matter 6: Mr. Kinneman failed to cooperate with the Bar Association's investigation of these matters. He did not respond to written requests for information pursuant to RLD 2.8 in several matters. He also failed to comply with a subpoena duces tecum issued by disciplinary counsel.

Mr. Kinneman's conduct violated RPCs 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, deceit, fraud or misrepresentation; 1.15(a)(1), requiring lawyers to withdraw from matters if the representation will result in a violation of the Rules of Professional Conduct (RPCs); 5.5(a), prohibiting lawyers from practicing in jurisdictions where doing so violates the regulation of the legal profession in that jurisdiction; 8.4(d), prohibiting lawyers from engaging in conduct prejudicial to the administration of justice; 1.3, requiring lawyers to act with reasonable diligence and promptness in representing clients; 1.4, requiring lawyers to keep clients reasonably informed of the status of their matters and to comply with reasonable requests for information; 1.5, requiring lawyers to charge reasonable fees for representation; 1.15(d), requiring lawyers to take steps to the extent reasonably practicable to protect a client's interests when withdrawing from representation; 1.14, requiring lawyers to preserve the identity of client funds or property in the lawyer's possession; RLDs 8.1(a), requiring suspended lawyers to notify their clients and others of their suspension; 8.2, requiring suspended lawyers to discontinue practicing; and 8.3, requiring suspended lawyers to file an affidavit indicating compliance with the duties upon suspension within 25 days of the suspension.

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

Suspended

Donald B. Kronenberg (WSBA No.13979, admitted 1984), of Seattle, has been suspended for six months effective March 1, 2001, by order of the Supreme Court dated November 30, 2000. This discipline is based on his charging an unreasonable fee

and failing to properly account for client funds in one matter, and engaging in conduct prejudicial to the administration of justice and filing a frivolous claim in another.

Matter 1: On August 18, 1987, Mr. Kronenberg agreed to collect back-due child support for a client on a contingent-fee basis. The fee agreement stated that Mr. Kronenberg would receive 50 percent of all sums recovered before the deduction of advanced costs and expenses. In October 1987, Mr. Kronenberg also agreed to represent the client in a custody modification matter on an hourly fee basis. The client moved several times during the representation, at times living in Nevada and at other times, California. The client's sister always lived in Federal Way, and Mr. Kronenberg knew or should have known that he could contact the client through her sister, since Mr. Kronenberg met with the sister at the beginning of the representation.

On January 15, 1988, Mr. Kronenberg obtained a \$27,868 judgment for back support. He immediately began garnishing the debtor's wages and, in October 1988, received a \$1,164 check. He notified the client that he had received the check and indicated he would apply the amount to his fees. Mr. Kronenberg received six additional garnishment checks totaling \$7,196.93. He deposited these checks into his general business account instead of his client trust account. He did not send the client copies of these checks or the garnishment pleadings. Mr. Kronenberg did not send the client any bills reflecting the amounts collected in the garnishments. Mr. Kronenberg applied all of the amounts collected on the judgment to his fees, without the client's permission.

In December 1989, the custody matter settled with the father agreeing to enter into a voluntary \$500 per month wage assignment, with \$400 per month allocated to back support and \$100 as current support.

In January 1990, Mr. Kronenberg received a \$500 payment on the wage assignment. He kept the \$400 back-due child support portion and mailed the \$100 payment to the client. The check was returned because the client had moved. Mr. Kronenberg asked his staff to look in the phone book for the client's new address, and then applied the \$100 to his fees when he could

not locate her. He did not attempt to contact her sister to find a current address.

From August 1987 through October 1988, Mr. Kronenberg sent the client a combined monthly statement for both matters. On November 15, 1988, he set up a separate internal billing statement for the back-support matter, which reflected that the client owed him \$14,215.68 (50 percent of the judgment amount), less the \$1,163.09 already received. Each month he generated a new internal billing reflecting a larger balance due from the client for garnishment costs, or a smaller balance reflecting garnishment payments, charging the client a compounded interest rate of up to 1.6 percent on the "unpaid balance."

In 1992, the client learned of the additional garnishments after looking at the court file. When she confronted Mr. Kronenberg, he first denied receiving any funds, and then stated that he was entitled to keep all of the funds until he had collected 50 percent of the judgment amount.

Matter 2: In November 1990, Mr. Kronenberg agreed to assist a client whose claim had been denied by the Crime Victims' Compensation Program administered by the Department of Labor and Industries (L&I). The client had been involved in a shooting in Seattle in 1989. On August 15, 1990, L&I awarded the client \$15,000 on his claim, to be paid in two or three installments. In October 1991, L&I sent \$8,987.52 to Mr. Kronenberg. Mr. Kronenberg kept one third, plus costs, and forwarded \$5,901.58 to the client.

Later that month, the client contacted L&I directly and asked to pick up the balance of his award at their office in Olympia. L&I agreed, so long as the client provided a handwritten note stating that Mr. Kronenberg no longer represented him. The client wrote the note and included a statement that he was relocating in approximately two weeks to the Midwest. The client's father, who lived near the L&I office, delivered the note and picked up the \$6,012.48 payment. Mr. Kronenberg did not receive his one-third fee from this portion of the payment.

After Mr. Kronenberg learned that the payment had been made to the client directly, he contacted the father. Mr. Kronenberg told the father that he must pay for Mr. Kronenberg's lost fee. When the

father objected, Mr. Kronenberg filed a lawsuit naming both the client and the father as respondents. Mr. Kronenberg also obtained a prejudgment writ of attachment on the father's home.

Mr. Kronenberg stated in his declaration justifying the writ that the client, in conjunction with the father, had removed or were about to remove property from the state. Although Mr. Kronenberg admitted that the only basis for this statement was the son's note, he refused to agree to remove the writ of attachment. The father paid \$992, half the amount of the claim, to obtain a release of the writ. After the payment, Mr. Kronenberg did not take steps to dismiss the matter.

Mr. Kronenberg's conduct violated RPCs 1.4, requiring lawyers to keep their clients informed of the status of their matters and to explain matters to the extent reasonably necessary for clients to make informed decisions; 1.14, requiring lawyers to deposit client funds into their trust accounts; 1.5, requiring lawyers' fees to be reasonable and to explain the basis for the fee to the client; 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; 3.1, prohibiting lawyers from bringing proceedings unless there is a nonfrivolous basis for doing so; 3.3, prohibiting knowingly making a false statement of material fact to a tribunal; and 8.4(d), prohibiting lawyers from engaging in conduct prejudicial to the administration of justice.

Joy McLean represented the Bar Association. Rita Bender represented Mr. Kronenberg. The hearing officer was Andrew K. Dolan.

Suspended

Lowell K. Halverson (WSBA No. 1518, admitted 1968), of Mercer Island, has been suspended for one year by order of the Supreme Court, following a hearing. The Court issued the certificate of finality in the case on July 7, 2000. For additional information, please see the published Supreme Court opinion. The suspension began on May 22, 2000 pursuant to an order allowing the suspension to begin while the case was pending. The discipline is based on Mr. Halverson's consensual sexual relationship with his client during her dissolution case and his failure to explain the

potential conflicts to the client.

Mr. Halverson had consensual sexual relationships with six female clients over a period of more than 10 years. During this time, Mr. Halverson was married. The most recent relationship began in 1991. The client worked in Mr. Halverson's office in 1990, and retained him to represent her in a marriage dissolution action in May 1991. Mr. Halverson filed the dissolution petition in June 1991, and the client moved out of her husband's house in July.

The same month, the client confided to Mr. Halverson that she was attracted to him. Shortly after that, following a successful court hearing, Mr. Halverson took the client to an art exhibit and then to a restaurant, where they discussed the ground rules for a potential relationship. Mr. Halverson stated that his wife could not find out and that he could not have a relationship with the client's children. Mr. Halverson told the client that if these rules were followed, their relationship would not affect her pending divorce. He did not explain to the client the possible effects on her pending divorce if their relationship was discovered. Mr. Halverson had a sexual relationship with his client for the next six months.

On January 1, 1992, Mr. Halverson's wife, who was also his office manager, discovered the affair. Within a few days, Mr. Halverson withdrew from the client's case. He temporarily moved out of his home and continued his relationship with the client, but in mid-February, told the client that he was returning to his wife, and the client retained new counsel to complete her divorce. In October 1994, the client filed a civil suit against Mr. Halverson. The civil suit settled in 1995 for a substantial sum and was sealed by agreement. The client's husband sued and received half of the settlement.

Mr. Halverson's conduct violated RPCs 1.4(b), requiring lawyers to explain matters to the extent reasonably necessary to permit their clients to make informed decisions regarding representation; 1.7(b), prohibiting lawyers from representing a client if the representation may be materially limited by the lawyer's responsibilities to another client, a third person or the lawyer's own interests, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents in

The Lawyers' Fund for Client Protection Committee meets quarterly to review applications for gifts from the fund. The committee is authorized to make gifts to qualified applicants of up to \$3,000. On applications for more than \$3,000, the committee makes recommendations to the Board of Governors, who are the fund's trustees. At their meeting on May 7, 2001, the committee took the following action:

William I. Freeman (Bar No. 17586, Vancouver; suspended; recommended for disbarment): Freeman entered into a scheme with a nonlawyer regarding filing hearing-loss claims with the Department of Labor and Industries. The applicant was charged a percentage of his award as a legal fee, even though he had never met Freeman. The department disallowed the fee, but Freeman never returned the unearned fee to the applicant. The committee gave the applicant \$941.24.

Kenneth R. Mitchell (Bar No. 17401, Tacoma; suspended): Mitchell previously stipulated to a 60-day suspension. While that stipulation was pending before the Supreme Court, he accepted a fee from the applicant to seek an emergency order against the applicant's neighbor. He did nothing, and a few days later was suspended from the practice of law. He did not advise the applicant of his suspension or return the fee. The committee gave the applicant \$750, which Mitchell has stipulated to repay as a condition of reinstatement to practice.

writing after consultation and a full disclosure of the material facts; and 2.1, requiring lawyers to exercise independent professional judgment in representing clients.

Andrea Darvas represented the Bar Association. David Allen represented Mr. Halverson. The hearing officer was William H. Broughton.

Suspended

Hugh J. Kelly (WSBA No. 14616, admitted 1984), of Spokane, has been suspended for two years effective December 11, 2000, by order of the Supreme Court, approving a stipulation. The discipline is based on his

Daniel S. Wilner (Bar No. 21690, Kitsap County; disbarred): The committee previously approved 11 applications concerning Wilner. At this meeting, four more were approved. All involve advance fees or costs paid to Wilner for matters in which he performed no services and failed to return the unearned fees or costs. The committee recommended one payment of \$4,800, and approved two payments of \$500 and one of \$1,500.

In addition, the committee reviewed 10 other applications. Six were denied for lack of evidence of dishonest conduct or as fee disputes; one was denied because restitution had been made, and three were continued for further investigation. The committee also met with WSBA Director of Communications Judith Berrett to discuss publicizing the activities of the fund. Discussion will continue at the next meeting.

Restitution: The fund seeks restitution from lawyers who cause payments from the fund. Because in most cases those lawyers have no assets, the chief avenue of restitution is through court-ordered restitution in criminal cases. Prosecuting attorneys cooperate with the fund in getting the fund listed in restitution orders. To date in this fiscal year (since October 1, 2000), the fund has received total restitution of \$4,034.

Appreciation: The purpose of the Lawyers' Fund for Client Protection is to assist persons who have been victims of dishonest lawyers. Although the fund can never fully compensate a person for the harm done by a dishonest lawyer, since March

2001 we received several thank-you notes from recipients of payments made on behalf of Washington lawyers.

"Thank you so much for your efforts.... This makes a world of difference for my children and myself."

"Just wanted to drop you a note to thank you, not only for the check, but for your time and effort investigating the matter. As a hardworking single mom trying to really make a difference in the lives of my children, I truly appreciate your getting my money back. Thank you very much."

"Please accept this note in gratitude.... It does provide some relief financially; it also shows me of your concerns — that is appreciated, too. My heartfelt thanks to you and your associates."

"We cannot thank you and the lawyers of the state of Washington enough for your thoughtfulness and kindness in sending us the \$3,200 we paid a lawyer who did nothing in our case.... You've changed our trust in lawyers and we do appreciate you."

"My wife and I extend a warm and heartfelt thank you for the \$3,000 you sent from the Washington State Bar Association Lawyers' Fund for Client Protection. Your concern for us is greatly appreciated. There definitely have been times over the last few years when we thought we were going to lose everything. For us, your generosity is immeasurable, and has given us a light at the end of a very long tunnel."

The committee chair is Seattle attorney Thomas R. Dreiling. WSBA General Counsel Robert Welden is staff liaison to the committee.

failure to diligently represent several clients.

Matter 1: On May 29, 1998, Mr. Kelly met with a client regarding a child support modification. The client paid Mr. Kelly \$120 for a filing fee and a \$750 advance fee deposit. Although Mr. Kelly indicated that the \$750 fee was nonrefundable, there was no written fee agreement, and the client reasonably expected that the unearned fee would be returned. After discussing with the client that the court may not have jurisdiction, Mr. Kelly filed a petition for modification of child support.

On September 18, 1998, the client received copies of the filed pleadings and

provided names of process servers in Nevada, where the father lived. Mr. Kelly did not arrange for service on the father, and took no further action on the client's case. The client asked that Mr. Kelly return her original paperwork and her \$750 advance fee deposit. As of the date of the stipulation, Mr. Kelly had not met her request.

Matter 2: On April 30, 1996, Mr. Kelly agreed to represent the mother in a parenting-plan modification. The client paid Mr. Kelly \$500; he told her that the total fee would be \$300 to \$500, and that he would return any excess fees. The client signed the petition on May 30, 1996, and Mr. Kelly

filed it on August 22, 1996. Mr. Kelly did not serve the father with the petition.

In August 1997, the client met with Mr. Kelly to discuss the case, and asked for copies of associated documents, filings and correspondence, along with an itemized billing. As of the date of the stipulation, Mr. Kelly had not provided copies of these documents to the client.

On April 5, 1998, the client sent Mr. Kelly a certified letter asking him to resolve the case by June 30, 1998, or return her fee. Mr. Kelly signed for the letter, but did not respond to the client's request. Mr. Kelly took no further action on the client's case.

Matter 3: On April 11, 1997, a client retained Mr. Kelly to represent her juvenile son in a criminal matter. The son had been convicted of robbery and sentenced to two years in jail. The client requested that Mr. Kelly file a motion for reconsideration of the sentence, and paid Mr. Kelly a \$3,000 advance fee deposit. In June, Mr. Kelly told the client he had filed the paperwork and that the next court date was June 20, 1997 at 3:00 p.m. In fact, Mr. Kelly had not filed any paperwork and there was no court date set.

On June 19, 1997, Mr. Kelly told the client that the hearing had been postponed until June 27, 1997. The client again contacted Mr. Kelly the day prior to the hearing. This time, Mr. Kelly told the client the hearing had been continued to July 4, 1997. When the client pointed out that this was a holiday, Mr. Kelly told her he would get back to her. After this, Mr. Kelly did not return the clients' calls. Mr. Kelly did not file any pleadings, schedule any court dates, or return any of the client's advance fee deposit.

Matter 4: On May 29, 1997, the mother and grandparents of a child retained Mr. Kelly to modify residential placement and visitation with the child. The grandparents paid Mr. Kelly \$2,000 and emphasized that they needed this work done quickly because they wanted to arrange visitation before a July 4, 1997 family trip. Mr. Kelly did not file a notice of appearance, a petition, or any pleadings in this matter. In October 1997, he refunded the client's \$2,000.

Matter 5: In February or March 1996, Mr. Kelly agreed to represent the wife in a marriage dissolution action. The parties

reached agreement in May 1997. Mr. Kelly was responsible for drafting the final pleadings, which he did not do. Opposing counsel drafted the pleadings and arranged for all the parties to sign them. Mr. Kelly received the signed pleadings on November 24, 1997, and filed them on January 20, 1998. Mr. Kelly did not notify his client that he filed final pleadings, or provide her copies.

Matter 6: Mr. Kelly agreed to represent the wife in a marriage dissolution matter. The client paid a \$1,000 advance fee deposit, and Mr. Kelly told her he billed at \$75 per hour. From July 1995 through 1997, Mr. Kelly canceled several appointments with the client and rarely returned her phone calls. In August 1997, just prior to the start of a hearing, Mr. Kelly notified the client of his intent to withdraw. Mr. Kelly did not provide copies of the client's file to the client or her new attorney. Mr. Kelly did not return the client's \$1,000 fee.

Matter 7: On April 15, 1999, Mr. Kelly met with a client who had been sued for back-due child support. A hearing was scheduled for May 19, 1999. On April 22, the client contacted Mr. Kelly, who scheduled a phone conference with her for the next day, which Mr. Kelly later cancelled. On April 29, 1999, the client's husband went to Mr. Kelly's home and asked for his wife's money back. Mr. Kelly told the client's husband he had not contacted him because Mr. Kelly's family had been sick. The client indicated that she wanted to settle the case and sent a written settlement proposal to Mr. Kelly.

On May 22, 1999, the client spoke to her ex-husband and reached agreement. On May 25, the client left a message for Mr. Kelly indicating that she had reached an agreement with the opposing party and wanted him to contact her. Mr. Kelly did not contact his client. On June 22, 1999, the client retrieved the original paperwork from Mr. Kelly's home. Mr. Kelly refused to refund the fee, stating that he had spent a lot of time on the case and would send the client a bill. Mr. Kelly never sent a bill or returned any part of the \$500 fee the client paid.

Matter 8: Mr. Kelly failed to respond to written requests for information regarding these matters sent to him by disciplinary counsel. In October 1997, disciplinary

counsel notified Mr. Kelly by certified mail that if he did not respond within 10 days, he would be responsible for the costs of his deposition. Mr. Kelly did not respond to this letter, and disciplinary counsel scheduled his deposition and continued the date at his request. Mr. Kelly attended the deposition, but refused to address several of the grievances and failed to produce subpoenaed documents.

Mr. Kelly's conduct violated RPCs 1.5(a), requiring lawyers to charge reasonable fees for their services; 1.14(b)(3) and (4), requiring lawyers to maintain complete records of client funds and promptly pay or deliver unearned advance fee deposits to clients; 1.15(d), requiring lawyers to take reasonable steps to protect clients' interests when lawyers withdraw from representation; 1.4(a), requiring lawyers to keep clients informed about the status of their cases and promptly comply with reasonable requests for information; 1.3 and 3.2, requiring lawyers to diligently represent clients and expedite litigation; 8.4(c), prohibiting lawyers from engaging in conduct involving misrepresentation; and RLD 2.8, requiring lawyers to cooperate with requests for information related to grievances or other matters concerning a lawyer's conduct.

Becky Neal represented the Bar Association. Mr. Kelly represented himself.

Reprimand

James R. McLees (WSBA No. 2785, admitted 1993), of Sumner, has received a reprimand based on a stipulation approved by the Disciplinary Board on November 17, 2000. The discipline is based upon his failure to diligently represent a client.

In July 1996, Mr. McLees agreed to represent a client in a claim against her insurance agent for misrepresentation of coverage. The client believed she had purchased a particular medical insurance policy, made a claim, and was told that she did not have the coverage she thought she had. Mr. McLees incorrectly determined that a six-year statute of limitations for breach of contract applied to this claim. Mr. McLees did not respond to his client's calls between July 1996 and August 1997.

In August 1997, the client retained another lawyer. The new lawyer determined that the three-year statute of limitations ap-

Congratulations to the New Admittees from the Winter 2001 Bar Exam!

Note: Individuals listed are from Washington unless indicated otherwise.

plied to the claim of the agent's negligence. The three-year statute of limitations expired while Mr. McLees was handling the client's case. Mr. McLees suffered health problems during this time and did not inform the client that these problems prevented him from attending to her case. Mr. McLees agreed to pay the client \$3,000 plus interest as part of the stipulation.

Mr. McLees's conduct violated RPCs 1.3, requiring lawyers to diligently represent clients; and 1.1, requiring lawyers to provide competent representation.

Val Tollefson represented the Bar Association. Kurt Bulmer represented Mr. McLees.

Admonished

Thomas C. Evans (WSBA No. 5122, admitted 1973), of Seattle, has been ordered admonished following a hearing. The disciplinary action is based upon his loaning money to his client during litigation.

Beginning in 1992, Mr. Evans represented a client in a maritime personal-injury case. Between May 26, 1992 and July 24, 1994, during litigation, Mr. Evans advanced \$4,500 to his client. During this time, the client traveled to Texas and located documents and witnesses important to his case. Mr. Evans did not keep records and receipts tying the advances to expenses of investigation or litigation. Additionally, some of Mr. Evans' documentation appeared to treat portions of these advances as a loan. The client paid back the advances out of his settlement funds.

Mr. Evan's conduct violated RPC 1.8 (e) (1), prohibiting lawyers, in connection with contemplated or pending litigation, to advance or guarantee financial assistance to the client, except that the lawyer may advance or guarantee the expenses of litigation including court costs, expenses of litigation, expenses of medical examination, and costs of obtaining and presenting evidence, provided the client remains ultimately liable for such expenses.

Jonathan Burke represented the Bar Association. Leland Ripley and Mr. Evans acted as co-counsel. The hearing officer was Douglas Dunham. ☞

- | | |
|--|---|
| Abrams, John Phillip – Gig Harbor | Brunkow, Brian Welsh – Seattle |
| Adams, Brandi Lane – Seattle | Bulkley, Kimberley Ruth –
Washington, DC |
| Adams, Elizabeth Jane – Federal Way | Calandriello, Joseph P. – Tumwater |
| Adams, Erik Hugh – Seattle | Campbell, April L. – Seattle |
| Agomuo, Augustine – Southfield, MI | Cannon, Clifton L. – Portland, OR |
| Alford, Etoy Jr. – Pasco | Cannon, Patrick C. – Bainbridge Island |
| Alkire, Brian Lee – Mukilteo | Cano, Joey – Kennewick |
| Allen, Angela Althea – Bellevue | Carvalho, Matthew Aaron – Seattle |
| Allen, Tavia Leigh – Kennewick | Case, Aaron David – Everett |
| Amann, Hans K. – Columbia, MO | Cerrillo-Ramirez, Josefina – Burlington |
| Amend, Steven B. – Las Vegas, NV | Chaffin, Mary D. – Portland, OR |
| Ames, Whitney Pollack – Seattle | Chamberlin, Donna M. – Seattle |
| Anderson, William Gwynn – Seattle | Chiang, W. Alexa – Seattle |
| Andrade, Christine – SeaTac | Chong, Angelie – Seattle |
| Andrews, Scott Alan – Seattle | Chow, Teddy Edward – Issaquah |
| Antanaitis, Robert Andrew –
Mountlake Terrace | Christen, Morgan B. – Anchorage, AK |
| Apgood, Robert Stillman – Seattle | Churchill, Carol A. – Signal Hill, CA |
| Atkinson, Lisa Larae – Edmonds | Clapp, Ian – Seattle |
| Atreya, Agraj – Seattle | Clare, Daniel Allan – Bellevue |
| Austin, Eugene Clayton – Arlington | Clopton, Eddie Eugene Jr. –
St. Louis Park, MN |
| Bahrman, Thomas E. – Tualatin, OR | Comstock, Danica Marian – Seattle |
| Bailes, Jason Case – Vancouver | Conlan, Teresa Lynn – Lynnwood |
| Baker, Kevin L. – Eugene, OR | Constantine, Brooks – Seattle |
| Banks, Suzanne M. – Tustin, CA | Cook, Amy F. – Lacey |
| Barrett, Beth A. – Brooklyn, NY | Costello, Gina Maria – Spokane |
| Bassli, Lucy Endel – Bellevue | Cox, Teresa Marie – Everett |
| Bauer, Dustin S. – Moscow, ID | Coxhead, Wendy – Newcastle |
| Beecher, Brent William – Seattle | Crawford, Christopher John – Spokane |
| Bellody-Odermat, Regina –
Bainbridge Island | Crowley, Paul Lawrence – Edgewood |
| Benado, Lisa N. – Kirkland | Culbertson, Davisson Doane – Seattle |
| Berman, Bernard – Spokane | Culwell, Rea Lynn – Walla Walla |
| Betts, Carol Dianne – Monroe | Dansereau, Carol – Seattle |
| Bhagwandin, Sarah Leila – Seattle | Dansky, Kara Patrice – Philadelphia, PA |
| Black, John D. – Sequim | Daugherty, Charlotte N. – Seattle |
| Blevins, Susan Ludi – Seattle | Davis, Toni Yvette – Bellevue |
| Bodmer, Julie M. – Snohomish | Defoe, Brian B. – Bainbridge Island |
| Bolio, Wayne Marc – Vancouver | Degroot, Douglas W. – Seattle |
| Born, Robert J. – Greenbank | Dehkhoda, Ramina – Kirkland |
| Bova, Brian J. – Federal Way | Delorme, Bernice Cecelia – Burien |
| Bowen, Sara S. – Seattle | Dempsey, Paul Campbell – Yakima |
| Bradley, M. Katheryn – Seattle | Dion, Michael – Seattle |
| Bradley, Sara Marie – Tacoma | Dion, Sarah Jael – Seattle |
| Bradow, Annaliese – Renton | Divinagracia, Erick Bautista – Bothell |
| Braly, Lisa J. – Bainbridge Island | Dowty, Laura A. – Spokane |
| Bricker, Rodger Scott – Lakewood | Dumas, Jennifer Lynne – Kent |
| Brown, Michael Jon – Kirkland | Edwards, Ginger – Seattle |
| Brown, Peter Malden – Seattle | Elkins, Randall T. – Seattle |
| Brown, Sharon Raye – Kennewick | Ellison, Mark Michael – Bainbridge Island |
| Brown, Susan Jane McKibben –
Beaverton, OR | Emmal, Bryan M. – Everett |
| Browning, Robert J. – Venice, CA | Englett, Pamela Eileen – Bellingham |
| | Epler, Sara M. – Seattle |

- Ewers, John W. – Seattle
 Feil, Megan Jolene – Puyallup
 Felts, Emily J. – San Jose, CA
 Ferguson, Allyson Janay – Seattle
 Fischer, Jens M. – Seattle
 Flores, Jennifer Ann – Bellevue
 Ford, Bruce Alexander – Seattle
 Fowler, Kathleen – Bainbridge Island
 Fox, Eileen Susan – Waldport, OR
 Francis, Rachelle Denise – Lynnwood
 Friedman, Leeann – Portland, OR
 Furman, Richard L. Jr. – Seattle
 Gaer, Roger Ival – Seattle
 Gaffney, Matthew M. – Seattle
 Gallagher, Daniel – Denver, CO
 Garvey, Tina S. – Seattle
 Garvin, Stephen Wooden – San Diego, CA
 Gaviria, Boris – Kirkland
 Gill, Shaun Amrit – Seattle
 Gilstrap, Joshua Begg – Spokane
 Giroux, David Paul – Renton
 Glatt, Camilla Jane – Spokane
 Gomes, Ronald Anthony – Lacey
 Gonzalez, Paula Helena – Seattle
 Goode, Anna – Seattle
 Graham, Linda Joyce – Seattle
 Griffin, Theresea Louise – Seattle
 Gustad, John – Seattle
 Hackworth, Arthur Alexander – Camas
 Harris, Cheryle Smith – Seattle
 Harmes, Jeffrey E. – Seattle
 Harms, Todd V. – Kennewick
 Harvey, Wesley Lincoln – Vancouver
 Hawes, Jason Christopher – Seattle
 Hazen, Larry E. – Ridgefield
 Helmick, Desiree K. – Everett
 Hendrikse, Remco R. – Sammamish
 Hennings, Mark – Bainbridge Island
 Henry, Dawn Lisa – Seattle
 Higby, Vicki L. – Tacoma
 Hobart, Roberta Lynn – El Cajon, CA
 Hopper, Grant Frederick – Everett
 Hornbrook, William Sean – Bellevue
 Hosannah, Desiree S. – University Place
 Hoskinson, Katharine Marino – Spokane
 Hunter, Amie L. – Chester, VA
 Iles, Ivan Lamont Benedict – Corona, CA
 Izer, Sharon Galeles – Bremerton
 Jarrett, Noah – Portland, OR
 Jenkins, Zabrina M. – Seattle
 Jensen, Micah Carrie – Seattle
 Jespersen, Chad M. – Spokane
 Johnson, Kent David – Seattle
 Johnston-Porter, Lisa Rene – Tigard, OR
 Jones, Eric A. – Mill Creek
 Jorgensen, David A. – Seattle
 Joyce, Elisha Crawford – Del Mar, CA
 Juris, Craig Davis Emile – Cle Elum
 Kahn, Patricia E. – Seattle
 Kaiman, Mark Aaron – Bellingham
 Karnan, Miguette – Woodinville
 Karp, Michael B. – Redmond
 Kaufman, Lissa Kara – Portland, OR
 Kehoe, Shoshana K. – Lakewood
 Kilo, Christine Kae – Shoreline
 Kim, Samuel Jai-Min – Seattle
 Kim, Steven W. – Seattle
 Kinzer, Stacy – Redmond
 Knickerbocker, T. K. – Tacoma
 Knight, Sarah Randolph – Seattle
 Koerber, Donna Flohr – Timonium, MD
 Krell, Brian D. – Seattle
 Krol, Tina Marie – Seattle
 Kutsche, Moana Maria Elizabeth – Eastsound
 Larrimer, Alison L. – Seattle
 Larsen, Matthew T. – Spokane
 Larson, Kirstin Erika – Seattle
 Larson, Wesley A. – Seattle
 Lassus, Tracey L. – Port Angeles
 Latta, Christina M. – Seattle
 Lawrence, Gloria Ochoa – Pasco
 Lee, Aaron S. T. – Tukwila
 Lee, Joon W. – Seattle
 Lee, Lisa C. – Spanaway
 Lee, Renee F. – Kenmore
 Lee, Susan G. – Tukwila
 Leuthold, Shawn T. – San Jose, CA
 Levesque, Joseph N. – Eagle River, AK
 Levine, Noah Adam – Seattle
 Levitt, Julie Maureen – Seattle
 Lewis, Yvonne C. – Spokane
 Lieb, Diane F. – Seattle
 Lindsay, Craig Paul – Lynnwood
 Litwak, Jeffrey Bruce – Portland, OR
 Liu, Joanne C. – Bellevue
 Long, Marti – Spokane
 Lorenz, Richard G. – Portland, OR
 Love, Kimberly Ann – Spokane
 Lucht, Julie Sherman – Seattle
 Lynch, James John – Seattle
 MacDougall, Kevin Scott – Bellevue
 Magee, Andrew Luke – Bellevue
 Mahoney, Mary – Pasco
 Manners, Rebecca Jordan – Woodinville
 Martin, T. J. – Seattle
 Marx, Michael P. – Kirkland
 McAloon, Laura Debacker – Spokane
 McCardle, Garth Wells – Seattle
 McCaulley, Carol Catherine – Washougal
 McCroskey, Robin R. – Newport
 Micko, Douglas Arthur – Seattle
 Migchelbrink, Paul David – Portland, OR
 Milgrom, Daniel J. – Seattle
 Millar, Duncan Jason Gordon – Bainbridge Island
 Miller, Scott – Spokane
 Minato, Stephanie Joy – Seattle
 Mirikitani, Clifford Kunio Jr. – Canada
 Mitchell, James T. – Gig Harbor
 Mitchell, Ronald C. – Richland
 Mitchell, Thomas C. – Everett
 Montgomery, Amy Elizabeth – Hillsboro, OR
 Moody, T. Dean II – University Place
 Moran, Tanya Kaye Noreen – Issaquah
 Morris, Michael S. – Seattle
 Morrison, Jonathan – Port Orchard
 Neubeck, David M. – Bellingham
 Nguyen, Thuong-Tri – Seattle
 Nguyen, Toan-Hao B. – Spokane
 Nickolauson, Paul J. – Kirkland
 Nilson, Racheal Hine – Kent
 Nixon, Jennifer Linnea – Seattle
 Odell, Russell M. – Redmond
 Okamoto, Yasumasa – Japan
 Palm, Craig W. – Redmond
 Pape, Scott Corey – Seattle
 Pappin, Adam Michael – Wailuku Maui, HI
 Patterson, Jim D. – Seattle
 Pattison, Kristopher – Seattle
 Perkins, Heather Shand – Kent
 Peterson, Margretha Eileen – Seattle
 Pfefer, Matthew Franklin – Spokane
 Pirzadeh, Jean Ann Abrahamson – Chehalis
 Piza, Ernesto Jack – Seattle
 Pohlman, Matthew G. – Seattle
 Pontefract, Elizabeth A. – Seattle
 Proctor, Ellen Marie – Tigard, OR
 Qureshi, Mona Jameela – Spokane
 Rapaport, Max R. – Seattle
 Rasmussen, Timothy – Marble, NC
 Ray, Supryia M. – Seattle
 Ray, Elmer P. III – Seattle
 Reed, Alice M. – Issaquah
 Reilly, Shannon C. – Kirkland
 Renda, Matt Andrew – Tacoma
 Renshaw, Jeffrey Flint – Portland, OR
 Rhodes, Elizabeth – Seattle
 Rhodes, Robert Dunn IV – Prescott, AZ
 Richards, Stephen Donald – Camas
 Richert, Karen Justine – Seattle
 Roberts, Deborah – Spokane
 Robillard, Daniel Allen – Kent
 Rogers, Susie Yang – Seattle
 Root, Robert Issac – Marysville
 Rosenberg, Marc – Edmonds
 Rupp, Mark William – Edmonds
 Rusing, Christopher M. – Sammamish
 Russell, Matthew Tyler – Seattle
 Ryan, Renee Pradels – Seattle
 Sams, Tedman Scott – Spokane
 Santel, Patrick F. X. – Edmonds
 Saunders, Stacey Melinda – Bremerton

Scannell, John R. – Seattle
 Schimpff, Kirsten M. – Seattle
 Schultz, Nora S. – Seattle
 Shapero, Laurence A. – Seattle
 Shields, Constance Hamilton – Spokane
 Sicilia, Joseph Albert – Spokane
 Siefkes, Michael John – SeaTac
 Sigle-Hermosilla, Devra Melina –
 Spokane
 Silversmith, Jed Michael – Seattle
 Singer, Alan Michael – Boston, MA
 Smale, Carolyn Reneé – Hood River, OR
 Smart, Steven Jon – Dutch Harbor, AK
 Smith, Bobby Dean – Bellevue
 Smith-Hill, Janice Lee – Moscow, ID
 Smythe, Sharna M. – Tacoma
 Snyder, Andre'a Wendy – Portland, OR
 Soderman, Jason Einar – Seattle
 Stallman, Brandon Carl – Seattle
 Stark, Janet Susan – Edmonds
 Steel, Gerald Barclay – Seattle
 Stern, Jonathan Gary – Seattle
 St. Germain, Thomas Edward – Seattle
 Stoker, Kenneth Don – Spokane
 Stovall, Steven Lynn – Steilacoom
 Strauss, Kenneth W. – San Diego, CA
 Styles, Auria – Seattle
 Sullivan, Patrick J. – White Salmon
 Swift, James L. – Westerville, OH
 Thames, Jonathan W. – Seattle
 Thorn, Nancy – Moses Lake
 Thorne, Celeste A. – Lynnwood
 Tilden, Marie N. – Portland, OR
 Tomich-Salinas, Terri L. – Orting
 Toojian, Jean – Fircrest
 Tran, Madeleine – Renton
 Triplett, Mark – Gig Harbor
 Uribe, Mauricio A. – Seattle
 Van Wert, Ronald Anthony –
 Phoenix, AZ
 Venneberg, Terry Allen – Anchorage, AK
 Walker, Jamie A. – Seattle
 Warfield, Calliste – Portland, OR
 Weber, James W. – La Conner
 Weber, Matthew B. – Seattle
 West, David D. Jr. – Seattle
 White, Midori Duarte – Issaquah
 Wiegand, Jamie L. – Bothell
 Williams, Teena J. – Auburn
 Willmer, Lisa Sawaya – Seattle
 Wire, Kathleen Marie – Kirkland
 Wong, Bruce C. – Union City, CA
 Wood, Michael I. – Seattle
 Wright, William E. – Port Orchard
 Yahyavi, Francesca Morvarid – Bellevue
 Young, Steven D. – Woodinville
 Zaike, Karma L. – Seattle
 Zilber, Gayle K. – Woodinville
 Zugish, Joshua B. – Marysville

Opportunities for Service

Board of Governors Election

Bryce Dille is the 2001-2004 Governor from the 9th Congressional District. Twenty-seven (27) percent of the approximately 1,071 active members of the 9th Congressional District cast their votes. Ballots were counted on Tuesday, June 19 at the WSBA office. Bryce Dille of Puyallup received 199 votes and Stephanie Delaney of Seattle 89 votes.

Opportunities for Citizen Members on WSBA Committees and Boards

The WSBA Character and Fitness Committee, Disciplinary Board, Lawyers' Fund for Client Protection Committee, and State Board of Continuing Legal Education all include nonlawyer citizen members. The WSBA is always interested in member referrals of nonlawyers to these important committees and boards. Members may suggest volunteers to their governor, or applicants may submit letters of application to the WSBA, Office of the Executive Director, 2101 Fourth Avenue, 4th 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.

Letters of Application Invited for the New WSBA Board of Governors At-Large Positions

Application deadline: August 1, 2001

At its May 2001 meeting, the Board of Governors adopted Bylaw amendments and application procedures for implementing two new at-large positions on the Board of Governors.

Letters of application are invited and should include a description of how the applicant fulfills the intent of section M of the amended Bylaws (see next page). Please submit letters of application to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330. At its September 2001 meeting, the board will interview candidates and fill both at-large seats, one a regular three-year term, and the second a two-year term.

M. ELECTION OF AT-LARGE GOVERNORS.

Any active member of the Bar, except a member previously elected to the Board of Governors, may apply for the office of At-Large Governor. Filing of applications shall be in accordance with Section C of this Article, except that any candidate who has run for and failed to win a Congressional District position in that election year may supplement his or her petition to run for an at-large position within 7 calendar days of the announcement of the election results.

At the regularly scheduled June meeting of the Board of Governors following the regular election of Governors from Congressional districts, or at a special meeting called for that purpose, the Board of Governors shall elect additional Governors from the active membership at-large pursuant to the election schedule set forth below. There shall be two at-large Governor positions to be filled with persons who, in the Board's sole discretion, have the experience and knowledge of the needs of those lawyers whose membership is or may be historically under-represented in governance, or who represent some of the diverse elements of the public of the State of Washington, to the end that the Board of Governors will be a more diverse and representative body than the results of the election of Governors based solely on Congressional districts may allow. Under-representation and diversity may be based upon the discretionary determination of the Board of Governors at the time of the election of any at-large Governor to include, but not be limited to, age, race, sex, geography, areas and types of practice, and years of membership, provided that no single factor shall be determinative.

In order to implement the election of the two at-large members to staggered terms, the following process will occur. One at-large member will be elected in 2001 to a regular three-year term, and the position will be elected every three years thereafter. One at-large member will be elected in 2001 to a two-year term, and the position will be elected for a regular three-year term every three years thereafter. Each new at-large Governor shall take office at the close of the next annual meeting of the Bar following such election.

WYLD Trustee Elections

Filing deadline: July 13, 2001

Young lawyers interested in serving on the WYLD Board of Trustees are invited to submit a statement of eligibility and qualifications for the following trustee district positions: King District (representing King County), Pierce District (representing Pierce County), and Southwest District (representing Clark, Cowlitz, Pacific, Skamania and Wahkiakum counties).

To be eligible for one of these positions, a candidate must reside or have his or her principal place of business in the district he or she wishes to represent, and must be a member of the WYLD for the entire term of the position. Elected trustees will serve a three-year term commencing October 1, 2001.

Any active member of the Washington State Bar Association is also a member of the Washington Young Lawyers Division until December 31 of the year in which he or she turns 36, or until December 31 of the fifth year in which he or she has been admitted to practice, whichever is later.

WYLD President-elect Nominations

Filing deadline: July 13, 2001

Young lawyers interested in serving as president-elect of the WYLD are invited to submit a statement of eligibility and qualifications for this position. The president-elect automatically succeeds to the position of WYLD president upon completion of a one-year term commencing October 1, 2001. To be eligible for the position of president-elect, candidates must have a principal place of business in Washington, and must be a member of the WYLD at the time of taking office for the president-elect position. Additionally, the Bylaws require that the president and president-elect have principal places of business in different counties. Therefore, this year's candidates may not have a principal place of business in King County.

Any active member of the Washington State Bar Association is also a member of the Washington Young Lawyers Division until December 31 of the year in which he or she turns 36, or until December 31 of the fifth year in which he or she has been admitted to practice, whichever is later.

Send statements of eligibility and qualifications to: Sherri L. Jefferson, WYLD President-elect, c/o Stoel Rives, 600 University St., Ste. 3600, Seattle, WA 98101; e-mail sljefferson@stoel.com.

Proud to Be a Lawyer

Start your day off with an inspirational story or quote! The WSBA Web site (www.wsba.org) features a new "Proud to Be a Lawyer" item each day. Please help us gather stories about your fellow members of the Bar, or share your favorite quote. Contact Allison Parker at allisonp@wsba.org or 206-733-5932.

Goldmark Award Nominations

The Legal Foundation of Washington is accepting nominations for the 2002 Goldmark Award. The award will be presented as part of the 16th Annual Goldmark Award Luncheon, Thursday, February 21, 2002.

The Distinguished Service Award is given annually to an exceptional individual or organization that, by their vision, leadership, and creativity, has provided meaningful access to the civil justice system in Washington.

Nomination forms may be obtained by calling the Legal Foundation of Washington at 206-624-2536, ext. 10; by e-mailing dtheories@legalfoundation.org; or by visiting <http://www.legalfoundation.org>. Completed nomination forms, along with letters or documents to support the nomination, must be received by Friday, September 7, 2001.

Glass Ceiling Project

The Committee on Gender Equality in the Legal Profession and the Glass Ceiling Task Force, with financial support from the Washington Supreme Court Commission on Gender and Justice, the

King County Bar Association, and the Washington State Bar Association, will perform a study to determine if a "glass ceiling" exists for female attorneys in Washington and any resulting impact on female compensation, tenure and career satisfaction. Private law firms with five or more attorneys will be surveyed this summer to obtain empirical information; survey results will be published in the fall. The sponsoring groups encourage each law firm to anonymously respond to the survey. Factual data will help in the design of programs and initiatives that will serve us all.

CASA Volunteers Needed

King County Superior Court is seeking volunteers to serve as Court-Appointed Special Advocates (CASAs). Volunteers receive extensive training to represent children involved in custody and visitation disputes in family law cases. They conduct interviews, write reports, and testify in hearings or trials. For information, contact Ed Greenleaf at 206-296-9320.

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.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in June 2001 is 3.634 percent. The maximum allowable interest rate for July is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum interest rates for June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears on the WSBA Web site at www.wsba.org/barnews/usuryrate.html.

UW School of Law Receives National Honor

The University of Washington School of Law has been selected by the American College of Trial Lawyers to receive the 2001 Gumpert Award, the organization's highest honor for excellence. The award will be presented to the UW Trial Advocacy Program, a sequence of courses to train law students in courtroom work through realistic trials under the wings of practicing attorneys. The award includes a \$50,000 prize.

Upcoming BOG Meetings

The Board of Governors meeting schedule is as follows:

July 27-28 — Sun Mountain Lodge, Winthrop

September 13-14 — WSBA office, Seattle

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 oed@wsba.org.

Announcements

BRADY & McLEAN, PLLC

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announces that Mr. Brady is now managing the firm's marketing.

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Member

Ms. Crabbe has experience in all facets of secured transactions, bankruptcy, receivership and workout proceedings.

She has represented lenders, trade creditors, receivers and individuals in these types of matters.

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or 208-388-4053.

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www.hteh.com

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and

John C. Versnel III

*(formerly shareholders with Lee, Smart, Cook,
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Jim Colborn

and

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The Washington State Bar Association

is pleased to offer advertising services
in the Announcements section
of *Bar News*.

For more information,
please contact Jack Young,
Bar News advertising manager,
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e-mail jacky@wsba.org.

Calendar

BUSINESS

Business Loan Documents

August 2 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

COMPUTER SKILLS

Computer Camp for Counselors™ – Basic & Intermediate

August 15 – Seattle. 4 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Computer Camp for Counselors™ – Legal Research & PowerPoint

August 16 – Seattle. 4 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

CREDITOR/DEBTOR

How to Advise the Business in Distress

July 26 – Vancouver; August 3 – Seattle. 7.25 CLE credits, including 1 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

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.

CRIMINAL LAW

Motor Vehicle Accident Cases

July 19 – Seattle. 6.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Basic Evidence: An Interactive Workshop

July 31 & August 1 – Seattle. 3 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Employment Discrimination Law Update

July 19-20 – San Francisco; July 26-27 – Chicago; August 2-3 – Washington, D.C. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

ESTATE PLANNING

The Estate Planner's Guide to Drafting and Using Trusts

August 22 – Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

Professional Ethics in the Legal System: When Personal Values Conflict with Professional Obligations

July 13 & 20 – Bellevue. 5 CLE credits, including 2.5 ethics. By Bellevue Community College; 425-564-3172.



Thursday
September 13, 2001

W Seattle Hotel
The Great Room
1112 Fourth Avenue
Seattle

Reception 6:00 p.m.
(no-host bar)
Dinner/Program
7:00 p.m.

WSBA office use only:

Date _____

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Amount _____

You Are Cordially Invited to Attend

The Washington State Bar Association Annual Awards Dinner and Business Meeting

Name _____ WSBA No. _____

Address _____

Phone _____ E-mail _____

Please note the name(s) of those attending and indicate dinner selection(s).

_____ beef tenderloin halibut vegan

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Cost for the dinner is \$50 per person. To make your reservation, please return this form (or a photocopy) with your credit-card information or check payable to WSBA. Space is limited, so please make your reservations early. Reservations and payment must be received no later than September 1, 2001.

Credit card: MasterCard Visa No. _____ Exp. date _____

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TOTAL \$ _____

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

Passed CPA exam in 1982

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GENERAL

Writing Techniques for Winning Cases (with Gary Kinder)

July 13 – Portland. 6 CLE credits, including 1 ethics credit pending. By Oregon State Bar; 503-684-7413.

Appellate Practice: A Day with the Oregon Court of Appeals

July 20 – Portland. 6.5 CLE credits pending. By Oregon State Bar; 503-684-7413.

Create the Practice You Want: A Law Practice Development Teleconference Course

July 27, August 3, 10 & 17 – Telephone. 4 CLE credits pending. By Coaching for Change; 206-723-9900.

Dealing with Animals in Your Practice

July 27 – Lake Oswego (OSB Center). 6 CLE credits and 1 ethics credit pending. By Oregon State Bar; 503-684-7413.

My Law Degree & Me: The Search for a Satisfying Career

August 9 – Seattle. 3.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Persuasive Trial Advocacy Techniques (with Todd Winegar)

August 10 – Portland. 7 CLE credits pending. By Oregon State Bar; 503-684-7413.

LITIGATION

Motor Vehicle Accident Primer

July 19 – Seattle. 7 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

How to Win Your Next Civil Jury Trial

August 2 – Seattle. 6 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Greatest Trials

August 9 – Seattle. 6.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

APPEALS

James E. Lobsenz

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

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For sale: Conference table, solid oak simplistic Eurostyle. 84 x 42 inches. \$700. Please call 253-859-8262.

West's Federal Practice Digest for sale. Up-to-date and in excellent condition. \$200. Please contact Yvonne Kennedy at 206-285-2828.

Law books for sale! Library closure left Pacific Reporters, Federal Reporters, Federal Practice Digests, Washington Reporters and more. Call Angela Arnett, 360-576-0106, or fax 360-576-0108.

SPACE AVAILABLE

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POSITIONS AVAILABLE

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Positions available are also
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General Counsel Office of the Reservation (ORA) on the Colville Reservation (1.4 million acres) in Nespelem, WA. We would prefer at least eight years' experience as an attorney, with a substantial amount of experience in Indian law and tribal government work, and some litigation background and skills. We will also consider otherwise strongly qualified applicants with less experience, including recent law school graduates with relevant work experience prior to or during law school. Strong preference for applicants already admitted to the WSBA, but will consider admittees from other jurisdictions. Above all, we seek excellence and commitment. ORA is an Indian-preference employer, and Native American attorneys are encouraged to apply. Salary schedule based on number of years' experience as an attorney. Medical and retirement benefits. Please send cover letter, résumé and writing sample to: Office of the Reservation Attorney, Confederated Tribes of the Colville Reservation, PO Box 150, Nespelem, WA 99155, 509-634-2381; fax 509-634-2387.

Eisenhower & Carlson PLLC is seeking a general litigation associate with a minimum three years' experience for our Seattle office. Salary competitive, plus benefits. Send résumé to: Hiring Partner, Eisenhower & Carlson PLLC, 1201 Pacific Ave., Ste. 1200, Tacoma WA 98402; e-mail pstrong@eisenhowerlaw.com or fax 253-272-5732.

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Land use attorney: Snohomish County Prosecuting Attorney – Civil Division. The Civil Division of the Snohomish County Prosecuting Attorney's Office seeks land use attorneys with at least three years' experience in advising clients in areas relating to land use regulation including zoning, GMA, and Endangered Species Act compliance. LUPA and hearing board experience is desired, as well as technical writing and ordinance drafting experience. Experience in computer-aided research and word processing is extremely desirable. Salary dependent upon qualifications. Generous fringe benefits and leave. To apply, please submit a résumé, cover letter and writing sample to: Barbara Dykes, Snohomish County Prosecuting Attorney's Office, 2918 Colby Ave., Ste. 203, Everett, WA 98201. Snohomish County is an equal opportunity employer.

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.

Heller Wiegenstein PLLC is a four-attorney firm in Poulsbo. Our practice focuses on insurance defense and coverage, and general civil litigation. We seek an associate with at least one year's experience. Applicants must be willing to live and work in Kitsap County, and be prepared to rapidly progress in their practice, and

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Deadline: Text and payment must be received (not postmarked) by the 1st day of each month for the issue following, e.g., August 1 for the September 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.

develop significant responsibilities and client contact early on. Respond to: Tom Heller or John Wiegenstein at PO Box 2760, Poulsbo, WA 98370, or johnw@hellerwiegenstein.com.

Associate trial lawyer: The Law Office of Ron Perey, a Seattle personal injury and medical malpractice law firm which exclusively represents plaintiffs, seeks an associate lawyer with at least two years' civil litigation experience. Experience in personal injury or medical malpractice, or medical or nursing education a plus. Defense lawyers with compassion and willingness to switch gears are encouraged to apply. Applicants must have high academic achievement, excellent writing skills, and references. Please send a letter of interest, your résumé, two writing samples (a trial brief which you wrote and a legal memorandum or letter containing legal analysis), and a copy of a deposition which you took to: Jane Seavecki, R.N., J.D., Law Office of Ron Perey, 2025 1st Ave., Ste. 250, Seattle, WA 98121; 206-443-7600; fax 206-443-4785.

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Commissioner: Court of Appeals, Division I. Appellate court commissioners are judicial officers appointed by the judges of their respective courts to act as judges in (1) deciding appeals, (2) deciding procedural matters, (3) conducting settlement conferences, and (4) performing other duties as provided in the court rules and as assigned by their courts. As judicial officers, appellate court commissioners are subject to the Code of Judicial Conduct and are responsible to the chief judge of the division in which they serve. A full copy of the job description is available at <http://www.courts.wa.gov/> employ. Annual salary range is approximately \$75,000-100,000. Minimum requirements include WSBA membership in good standing and at least five years' experience in the practice of law or in a judicially related field. Applicants must have excellent research and writing skills. To apply, please submit 13 copies of each of the following by August 15, 2001: a cover letter with reasons for seeking the position, a résumé, a writing sample, and a list of at least 10 references. Submit application packets to the Court of Appeals, care of: Richard Johnson, Court Administrator; Court of Appeals, Division I; One Union Square, 600 University St., Seattle, WA 98101. The Washington State Court of Appeals is an equal opportunity employer.

The Washington State Attorney General's Office's torts division in Lacey has an opening for a trial attorney who, with the guidance of a senior attorney, would represent various state agencies, including DSHS, the Dept. of Corrections and DOT. Applicants should have at least one year of litigation experience, and possess strong writing and oral advocacy skills. Applicant must be a member of the WSBA. Salary DOE plus standard state benefits. Interested applicants should submit an application, a current résumé, law school transcript and writing sample to: Linda Payne, PO Box 40130, Olympia, WA 98504-0130. Call Linda at 360-407-0397 for an application. For information about the position, contact Linda Dunn at 206-464-5342 or lindad1@atg.wa.gov. Applications will be accepted until the position is filled. The Washington AGO is an EOE. For ADA Accom call 360-407-0423.

In-house counsel: The Seattle School District is seeking an employment attorney for its general counsel's office. At least three years' experi-

ence preferred. Applicants should have strong analytical, writing and communication skills. Send résumé and cover letter referencing Job Ad No. 2001-8192 to: Employment Services, Seattle School District, 815 4th Ave. N., Seattle, WA 98109. The Seattle School District is an equal opportunity employer and values diversity.

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