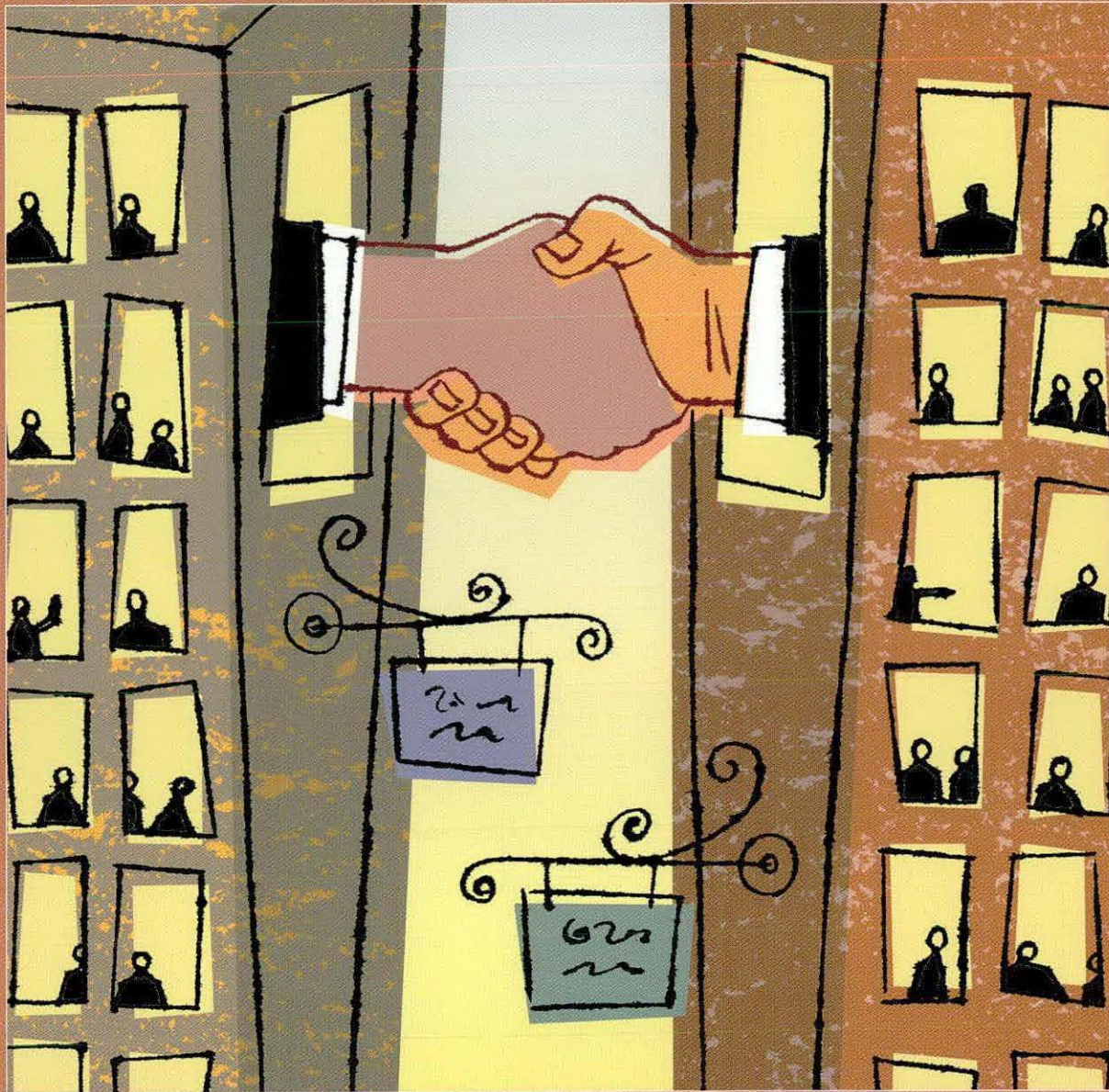


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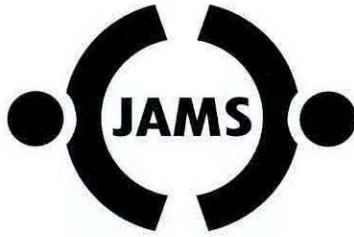
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Submission Guidelines

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

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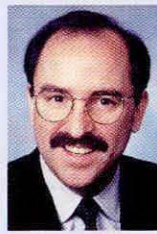
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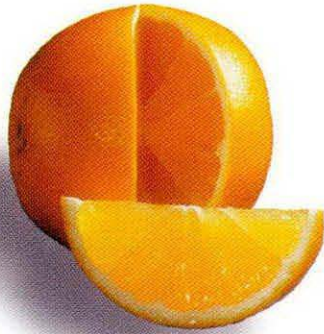
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Letters

WSBA Should Make CLE Affordable

Editor:

Thank you for publishing the letter some months ago that alerted me to the fact that it is possible to complete CLE requirements without paying \$25 an hour for that privilege. Currently Ed Hiskes is pursuing a campaign to try to get the Bar Association to use a portion of our annual fees to cover the cost of CLEs. He has shown that to be possible, by supplying CLEs on CDs. Not all of the members of the Bar Association can afford the normal CLE prices. Since the Bar seems concerned about access to justice, they should probably make it possible for lawyers who pay for CLEs out of their own pockets but can't afford the going rates. It seems quite doable at a modest cost to the Bar Association. Perhaps there is fear of a loss of revenues (read "easy money") by the WSBA, WSTLA and others that oppose such a plan.

*Bob Dickerson
Seattle*

Free CLE

Editor:

The 15-hour limit on audio/visual CLE credit has burdened WSBA members by requiring them to attend in-person, "live" CLE seminars to fulfill the bulk of their CLE requirements.

To demonstrate one solution to this problem, the Washington Digital Law Library will present a free "live-via-Internet" seminar on September 14, 2001 at noon PDT, approved by the MCLE Board for 2.5 hours of "live" credit. The seminar, titled "Legal Protection for Software," will be presented by patent attorney Daniel B. Ravicher, speaking from his office in Manhattan.

To listen to the seminar, WSBA members will need an installed copy of the free RealAudio Basic sound program. Instructions for getting and installing RealAudio Basic are available at <http://www.freecle.com>. Since "seating" will be limited to 500 listeners, WSBA members should preregister and get a password, also via <http://www.freecle.com>. Registration opens September 1.

This seminar will demonstrate an exciting technology: (1) it provides "live" CLE credit; (2) it liberates CLE speakers from the need to travel, thus allowing speakers

to be recruited from anywhere on the continent; and (3) it is relatively cheap—about 50 cents per listener per hour, which is the fee paid to an Internet broadcasting service provider.

There is bad news, however. The WSBA informs me that it has made a business decision to charge \$35 per hour for its own brand of Internet-delivered CLE. This means that the digital law library must change its primary mission from "demonstrating technology and urging the WSBA to do it" to "going it alone." Since I cannot supply 50-cent per hour CLE to 24,000

WSBA members on an indefinite basis, some alternate form of financing, by way of donations, grants, user fees or otherwise, will eventually need to be found. Volunteers, especially those with radio broadcasting experience, or at least aspirations, are also needed.

*Edward V. Hiskes
Director, Washington Digital Law Library*

Taste in Advertising

Editor:

I am responding to the thoughtful letter of Jeffrey C. Mirsepasy (July *Bar News*, p. 8),



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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>

who raised concern about my firm's dollar figures of actual recoveries for our clients in our *Bar News* advertisements. In that the image and dignity of the legal profession have always been an important concern of ours, we carefully considered the implications of this ad before we ran it, using the applicable ABA guidelines and seeking review by a former chief disciplinary counsel of the WSBA.

The first point to be made here is that our advertisement is in a magazine that is not seen by members of the general public, only fellow lawyers. Thus, in no way is this comparable to the Las Vegas highway billboards Mr. Mirsepasy speaks of disparagingly.

As a firm focusing on serious personal-injury matters, a number of our cases come to us on association from other lawyers. The clients in these circumstances typically have suffered severe life-altering injuries or the death of a family member, so the lawyers who associate litigation counsel have an important responsibility to choose wisely. The economic devastation suffered by such clients is often lifelong, and a lawsuit is their only chance to be made whole.

Like it or not, plaintiffs' personal injury litigation is a results business. The track record of a trial lawyer is ultimately measured in the amounts he or she obtains. Hence, this is information that other lawyers want and need to know when deciding whom to associate.

My late father, Robert W. Bailey Jr., raised me to act in a way that I could always look another person in the eye and be proud of who I am and what I've done. Our ad in *Bar News* passes this test. It is low-key and informational, accurately reflecting results we have been able to achieve for our clients. It meets all applicable ABA guidelines and is in good taste. While I actively share Mr. Mirsepasy's concerns about the dignity of the legal profession, they are misplaced in this circumstance.

*William S. Bailey
Seattle*

ABA Positions Are Mainstream

Editor:

A few letters to the editor have castigated the editor for using an editorial column to editorialize. I am puzzled. Must an editorial column be free of editorial content,

concern only trivial subjects, use the language of pencilnecks, and above all, genuflect to a politician who, it is undisputed, got fewer votes than the other guy? Which side won the American Revolution anyway?

Let us agree that the subject matter of the editorials — a major change in federal judicial nominee evaluation — is fit meat for a bar journal. Let's note that the ABA's role was advisory only; once it did its research, the Senate might ignore it in the mandatory public hearings. And let's keep in mind that this has been a public/private partnership that has worked well and long,

saving taxpayers a lot of money. A philosophical conservative (as opposed to a political one) would say, "Leave well enough alone; if it ain't broke, don't fix it."

How, then, might the process be broke? The ABA procedure has rated as "unqualified" five times as many Democratic nominees as Republican nominees. All current members of the U.S. Supreme Court were rated "qualified" or better, including Justice Thomas. On the evidence, the ABA process is biased in favor of Republican, conservative, establishment judges. There's no green hair or pierced noses anywhere

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But the letters assert that there must be a problem, because the ABA has 71 pages of liberal, "outside-the-mainstream" political positions. The letter-writers have confused the ABA as a whole, which has many and varied statements appropriate to a large, mainstream organization, with the ABA judicial evaluation committees, which have far more restricted and task-oriented programs. In their confusion, none of the letters provide evidence of bias on the part of the evaluation committees, nor could they.

Conspiratorial or deconstructionist

theories may suggest that the ABA, like any other person or organization, cannot perform any task objectively, but must always be tainted by bias regardless of best efforts. This may be a popular theory in the sort of radical literature studies that caricature Shakespeare as a sex criminal. However, these theories are irrelevant to mature discussion of the judicial selection process. After all, under such theories no judge, however evaluated, could ever rule objectively; the whole judicial branch would be a sham, so why complain?

But even if the ABA's judicial evalua-

tion process were fiendishly perverted to impose the diabolical political views of a half-million radical, tassel-loafed corporate lawyers, what is the evidence that the ABA lies far outside the American mainstream? The letters offer ABA positions on Vietnam, flag-burning, and a constitutional right to privacy in *Roe v. Wade* and its important predecessor, *Griswold v. Connecticut*.

The fact is that, give or take a few outliers, ABA positions tend to lie squarely within the broad American mainstream. Are there any Americans who wish we were still fighting in Vietnam? While abortion makes many of us uncomfortable, support for *Roe v. Wade* as a workable compromise is totally mainstream. And even Justice Scalia opposes a flag-burning amendment; who calls him "too liberal"?

The capper is the right to privacy, a "liberal, out-of-the-mainstream" ABA position first elaborated upon in *Griswold* (and recently supported again by that liberal Scalia). The more technology invades our privacy, the more important grows *Griswold* and the right to privacy. Pause a moment, and recall what *Griswold* was about: the criminalization of birth control. This is not a misprint. *Griswold* was arrested in Connecticut for the crime of prescribing birth control to a married couple, and not in the 1860s either, but in the 1960s!

Perhaps the ABA was being squishy liberal when, with *Griswold*, it favored decriminalizing condoms. Perhaps it is liberal to find "privacy" in the Constitution. But I say without fear of contradiction that these "liberal" positions are squarely and solidly mainstream American.

Anyone with any doubts may test the proposition by seeking to invade the privacy of any salt-of-the-earth American construction worker's birth-control practices. When you return from the hospital, you will know this: it is beyond preposterous to claim that the ABA positions on privacy, et cetera, are outside the American mainstream; it is beyond ridiculous; it is a total disconnect from the facts of American life.

But I support the right of Tories not to read words that disturb them, and therefore I make a modest proposal. Perhaps WSBA members should be able to claim a Keller deduction for each page of *Bar News*

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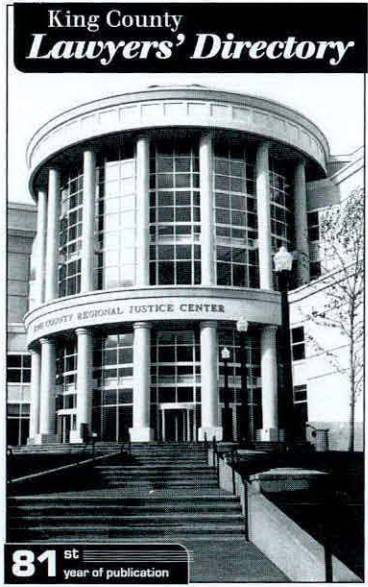
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that offends them (this page would be a good place to start). From the WSBA budget (on the Web site), I calculate that each printed page costs about 1.5 cents. Panitch's editorials are indeed at least as good as advertised.

*R. Edwin Winn
 Mercer Island*

Lawyers Must Be Honest

Editor:

I applaud the president's column in the June issue of *Bar News* (p. 13) about lawyers being less than honest. Until such time as more in our profession start taking President Peterson's advice to stop stretching the truth, the public perception of lawyers will remain, essentially, correct.

*John Merriam
 Seattle*

Request Referendum on Diversity Seats

Editor:

I am an active member of the WSBA (No. 27844). I wish to add my name to the list of Bar members who are requesting a referendum of the entire Bar membership on whether or not to affirm the recent Board of Governors' decision to add two non-elected positions to the board.

While a statement of my reasons for requesting a referendum is not necessary, I would like to take this opportunity to inform you that I believe any selection of additional, unelected governors will be arbitrary and capricious, and a dilution of my rights as a member of the Bar, denying me equal protection of the law and impairing my rights as a citizen of the United States.

While the rationale published by the board claims that this action will somehow increase my participation in the governance of the board and the Bar through installing members of "traditionally underrepresented groups" on the board, I believe this is a specious argument that is a pretext for placing cronies and acquaintances of existing Bar members on the board — persons who will be responsible and loyal only to the board members who appointed them, which will tend to reinforce the power of the majority and decrease the power of minority viewpoints on the board. I personally am much more interested in, and

affected by, the political and policy views of board members than I am in whether they have some ancestral or cultural connection to me (a Japanese-American immigrant).

In particular, it is well known that: (a) the majority of the population of the state of Washington resides in the western portion of the state; and (b) that the western portion of the state has historically supported a more liberal political position on major issues, including affirmative action. Therefore, the result of the new rule will be that, in general, the power of the minority of the board, who represent persons from the less populous eastern portion of the state, will be significantly diluted, while the power of the majority from the western portion of the state will be enhanced.

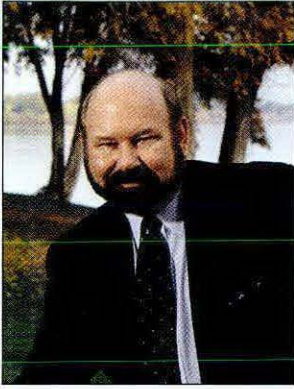
As a member of the Bar who has been a resident of the eastern portion of the state, and whose political views are in consonance with the majority of the residents of that region, the action of the board in appointing additional members by majority vote of the board is clearly an unconstitutional deprivation of my equal representation in the governing board that operates as an agency of state government to regulate the profession of law.

I therefore support a referendum of the full Bar membership on this change to the rules governing the Washington State Bar.

*Raymond Takashi Swenson
 Idaho Falls, ID*

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., September 10 for publication in the November 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.





Parting Shots

by Jan Eric Peterson
WSBA President

This is my last column as your president and though I won't miss the monthly pressure of a deadline, I will probably soon miss the opportunity of this bully pulpit. So I am determined not to waste it.

First, I must say I have enjoyed being WSBA president and before I wander off into obscurity, I want to acknowledge the daily work the WSBA staff does for all of us. I especially want to personally and publicly thank Executive Director Jan Michels, whom we are very lucky to have at the helm; my very efficient personal assistants at the Bar, Lori Lee and Lisa KauzLoric; and Judith Berrett, director of communications, for helping get the message out that we are "proud to be lawyers." Last, but most deserving of my thanks, are my assistant, Mary Monschein, my law partners, and my family for allowing me to do this.

One of the achievements of the WSBA that has made me proud to be a lawyer is the remaking of our self-discipline system that I have been pleased to be a part of reshaping for nine years. With the current implementation of the diversion rules, the job is complete. You, the members, put your money where your collective mouth is and increased your dues support for our biggest budget department. As a result, we have created the best lawyer discipline system in the country, and completely eliminated caseload backlog. Now our system, while being more efficient and fair in processing prosecutions, emphasizes prevention and treatment before punishment. We have the Law Office Management Assistance Program (LOMAP), the Lawyers' Assistance Program (LAP), Rule 11 open public proceedings, financial audits, mediation services, voluntary fee arbitration, diversion of minor misconduct, and the Lawyers' Fund for Client Protection. In addition, the consumer affairs staff handles thousands of client calls that don't become grievances. By helping each other and protecting the public, we have fulfilled our duty, not only to our profession but to consumers. What other profession does it as well? And Washington does it better than anyone.

These past two years, I have been all over the state attending lunches, dinners and meetings with lawyers. You know

what? Most lawyers care about their clients, the justice system, and the public's interest before themselves. We have celebrated local heroes across our state who have given so much of themselves to our profession and to their communities. More than ever, you have made me proud to be a lawyer.

There are a few things that still trouble me, and as comedian Dennis Miller says, "I don't want to get off on a rant here, but..."

**The more we lawyers
become big business, the
more we lose the trust and
respect of the public we
are pledged to serve.**

The hypocrisy of our drug laws. Fred Noland's noble campaign as King County Bar Association president has rightly focused attention of the bar and bench on reconsidering the failed punitive laws of the war on drugs. It's a big step in the right direction.

What troubles me most is the hypocrisy. We criminalize and harshly punish the use of recreational drugs, but not alcohol and tobacco. We are a national drug culture hooked on pharmaceuticals to solve our problems, from impotence to weight loss. Every other block has a store advertising drugs — in neon letters. Our children are brought up amidst the message that problems can be solved by using drugs. And then we send them to jail for possessing marijuana, because they don't understand our hypocritical distinctions that tell them killers like alcohol and tobacco are okay.

This hypocrisy is undermining the credibility of our entire justice system and burying it in a tidal wave of prosecutions and jail sentences. Such hypocrisy cuts at the core of faith in justice, and a country without justice is doomed. I say it is high time to save the justice system from this moralistic madness and start treating drug abuse as a medical problem, not a criminal one. Decriminalize drug possession and use. Put money wasted on police, prosecutions and prisons into education and treatment, and give us back our courts.

Public funding of the judiciary. Speaking of courts, as developing third-world and former Communist countries are discovering, an essential element of a democracy is an independent judiciary. Our forefathers knew this and established the judiciary as the third branch of government. It is so important that our pledge of allegiance says "liberty and justice for all."

To be true to the promise of American-style democracy, that third branch of government must be independent, which means funded. We must find a better way than the current hodgepodge of county commissioners with strained local tax bases, state legislative appropriations limited by tax initiatives, municipalities contracting for part-time justice, and courts trying to patch it up with fines and fees.

Our courts are overburdened and understaffed, some without copy machines, let alone computers. Judges are underpaid, so they quit and go to the ADR business, where the public itself must go more often because public justice is inaccessible and unaffordable. Justice for only those who can afford it is not the democratic ideal. We must lead the demand for realistic public funding of the judiciary and courts, public defense and civil legal services. Justice is the most important service of government, and it must be funded. Demand it. Accept no more Band-Aids and half measures. Who, if not us, will lead the creation of the political will to see it done?

Professional independence. We are first a public trust and a service, not a business. The public interest must be our first priority, and we must return to core values of professionalism. The more we lawyers become big business, the more we lose the trust and respect of the public we are pledged to serve. The people know the bottom line for business is the bottom line. Profit rules. We cannot go there and survive. Multidisciplinary practice is a bad idea. Do not give up our professional independence. My dad was right when he said, "Do the right thing, and the money will take care of itself." You can do well by doing good. Sometimes that requires taking the long view and having patience. So be it. We are not in this to get rich; we are in this to help people.

Public justice and secrecy. Speaking of helping people, while keeping client confidences is a cornerstone to the trust in an independent profession, secrecy deals that thwart public safety are not. When we lawyers are party to confidentiality in settle-

ment agreements and agreed orders that seal discovery to keep consumers in the dark, we do a public disservice. We are party to the payment and acceptance of hush money from corporate wrongdoers as the price of compensation for their victims. We ought to make court rules and ethical rules that don't allow this practice unless exceptional circumstances apply, solely for the client's benefit and approved by the courts. Secrecy should be the rare exception rather than the rule. It is, after all, public justice, and a system that's supposed to be open to the public. Only then will it be trusted.

As Dennis Miller further says, "That's just my opinion. I could be wrong."

Thanks for the privilege of being your president. When I began, I was asked how I wanted to be remembered. When I thought about it, I said, "I hope they'll say, 'He made me proud to be a lawyer.'" I'm going to continue to help the Bar shout from the rooftops: "I am proud to be a lawyer." ☞

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Two Cents' Worth

by Mark A. Panitch

Bar News Editor

Every time I hear another lawyer joke, I cringe. It's not that the jokes are so cruel — a lot of humor is based on cruelty. And it's not that the jokes aren't funny — a lot of them really are very clever. No, what bothers me is the underlying message in the jokes that lawyers are members of a parasite class, sucking blood money out of our society and gumming up the system. And what really bothers me is that so many people seem to believe it. And what really, really bothers me is that so many lawyers seem to be encouraging that belief.

Consider. Only a few weeks ago, during a Rose Garden ceremony at the White House, President Bush was lobbying for his version of a patients' bill of rights by slamming lawyers. Not just *any* lawyers, of course, but *trial* lawyers. He said that "junk lawsuits" filed by trial lawyers would force health-care prices out of reach for the average person. As we all know, "trial lawyers" is code for plaintiffs' lawyers. "Junk lawsuits" means contingent-fee cases.

Of course, President Bush is entitled to his opinion. That it is unsupported by any credible evidence is irrelevant. What is important, though, is that his statement reflects the continuing strength of a movement — going back 200-plus years to the American Revolution — to limit access to our courts. For as long as there has been a United States, there have been those who looked upon the Revolution and felt pangs of buyers' remorse. No longer subject to British rule, they look back to England with affection close to longing. For them, American courts and American justice are just too democratic.

A version of this battle is played out every year in every county when the public criminal-defense budget is debated. *Gideon v. Wainwright* (372 U.S. 335, 1963) resolved whether accused are entitled to counsel. The cost and quality of that counsel when the public pays for it remains an open question. But the criminal courts are really pretty small potatoes.

It is in the civil courts, where the financial stakes can be astronomical, that the battle is hardest fought. In England this has always been the realm of the elite, kept that way by the high cost of admission. The so-called "English rule" is simple: If you play you pay. The losing side is obligated to pay

the costs, including attorneys' fees, of the winning side. Likewise, English jurisprudence frowns on contingent fees. Once again wealth rules; if you can't afford to lose you shouldn't be in the game. Despite their rule about the losers paying the winners' costs, it is "unprofessional" for English lawyers to get

paid by their clients only if they win. The point is that the law courts in England are mainly there to settle property disputes — and most people have no property.

In America, and particularly in Washington, we take a much more expansive view of justice. The courts are here to settle disputes among people, and everyone is supposed to be welcome. Under the American rule as followed in Washington, "a court has no power to award attorney

fees in the absence..." of certain specific factors. *Young v. Teti*, 16 P.3d 1275, 78 (Wn. App. 2001) citing to *Dayton v. Farmers Ins. Group*, 124 Wn.2d 277 (1994). Even when the case isn't very good and it is dismissed, our courts do not award attorneys' fees. In 1983, the WSBA itself took the position that "the English system of providing attorneys' fees to the winning side of every lawsuit would have a chilling effect on the public's use and access to the judicial system as a means of settling legitimate disputes." See, *State ex rel Quick-Ruben v. Verharen*, 136 Wn.2d 888, Sanders dissent at 136 Wn.2d 906 (1998).

In fact, "access to the courts" has become a kind of shibboleth. Our Supreme Court has championed access to the courts in a variety of ways. The most public was the creation of the Access to Justice Board. Many current and former justices have played an active role in the access to justice community. Recently, Chief Justice Gerry Alexander told UW law school graduates that access to our civil justice system should be a right.

During the past year, WSBA President Jan Eric Peterson created the "Proud to Be a Lawyer" campaign and the "local hero" program in which attorneys around the state were honored for their contributions to their communities as well as to the Bar. These honorees practice in many areas of law, and

If we were all really proud to be lawyers, we would all be writing letters to the editor of our local newspapers and giving speeches at our local service clubs about how our civil justice system really works.

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they come from small towns and big cities.

So what's the problem? Well, it seems that we are all proud to be lawyers as long as it's just among ourselves. But when it comes to the rest of the world, we seem to run for cover. That's the only way I can explain the resounding lack of response to President Bush's crack about "junk lawsuits" and the constant business-community refrain about those nasty trial lawyers.

If we were all really proud to be lawyers, we would all be writing letters to the editors of our local newspapers and giving speeches at our local service clubs about how our civil justice system really works.

Business and insurance lawyers, especially, would explain that the contingent-fee system is the only way that average people can get access to our courts. They would remind their clients and friends that Rule 11 and our WSBA ethics rules both prevent "junk lawsuits" and provide serious sanctions for attorneys who do bring truly frivolous cases. And they would acknowledge that an attorney working on a contingent-fee basis has more apparent incentive to settle a case than one billing by the hour. They would denounce the next ignorant loudmouth who complains about the "million-dollar verdict" for spilling a cup of coffee. Hopefully they would even ask how much he would charge to have scalding hot coffee spilled on his genitals, and what three different genital-area skin grafts are worth. And finally, they would tell their friends and clients that our accessible civil justice system is one of the greatest accomplishments of our American experiment in democratic self-government.

When the defense trial lawyers stand up to defend their trial-lawyer colleagues — and with them our open, accessible civil justice system — then I'll really be proud to be a lawyer. ☞

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The CLE Story

by Jan Michels

WSBA Executive Director

I want to tell this story to respond to two recent letters to the editor and to questions about what the WSBA-CLE Department does, and why. Common to most inquiries are questions about goals, costs, access and scheduling. After reading my explanation, I hope members will have a better understanding of WSBA-CLE.

What the CLE Department Is

The WSBA has a CLE Department in order to provide the education members want at the lowest possible cost. Different from commercial CLE vendors, WSBA-CLE is non-profit and member-service oriented. Board of Governors' policy requires that it also be self-supporting. From this unique structure flows the basic fact that WSBA-CLE, while a WSBA department, *must* live within its own revenues and expenses. CLE expenses include overhead paid to the WSBA for labor, rent, equipment and administration. WSBA-CLE is not supported by license fees or other member-generated revenue, and other WSBA programs or services are not supported by WSBA-CLE revenues. To further ensure this financial independence, WSBA-CLE is mandated to maintain a 25 percent reserve account. To WSBA members who run law practices or other businesses, these financial considerations have a familiar ring. They are the same overhead, marketing, and business decisions law firms deal with daily.

WSBA-CLE generates its revenue from educational and information services for members. This includes approximately 110 seminars per year, about 30 of which are in partnership with WSBA sections. There is also "after-market" derivative income generated from seminars, including course books; taped versions of the seminars; and beginning this summer, selected topics from seminars available on the Internet as credit-approved short courses. In addition, WSBA-CLE generates and updates a library of over 15 Washington-oriented resource books on a variety of legal topics, both in print and on CD-ROM. All these services generate expenses and revenues of approximately \$2.8 million annually. If the board's present pay-as-you-go model were abandoned in favor of underwriting CLE for members as a free member service partially paid by license fees, current estimates are that each member would

be bearing an annual license-fee increase of more than \$300 for core courses.

All these factors explain why major WSBA-CLE decisions are driven by revenue and expense considerations just like any other "business." As an example, the after-market sales of WSBA-CLE seminars in audio, video and Internet versions of the seminar presentations partly subsidize seminar registration costs. There are only two reasons for WSBA-CLE to make money: to put it back into member services such as access, training and education; and to stretch funds to meet the needs of a diverse membership.

WSBA-CLE is not supported by license fees or other member-generated revenue, and other WSBA programs or services are not supported by WSBA-CLE revenues.

Special services include educational offerings in smaller centers of lawyer population, occasional offerings of specialized but important courses where attendance may be limited, and cost breaks to help members who are interested in attending our seminars. Current programs for low-cost seminars include the Preferred Pass discount-price program, subsidized special offers to newly admitted members, and a limited scholarship program.

Unique WSBA-CLE Programs and Services

Although 73 percent of our members live within driving distance of our Seattle seminars, WSBA-CLE is committed to meeting the needs of members living in lesser-populated areas, or who practice in specific areas of law. A pure for-profit operational model suggests limiting programs to those regional and practice areas that yield the biggest attendance, and most of WSBA-CLE's provider competitors do just that. WSBA-CLE, in derogation of the pure business model, presented the following options for members in 2000-2001:

- WSBA-CLE sponsored live seminars in Bellingham, Chelalis, Friday Harbor, Kennewick, Lake Chelan, Mt. Vernon, Ocean Shores, Olympia, Portland, SeaTac, Seattle, Spokane, Tacoma, Tukwila and Vancouver; and video replays of popular seminars for local groups in Mt. Vernon, Spokane, Vancouver, Wenatchee and Yakima.
- WSBA-CLE offered 13 telephone seminars that WSBA members could take in their offices.

• WSBA-CLE offered unique discounted programs tied to hotel packages to help members take advantage of additional offerings in Seattle.

Finally, WSBA-CLE is now "rolling out" over 70 short, practice-specific audio courses online (CLE by-the-Slice) for attorneys to take at their own convenience, with no loss of billable hours due to travel.

Other Efforts to Assist Members

In addition to WSBA-CLE courses, the WSBA contributes knowledgeable staff to make presentations at county bar events as well as seminars sponsored by other pro-

viders. Through outreach from the Bar's disciplinary counsel, professional responsibility counsel, Law Office Management Assistance Program and Lawyers' Assistance Program, the WSBA has been present at over 65 locations this year.

Can There Be Changes?

As far as WSBA-CLE services are concerned, we know from listening sessions around the state and from member watchdogs that there is continual desire for more flexible, low-cost, close-to-home, and convenient ways to earn CLE credits. WSBA-CLE does more than anyone else to meet

this understandable desire. To do even "more" is a tall bill to fill in our current business model. It's important to keep in mind that it is this business model that allows the WSBA to underwrite the customized, educational outreaching to all areas, and even more convenient at-your-desk telephone and Internet seminars and post-seminar materials. But we are never done rethinking this pay-as-you-go CLE premise and the consequent business model. This model will be discussed by the board and at "listening sessions" throughout the state.

What the CLE Department Is Not

WSBA-CLE has no responsibility for mandatory continuing legal education rules (MCLE rules) or for our members' reporting and compliance with them. This is a function of the rules themselves, and the policies and procedures promulgated by the court-appointed Board on Mandatory Continuing Legal Education (MCLE). The MCLE regulatory function includes items that relate to each member such as credit reporting, credit tracking, and contact with members about their compliance. In the regulatory area, WSBA-CLE stands on an equal footing with all other CLE providers, and is required to meet uniform standards for credit approval and reporting attendance.

WSBA-CLE does not have any special connection to MCLE requirements. The only way to change MCLE requirements, to allow for more A/V or electronic CLE credits or a different mix of ethics credits per reporting period, is to change the MCLE rules. By board mandate, WSBA-CLE is not a revenue-generating function for the WSBA and is not supported by any member license fees. It is this board policy that generates the most member confusion about the mission and function of WSBA-CLE. That CLE is self-supporting is what distinguishes CLE member services from regulatory and other WSBA services that are supported by license fees.

Member input on MCLE rules or procedures may be directed to Executive Secretary, MCLE Board, c/o WSBA, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330. For schedules and details on most of the WSBA-CLE features mentioned in this article, visit the WSBA Web site at www.wsba.org/cle or call the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. ☞

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Proud to Be a Lawyer

by Thomas A. Campbell

I am a lucky guy. For years, I have been telling my friends that lawyers are good folks. We are people, like everybody else, with feelings and sensibilities. Lawyers are driven. We aim to succeed. Our profession gives us the luxury to stand up for our principles, but frequently our greatest achievements have nothing to do with our practice.

I am particularly lucky because I was invited to participate on the President's Initiative Task Force. WSBA President Jan Eric Peterson composed the task force to enhance the public image of lawyers. He shared my view of lawyers, and asked me to help find WSBA members who were worthy of special recognition for their contributions to their communities.

We did this in two ways. Jay Flynn wrote articles in *Bar News* about some of his personal experiences, and sought contributions from other lawyers across the state. I contacted local and specialty bars and the Board of Governors, and asked them to identify "local heroes" who deserved recognition for their community involvement. Each time the Board of Governors convened, a "local hero" was recognized with an award, and a press release announced the recognition.

This year, we honored our contemporaries who work hard to be good neighbors, friends, and highly respected members of their communities. We sought to recognize these individuals for their activities outside the practice of law, because that side of our lives is too often forgotten. In some instances, we gave recognition because the nature of practice stood for a principle that showed courage and provided a great community benefit.

As the stories began to flow in, I knew we were onto something special. During the task force meetings, committee members discussed what it meant to be "proud to be a lawyer." After this experience, I've never been prouder. As rewarding as finding the local heroes has been, it wouldn't have been possible without the assistance of WSBA Director of Communications Judith Berrett and Communications Specialist Allison Parker. Both Judy and Allison have made this award a success. They helped find the heroes, wrote compelling press releases, and invited the media to the

This year, we honored our contemporaries who work hard to be good neighbors, friends, and highly respected members of their communities.

award presentations; they are my Bar heroes.

The recipients of the 2001 Local Hero Awards are Francois X. Forgette, John H. Hill, William G. Knebes, Timothy B. Odell, Robert L. Parlette, Edward F. Schaller Jr., Raymond H. Thoenig and Douglas W. Tufts. Detailed information was not available for Mr. Hill, Mr. Thoenig or Mr. Tufts when *Bar News* went to press.

October – Kennewick lawyer Fran Forgette received the Local Hero Award for outstanding volunteer service to the residents of the Tri-Cities area. Mr. Forgette has been active in numerous Tri-Cities civic groups, including the Mid-Columbia Education Alliance, a business/education partnership. He also founded the Adopt-a-Disk Program, which is a continuing partnership between local businesses and education that provides technology funding for computer software and peripherals to every elementary school in the Tri-Cities area. Mr. Forgette is the administrator of the program and serves on the executive committee of the alliance.

Mr. Forgette is a member of the board of directors and the executive committee of TRIDEC, the economic development entity for the greater Tri-Cities area. He is the immediate past-president and current member of the Tri-Cities Cancer Center board of directors, and is a past president of the Tri-City Area Chamber of Commerce and Tri-Cities Estate Planning Council.

December – Commissioner William G. Knebes received the award for outstanding service to the bench, bar and residents of Clallam County. Commissioner Knebes has served Clallam County for nearly 20 years, hearing all juvenile criminal, juvenile dependency, domestic violence and

family law matters. Over the course of his career, Commissioner Knebes developed and implemented a unified family-court system, to ensure that one judge handles all cases involving a particular family. He was founder of the Peninsula Dispute Resolution Center, a nonprofit agency providing low-cost mediation services to Jefferson and Clallam County residents. He is a certified mediator and serves as the center's advisor.

Commissioner Knebes developed and implemented the Clallam County Court Appointed Special Advocate Guardian Ad Litem program (CASA/GAL), which now provides a special GAL for each dependent child. He also established the Clallam County Domestic Violence Task Force to coordinate a community response to domestic violence, ensuring that victims are appropriately served and provided with necessary assistance. Additionally, Commissioner Knebes works with the Clallam County Pro Bono Lawyers' Courthouse Facilitator Program to assist those without an attorney.

January – Olympia lawyer **Edward F. Schaller Jr.** was honored for his service to the residents of Thurston County. From 1980 to 2000, Mr. Schaller was in private practice with the Olympia firm Foster Foster & Schaller. Prior to starting his own firm, Mr. Schaller worked for the Thurston County Prosecutor's Office, and served as clerk for Justices Hunter and Wright at the Washington Supreme Court.

Mr. Schaller has been an active member of St. Martin's College Alumni Association for 10 years, including two years as president. For several years he managed concession trailers at sports events to raise money for the college and alumni associations. He also served on the college's board of trustees.

Mr. Schaller has participated in fundraising activities for the American Cancer Society, including the Relay for Life. In the last two years, he coordinated a relay team sponsored by his firm, and last June his team was the top fundraiser at the event. Mr. Schaller has been a member of the Kiwanis and Elks clubs, and has been a supporter of Thurston County community programs for over 30 years.

April – Everett lawyer **Timothy B. Odell** was honored for his service to the residents

of Snohomish County. Mr. Odell has been an active community volunteer in Snohomish County for over 20 years. He is a member of the Everett High School booster club and an assistant coach for the varsity football team. For nearly 20 years, he was the timekeeper for the Everett High School varsity boys' basketball team. He also volunteered as a Little League baseball coach, and was a statistician for the Everett Giants baseball team.

Mr. Odell is an active member of the Elks Club and works on volunteer projects with the Veterans of Foreign Wars. He is a former member of the Knights of Columbus and Sertona, and served on the board of directors of the Boys and Girls Club of Snohomish County. In addition to his law practice, Mr. Odell serves as a half-time municipal court judge in Everett.

During the task force meetings, committee members discussed what it meant to be "proud to be a lawyer."

June – Wenatchee lawyer **Robert L. Parlette** received the Local Hero Award in recognition of his community service in the Wenatchee area. A partner in the Wenatchee firm Davis Arneil, Mr. Parlette was named interim president of Wenatchee Valley College last year. In May, he was honored by the Central Washington Hospital Foundation with the A.Z. Wells Award, in recognition of more than 30 years of community service.

In the mid-1970s, Mr. Parlette helped raise more than \$1 million to expand Central Washington Hospital. He was a founding member of the Wenatchee Outdoor Club and the Ridge to River Relay. In 1989, he served as president of the local organizing committee for the Washington Centennial State Winter Games, and he remains a member of the Washington State Games Foundation.

Mr. Parlette co-founded the Complete the Loop Coalition, a 12-mile trail system that circles the Columbia River in Chelan and Douglas counties. He currently serves on the Washington State Interagency Committee for Outdoor Recreation, and is a member of Sunshine Rotary and Rotary International. ☞

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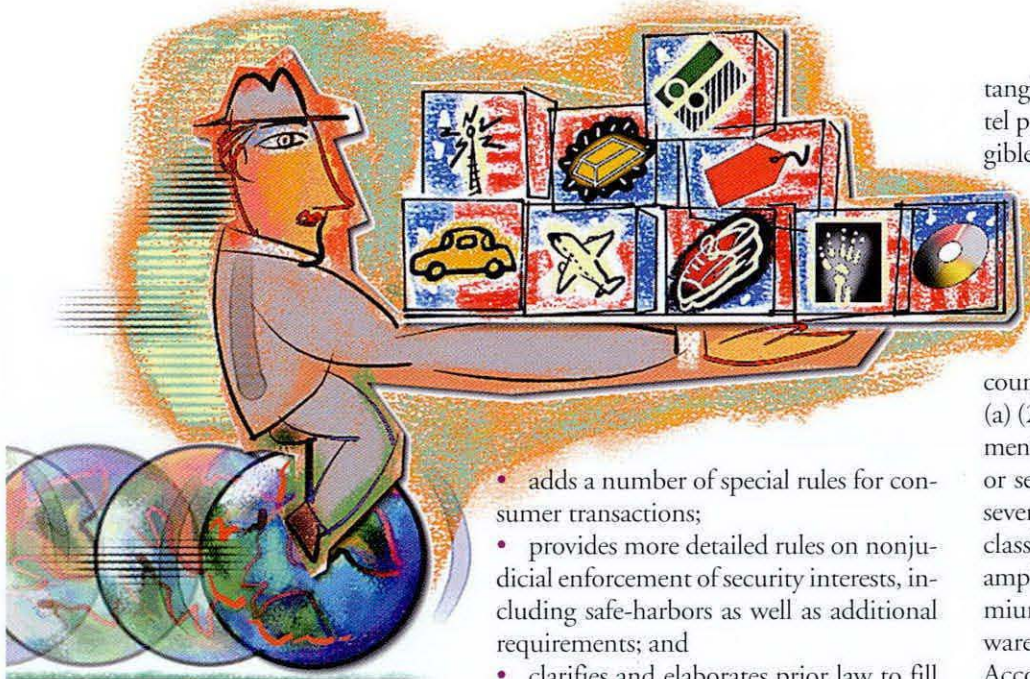
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A New Law for Secured Transactions



by Daniel B. Ritter

Uniform Commercial Code Revised Article 9 represents a major overhaul and updating—the first since 1972—of the law governing security interests in personal property (and outright sales of some types of intangible property). Wash. Sess. Laws of 2000, ch. 250, as amended by Laws of 2001, ch. 32, effective July 1, 2001, adding RCW 62A.9A. In brief, the revised article:

- accommodates technological developments such as software and electronic commerce;
- simplifies the filing system; for example, it promulgates a national form of financing statement and designates the debtor's location as the place to file against tangible property as well as intangible;
- expands the scope of Article 9 to cover more types of collateral (for example, deposit accounts) and more transactions (for example, asset securitizations);

- adds a number of special rules for consumer transactions;
- provides more detailed rules on nonjudicial enforcement of security interests, including safe-harbors as well as additional requirements; and
- clarifies and elaborates prior law to fill in gaps, eliminate ambiguities, and resolve conflicts in judicial interpretation.

Similarly, the official comments to Revised Article 9 explain how the law works in much greater detail than do the official comments to prior Article 9. As a result of this increased specificity, Revised Article 9 and the accompanying official comments occupy 327 pages in the Uniform Commercial Code (West 1999 edition) as compared to 128 pages for prior Article 9 and official comments. Given the length of the new law, this article can do no more than note the most important changes and additions. Significant Washington variations from the official text of Revised Article 9 will also be noted. (In the ensuing text, numbers in brackets refer to sections of RCW 62A.9A unless otherwise indicated.)

Scope

Coverage of Additional Transactions. Revised Article 9 applies to many transactions that fall outside the scope of prior Article 9. The prior law applied to security interests in accounts, chattel paper, or general in-

tangibles, and to sales of accounts or chattel paper, but not to sales of general intangibles. The revised article is expanded to cover sales of “payment intangibles”—general intangibles under which the debtor's principal obligation is a monetary obligation [9A-102(a)(61); 9A-109(a)(3)]. In addition, the definition of “account” is significantly broadened [9A-102(a)(2)]. No longer limited to rights to payment arising out of the sale or lease of goods or services, the new definition sweeps up several kinds of payment rights previously classified as general intangibles; for example, rights to payment for insurance premiums, for energy, for vessel hire, for software licenses, and for lottery winnings. Accounts also include receivables from health-care insurance and credit-card receivables.

By covering sales of payment intangibles and broadening the definition of “account,” Revised Article 9 applies to many more sales than does prior law.

By covering sales of payment intangibles and broadening the definition of “account,” Revised Article 9 applies to many more sales than does prior law. This expansion facilitates commercial financings, especially asset securitizations, which typically involve the sale of intangibles. With similar effect, the revised article covers sales of promissory notes [9A-102(a)(65); 9A-109(a)(3)].

Coverage of Additional Types of Collateral. Revised Article 9 applies to several types of collateral previously excluded. An important addition is coverage of deposit

accounts as original collateral, except for checking accounts in consumer transactions [9A-102(a)(29); 9A-109(d)(13)]. Although the exclusion for insurance claims is generally retained, the new law (as noted above) applies to receivables from health-care insurance taken as original collateral. (As before, Article 9 applies to insurance claims that are proceeds of other collateral.) Revised Article 9 applies to “commercial tort claims”—claims arising in the course of a business or profession, excluding claims for personal injury [9A-102(a)(13); 9A-109(d)(12)]. The definition of “goods” is broadened to include embedded software [9A-102(a)(44)], and the definition of “chattel paper” is broadened to include obligations secured by software used in goods when the security interest also covers the goods [9A-102(a)(11)]. “Electronic chattel paper” is also covered [9A-102(a)(31)].

Consignments. Revised Article 9 applies generally to true consignments, so that the consignor must now file to protect itself. There are exceptions where the consignor is a consumer, the goods are worth less than \$1,000, or the consignee is generally known to be selling the goods of others [9A-102(a)(20); 9A-109(a)(4); revised UCC 1-201(37)].

Agricultural Liens. Although other statutes govern the creation of “agricultural liens,” Revised Article 9 governs their perfection and priority [9A-102(a)(5); 9A-109(a)(2)]. The definition of “agricultural lien” excludes a possessory lien. Washington’s crop lien law, RCW ch. 60.11, is generally retained except that a lien claimant will file an ordinary UCC financing statement. The more detailed statement now required by RCW 60.11.040(2) need not be filed, but must be furnished on request. As before, the lien of a handler of orchard crops will be perfected without filing.

Investment Property. Revised Article 8 (investment securities) was accompanied by a conforming amendment to Article 9 that added Section 9-115 to govern all aspects of security interests in “investment property.” Revised Article 9 spreads the contents of that section throughout Article 9, so that attachment of a security interest in investment property is governed by parts 1 and 2, and perfection and priority are governed by part 3. However, the substantive treatment of investment property remains essentially unchanged.


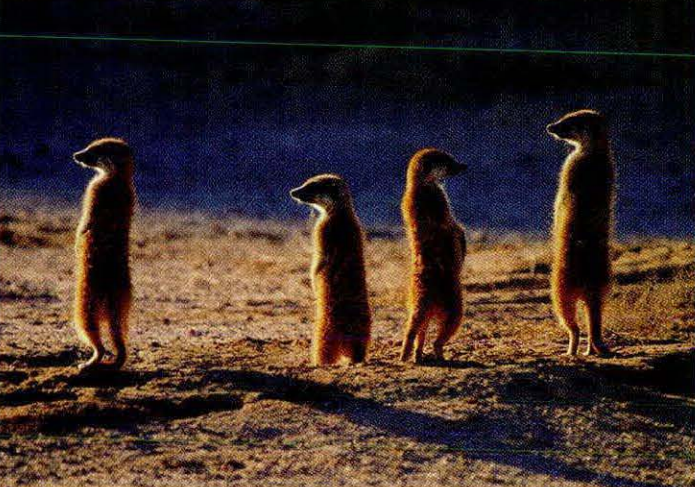
Clarification. Revised Article 9 confirms that federal law controls only when it actually preempts the UCC [9A-109(c)(1)]. This is pertinent to aircraft and to intellectual property. Revised Article 9 explicitly applies to a security interest in a note secured by real property [9A-109(b)], and it applies to letter-of-credit rights (i.e., rights to proceeds of a letter of credit, not the right to draw under the credit) [9A-102(a)(51); 9A-109(c)(4)].

Electronic Commerce. The term “record” is used in place of “writing” and includes information stored in an electronic medium if it is retrievable in perceivable

form [9A-102(a)(69)]. Correlatively, the verb “authenticate” is used in place of “sign,” and includes any processing of a record with the intention to identify oneself and adopt or accept the record [9A-102(a)(7)].

Creation of Security Interest

Collateral Description [9A-108]. Although a security agreement must “reasonably identify” the collateral, Revised Article 9 provides a safe harbor; it generally suffices to designate a type of collateral defined in the UCC, e.g., accounts, equipment, inventory, chattel paper, investment

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property, and so forth. However, in a consumer transaction, it is necessary to be more specific. Likewise, a commercial tort claim must be described specifically; indeed, a security interest cannot attach to after-acquired commercial tort claims [9A-204(b)(2)].

Automatic Attachment. When a security interest attaches to a payment right, it automatically attaches to any security interest or lien that secures the payment right [9A-203(g)]. For example, when a promissory note is secured by a real-property mortgage, attachment of a security interest in the note automatically extends to the mortgage without any recordation of an assignment of mortgage. In other words, the mortgage follows the debt. So too does a "supporting obligation," i.e., a guaranty or letter of credit that supports the debt [9A-102(a)(71) & (77); 9A-203(f)]. As under prior law, a security interest in original collateral automatically attaches to identifiable proceeds [9A-203(f); 9A-315(a)(2)], and the definition of "proceeds" has been expanded [9A-102(a)(64)]. It is no longer limited to what is received upon a "disposition," but includes, for example, dividends on securities held as collateral, payments on guaranties or letters of credit

When a debtor is acquired by merger or sale of substantially all its assets, the acquirer will usually succeed to or assume the debtor's obligations, including security agreements.

supporting promissory notes held as collateral, warranty claims arising from defects in collateral, and payments for licenses of collateral.

Rights in Collateral. Generally, a security interest can attach only if the debtor has rights in the collateral, and Revised Article 9 makes explicit that a seller of accounts, chattel paper, payment intangibles or promissory notes no longer has rights in what was sold (thus overruling *Octagon Gas Systems, Inc. v. Rimmer*, 995 F.2d 948 (10th Cir. 1993)). However, until the purchaser perfects its security interest, the seller retains power to transfer the collateral to a third party [9A-203(b)(2); 9A-318].

New Debtor. When a debtor is acquired by merger or sale of substantially all its as-

sets, the acquirer will usually succeed to or assume the debtor's obligations, including security agreements. Provided they cover after-acquired property, Revised Article 9 makes the original debtor's security agreements enforceable against the "new debtor" with respect to after-acquired property as well as existing property [9A-102(a)(56); 9A-203(d) & (e)]. Consequently, a new security agreement will not be needed. But usually a new financing statement will be required for after-acquired property because the old one will become seriously misleading [9A-508].

Free Assignability. A contract may prohibit selling or granting a security interest in certain personal-property rights. In a complex set of provisions [9A-406; 9A-407; 9A-408], Revised Article 9 generally invalidates most such prohibitions, but there are several exceptions. For example, in an agreement between the assignor and its lender, a "negative pledge" remains enforceable, so even if effective, the assignor's sale or grant of a security interest may constitute a breach of contract. The rules on anti-assignment clauses in leases are not new in substance, but have been moved to Article 9 from RCW 62A.2A-303.

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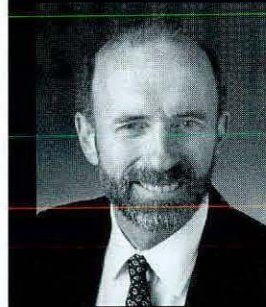
Where to File. As under prior law, filing under Revised Article 9 is at the county level for fixtures, timber to be cut, oil, gas and minerals, and accounts arising from sale of oil, gas or minerals at the wellhead or minehead [9A-102(a)(6); 9A-301(3) & (4); 9A-501(a)]. Otherwise, all financing statements are filed at the "location" of the debtor [9A-301(1)]. So if the collateral includes inventory and equipment located in 20 states, it is no longer necessary to file in 20 states. Instead, it will be necessary and sufficient to file in one state — that in which the debtor is located.

Location of Debtor. The "location" of a "registered organization" such as a corporation, limited partnership or limited liability company is the jurisdiction where it is organized, e.g., the state of incorporation of a corporation [9A-102(a)(70); 9A-307(e)]. Consequently, a prudent secured party will obtain a good-standing certificate before advancing funds. A foreign debtor whose home jurisdiction does not maintain a filing or recording system for personal-property security interests is "located" in the District of Columbia [9A-307(c)]. Other definitions of "location" are provided for individuals, nonregistered organizations, federally chartered organizations, foreign banks and foreign air carriers [9A-307]. A debtor that ceases to exist continues to be "located" in the same jurisdiction as before [9A-307(d)].

Form of Financing Statement. Revised Article 9 provides a simplified uniform financing statement that must be accepted by the filing office [9A-521].

- **Name of Debtor.** If the debtor is a registered organization, the financing statement must contain its exact name [9A-502(a)(1); 9A-503(a)(1)]. Otherwise, the financing statement is "seriously misleading," hence ineffective, unless the debtor's exact name would be disclosed by a records search using the filing office's standard search logic [9A-506]. Consequently, a prudent secured party will obtain, at least in large transactions, certified copies of the debtor's constituent documents and all amendments.

- **Name of Secured Party.** The financing statement may name either the secured party or its representative, whose representative capacity need not be indicated [9A-102(a)(72); 9A-502(a)(2); 9A-503(d)]. So, in a syndicated loan by X, Y and Z, where X is agent, the financing state-



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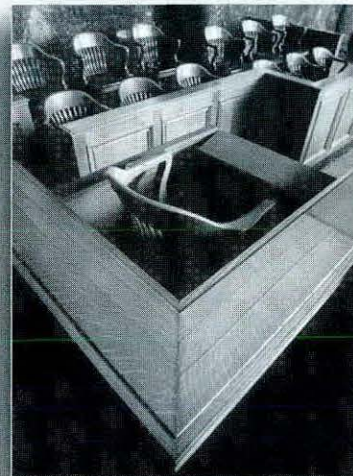


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ment may name as secured party: (1) X as agent for X, Y and Z; or (2) X as agent; or (3) simply X. Multiple debtors or secured parties may be named. In the case of multiple secured parties, each may file amendments and termination statements with respect to its interest or may authorize another secured party of record to do so [9A-503(e); 9A-509(d); 9A-510(b)].

- **Collateral Covered.** As under prior law, the financing statement must "indicate" what collateral is covered. Yet although the security agreement requires a "description" of collateral, the financing statement will suffice if it merely indicates that it covers

"all assets" or "all personal property" of the debtor [9A-502(a)(3); 9A-504(2)].

- **No Debtor Signature.** The last major change in the financing statement is that it no longer requires the debtor's signature. Nor does an amendment. The debtor must authorize the filing, but the debtor's authentication of a security agreement constitutes authorization to file a financing statement covering collateral described in the security agreement [9A-509(a) & (b)]. This authorization binds a new debtor who becomes bound on the security agreement pursuant to a merger or asset acquisition. If the secured party wishes to use a super-

generic description in the financing statement, e.g., "all assets," it is advisable to include express authorization in the security agreement. Otherwise, the financing statement is unauthorized to the extent it covers collateral not described in the security agreement. When the security agreement is to be signed at closing, filing before closing can be authorized in the credit application or some other preclosing document.

Correction Statements. If you believe that a filing against your name is inaccurate or was wrongfully filed, you may file a correction statement [9A-518]. This will not change the legal effect of the filing, if any, but will give notice that an issue exists. Such notice affords some protection against bogus filing (as when a losing litigant files against the judge) without enabling a debtor to defraud the secured party by unilateral termination of a financing statement.

The Filing Office. There are just a few specified reasons for which the filing office may reject a financing statement [9A-516(b); 9A-520(a)]. A financing statement that is wrongfully refused is effective anyway, except against a purchaser (including another secured party) who gives value in reasonable reliance on the absence of a filing [9A-516(d)]. This allocation of risk is fair because the first secured party is in a better position to discover that its filing was rejected. On the other hand, if the filing office accepts a financing statement but fails to index it correctly, the secured party is prior to a purchaser or subsequent secured party, even though a records search could not have discovered the misindexed filing [9A-517]. Consequently, a secured party need not conduct a post-filing search to protect itself against misindexing. However, to avoid problems it is nevertheless prudent to conduct a post-filing search, at least in large transactions.

Termination Statements. In a commercial *credit* transaction (as distinguished from a *sale* of accounts, etc.), if no indebtedness or commitment remains outstanding, the secured party must file a termination statement within 20 days after the debtor requests it [9A-513(c)]. Failure to comply incurs a \$500 penalty [9A-625(e)(4)]. If the financing statement covers consumer goods, the secured party must file a termination statement within 30 days after the secured indebtedness is paid in full and no credit commitment remains outstanding,



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regardless of whether the consumer debtor makes a request [9A-513(a) & (b)]. However, the \$500 penalty applies only if the secured party fails to file the termination statement within 20 days after the consumer debtor requests it [9A-625(e)(4)].

Perfection (Other than by Filing) and Priority Among Competing Security Interests

Control. Revised Article 9 adopts and extends the concept of “control” introduced for investment property by Revised Article 8. With respect to investment property, the rules for control under Revised Article 9 have not been changed except when there is a conflict between security interests both perfected by control. In that situation, Revised Article 9 adopts the rule of first-in-time, first-in-right [9A-328(2)].

Deposit Accounts. A security interest in a deposit account can be perfected only by control [9A-312(b)(1); 9A-314]. The control rules track those applicable to investment property. So, if the depositary is the secured party, control is automatic and, unless otherwise agreed, the depositary’s security interest is prior to any conflicting security interest [9A-104(a)(1); 9A-327].

A secured party other than the depositary can obtain control either by transfer of the account into its own name or by entering into a control agreement in which the depositary agrees, with the consent of the debtor, to comply with instructions from the secured party without any further consent from the debtor [9A-104; 9A-312(b); 9A-314]. A depositary need not enter into a control agreement and, unless it does, its rights and duties with respect to the account are unaffected by any security interest [9A-341; 9A-342].

A perfected security interest defeats the depositary’s common-law right of set-off against the debtor when control is obtained by transfer of the account, but not when control is obtained by a control agreement (unless otherwise agreed). However, a right of recoupment always defeats the security interest [9A-340]. A right of recoupment arises when the depositary’s claim relates to funds in the account, e.g., an overdraft, while a right of set-off arises from an unrelated claim, e.g., default on a loan.

Letter-of-Credit Rights. Control over letter-of-credit rights is obtained when the issuer has consented to an assignment of proceeds of the credit pursuant to Article 5

[9A-107; 9A-314(a)]. If the letter of credit is a supporting obligation, e.g., it serves as credit enhancement for a promissory note, then a security interest in the letter-of-credit rights is perfected automatically (without control) by perfecting a security interest in the supported obligation (the note) [9A-308(d); 9A-312(b)(2)]. But absent control, Article 5 will preclude the secured party from enforcing its security interest against the issuer.

Investment Property. As noted above, Revised Article 9 continues prior law with respect to security interests in investment property. They can be perfected either by

filing or control [9A-102(a)(49); 9A-312(a); 9A-313(e); 9A-314]. A security interest perfected by control prevails over one perfected by filing [9A-328]. Control of a certificated security is obtained by possession, together with any necessary indorsement. For other kinds of investment property control can be obtained either by transfer into the name of the secured party or by means of a control agreement [9A-106; revised RCW 62A.8-106 & 8-301].

Chattel Paper. Under prior law a security interest in chattel paper could be perfected either by filing or by possession. Revised Article 9 continues this rule for



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tangible chattel paper. As it is impossible to possess electronic chattel paper, a security interest in that kind of chattel paper can be perfected either by filing or by control [9A-312(a); 9A-313(a); 9A-314(a)].

Control of electronic chattel paper is obtained by identification of the secured party on an authoritative electronic record comprising the chattel paper [9A-105]. Whether the chattel paper is tangible or electronic, Revised Article 9 continues existing rules governing priorities between a purchaser of chattel paper and a secured party claiming the chattel paper merely as proceeds of inventory [9A-330(a)].

Instruments. A security interest in an

instrument can now be perfected either by possession or filing [9A-312(a); 9A-313(a)]. However, a secured party who perfects by filing is subordinate to a purchaser (including another secured party) who gives value and takes possession in good faith without knowledge that the purchase violates the rights of the secured party who filed. [9A-330(d)]. The official comment states that this test is less stringent than the Article 3 test for holder-in-due-course status, and of course, a holder in due course is prior to anyone else [9A-331(a)]. Pledges of instruments are thus treated the same as pledges of certificated securities, except that for instruments there is no indorsement

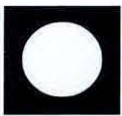
A security interest attaches to any identifiable proceeds of collateral and is automatically perfected if the security in the original collateral was perfected.

requirement. Regardless of perfection, however, an unindorsed instrument is harder to enforce against the maker.

Automatic Perfection. A security interest arising from sale of a promissory note is automatically perfected upon attachment [9A-309(4)]. However, if the purchaser does not take possession, it will lose to a subsequent holder in due course [9A-333(a)]. Revised Article 9 also provides automatic perfection upon attachment for sales of payment intangibles [9A-309(3)]. This provision resolves a dilemma between asset securitizers, who want the protection of Article 9 coverage, and banks selling loan participations, who do not want financing statements to be filed against them by the participants.

Possession by Bailee. When collateral is in the possession of a bailee, prior Article 9 allowed a secured party to perfect by mere notice to the bailee. Revised Article 9 requires the bailee to *acknowledge* that it holds the collateral for the secured party's benefit [9A-313(c)(1)]. However, such acknowledgement can be given prospectively [9A-313(c)(2)], thus facilitating mortgage warehousing. Under Revised Article 9, the law of the location of collateral governs perfection of possessory security interests [9A-301(2)]. Consequently, the law of the place where the bailee holds the collateral must be consulted to determine whether an acknowledgement is required.

Proceeds. As noted above, Revised Article 9 expands the definition of proceeds. The treatment of proceeds is also simplified somewhat [9A-315]. A security interest attaches to any identifiable proceeds of collateral and is automatically perfected if the security in the original collateral was perfected. Commingled proceeds are identifiable if they can be traced. Perfection in noncash proceeds is lost 21 days after attachment unless the security interest has been perfected by other means.



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Purchase-Money Security Interests.

Revised Article 9 makes several changes with respect to purchase-money security interests (PMSIs). A security interest in goods is a PMSI *to the extent* it secures a purchase-money obligation, including a refinancing [9A-103(b)(1) & (f)]. Thus, the dual-status rule is adopted and the transformation rule rejected. But the dual-status rule is not adopted for consumer goods; whether it should be left to the courts [9A-103(h)]. A PMSI in inventory remains a PMSI to the extent it secures purchase-money obligations for other inventory [9A-103(b)(2)].

A PMSI priority in inventory extends not only to cash proceeds received before delivery of the inventory to the buyer (as under prior law), but also in some circumstances to chattel paper received as proceeds of the inventory [9A-324(b)]. A PMSI can be taken in software, even when it is not embedded in goods, if it is financed together with the goods in which the software will be used [9A-103(c)]. A seller's PMSI taken to secure the purchase price has priority over the PMSI of a third party who makes a purchase money loan [9A-324(g)]. If there is more than one purchase money loan, priority ranks in order of filing.

Priorities between Secured Parties and Transferees of Collateral

Authorized Disposition. A transferee takes free of a security interest if the secured party authorized the disposition "free of other security interests" [9A-315(a)(1)]. This change does not answer the question of whether a disposition is authorized when consent is conditioned on the secured party's receipt of sale proceeds.

Buyer in Ordinary Course. The long-standing rule that a buyer of collateral in the ordinary course of business takes free of a security interest does not apply to a possessory security interest [9A-317(b); 9A-320(e)]. This provision rejects the holding of *Tanbro Fabrics Corp. v. Deering Milliken, Inc.*, 350 N.E.2d 590 (N.Y. 1976).

Licensee in Ordinary Course. A non-exclusive licensee in the ordinary course of business takes free of a security interest created by its *immediate* licensor [9A-321]. Of course, the licensee remains subject to the terms of the license.

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party who receives an instrument as proceeds of collateral must account to the senior secured party if the junior knows that its receipt violates the rights of the senior [9A-330(d)].

Transferee of Funds. Unless it acted "in collusion with" the debtor, a transferee of money or of funds from a deposit account takes free of a security interest in the money or funds.

Enforcement

Notice of Sale. As before, the secured party must give notice of disposition, not only to the debtor and any guarantors, but also

(unless the collateral is consumer goods) to other secured parties who have filed financing statements [9A-611(c)(3)]. Except in nonconsumer transactions, 10 days' notice of sale is sufficient [9A-612]. Two safe-harbor forms of notice of disposition are provided, one for consumer goods and one for other collateral [9A-613; 9A-614]. The consumer form is written in plain English and provides more information.

Commercially Reasonable Sale. A secured party may dispose of collateral "in its then condition or following any commercially reasonable preparation or processing" [9A-610(a)]. The official comment in-

dicates that a cost-benefit analysis should be used to determine what preparation, if any, is reasonable. Noncash proceeds must be immediately credited against the debtor's obligation only if it would be unreasonable not to do so [9A-615(c)]. So if collateral is paid for with a promissory note, it should ordinarily be permissible to give credit only as payments on the note are received. But if the note is supported by a letter of credit, it may be unreasonable to defer credit.

Sales Warranties. A secured party selling collateral is now deemed to give a seller's usual implied warranties of title unless they are expressly disclaimed [9A-610(d)]. A disclaimer is sufficient if it states "there is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" [9A-610(f)].

Deficiency Judgment. A secured party who seeks a deficiency judgment following nonjudicial foreclosure must, if challenged, prove that the conduct of the sale was commercially reasonable. If it was not, the rebuttable presumption rule applies, i.e., the collateral is rebuttably presumed to have been worth the amount of the secured debt [9A-626]. This rule, which reflects the weight of case authority, rejects both the absolute bar rule and the actual damages rule. A secured party incurs a \$500 penalty by demanding payment of a deficiency from a *consumer* obligor without providing a detailed explanation of how the deficiency was calculated or by failing to provide such an explanation when the debtor requests it [9A-616; 9A-625(e)(5) & (6)].

Account Debtors. Revised Article 9 makes explicit that, when collateral includes accounts or other rights to payment, the secured party may, after default, effect collection directly from the underlying account obligors and their guarantors and may realize on any collateral they have provided [9A-607]. Account debtors of all kinds may waive claims against assignees, including secured creditors of the assignor [9A-403(b)]. Absent waiver, an account debtor's claims against the assignor may be asserted as a defense to the assignee, but the account debtor is not entitled to an affirmative recovery against the assignee [9A-404(b)]. However, such recovery may be permitted under the form of notice required to be included in consumer notes by the Federal Trade Commission holder-

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in-due-course regulation, 16 C.F.R. Part 433. Revised Article 9 provides that, when other law requires such a notice to be included and it is not, the account debtor has the same rights against the assignee as if the notice had been included [9A-404(d)].

Strict Foreclosure [9A-620; 9A-621; 9A-622]. As under prior law, a secured party may accept collateral in full satisfaction of the secured obligations, provided notice is given to the debtor and other secured parties and they do not object within 20 days (formerly 21 days). But it will now be possible, with the debtor's consent given after default, to accept collateral in partial satisfaction of the secured obligations. Moreover, it is not necessary for the secured party to acquire possession of the collateral before accepting it in full or partial satisfaction. Under Revised Article 9, there is no constructive acceptance of collateral as a result of taking possession of collateral and waiting too long to dispose of it. This overrules *Service Chevrolet, Inc. v. Sparks*, 99 Wn.2d 199, 660 P.2d 760 (1983). The official comment indicates that excessive delay bears on whether the eventual disposition is commercially reasonable.

A secured party who seeks a deficiency judgment following non-judicial foreclosure must, if challenged, prove that the conduct of the sale was commercially reasonable.

Washington Variations

Like prior law, RCW 62A.9A contains several variations from the official text promulgated by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. These variations, however, are not of the sort that will create conflicts-of-law problems in multistate transactions. Some of the variations are technical changes needed to conform with existing Washington statutes on manufactured homes, motor vehicles, crop liens, recording of instruments, and foreclosure on real property. Other variations merely clarify the official text. But a few

variations are substantive:

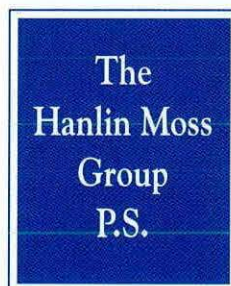
- The definition of "consumer transaction" excludes the incurrence of an obligation exceeding \$40,000 [9A-102(24), (25) & (26)]. There is an exception for mobile-home financing.
- The definition of "instrument" excludes a writing that does not contain an order or promise to pay or expressly states that it is nontransferable or nonassignable [9A-102(47)].
- Transfers by the state of Washington and its political subdivisions continue to be excluded from Article 9 [9A-109(d) (14)].

- While Revised Article 9 generally covers security interests in deposit accounts, the official text contains an exclusion for consumer transactions; Washington limits the exclusion to a security interest in the consumer's checking account [9A-109(d) (13)].
- Automatic perfection, without filing, for assignment of an "insignificant" part of an assignor's accounts or payment intangibles is limited to an assignment not exceeding \$50,000 or 10 percent of the assignor's outstanding accounts and payment intangibles [9A-309(2)]. This limit provides the specificity required by *Architectural Woods*

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v. State, 88 Wn.2d 406, 562 P.2d 248 (1977).

- As before, a possessory lien for materials or services will be prior to a perfected security interest only if the lien is created by a statute that expressly so provides [9A-333].
- Washington omits a provision in the official text that would generally invalidate a law or regulation prohibiting, or requiring governmental approval for, the transfer of an account or chattel paper [9A-406(f)]. So, for example, the statutory requirement of court approval to assign lottery winnings will remain in force.
- The Washington statute preserves exist-

ing case law upholding waivers of suretyship defenses [9A-602; 9A-624(a)].

- As before, a secured party is required to give notice of foreclosure sale to other secured parties only if they are perfected [9A-611; 9A-621].
- The Washington statute omits a novel upset price procedure allowing a debtor to challenge the sufficiency of the sale price obtained at a foreclosure sale at which the purchaser was the secured party or a guarantor, even though the secured party proves that the sale was commercially reasonable [9A-615(f)].
- While a debtor may generally agree after default to surrender collateral in full or

partial satisfaction of the secured obligation, the official text contains an exclusion for surrender in *partial* satisfaction of a *consumer* obligation; Washington omits this exclusion [9A-620(g)].

- The \$500 penalty for failure to file a termination statement applies in a commercial transaction only if the debtor requests the filing, but under the official text, the penalty applies in a consumer transaction even absent a debtor request. The Washington statute requires a debtor request in all transactions [9A-625(e)(4)].
- When a secured party seeking to recover a deficiency fails to prove that the conduct of its foreclosure sale was commercially reasonable, the official text applies the rebuttable presumption rule (described above) in a commercial transaction, but leaves it for the courts to decide what rule will govern in a consumer transaction. The Washington statute applies the rebuttable presumption rule to all transactions [9A-626]. This is consistent with Washington case law, e.g., *McChord Credit Union v. Parrish*, 61 Wn. App. 8, 809 P.2d 759 (1991).



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Transition

Revised Article 9 has been adopted in all 50 states and the District of Columbia, and became effective in all jurisdictions on July 1, 2001 except for Alabama, Florida, Mississippi (where the effective date is January 1, 2002) and Connecticut (with an effective date of October 1, 2001).

Savings Clause. The new law does not apply to pending actions, but does apply to existing transactions within its scope except for valid transactions not governed by former Article 9; they will continue to be governed by the same law as before [9A-702]. For example, if a security interest in a commercial tort claim was valid under prior law, it will remain valid under the new law. However, as will appear, the security interest will become unperfected one year after the new law's effective date unless it has been perfected under the new law by the filing of a financing statement.

Perfection. Suppose a security interest was perfected under prior law (either under Article 9 or outside of it). There are three possibilities:

(1) The security interest was perfected by acts that would constitute perfection under the new law as well. In this situation, the security interest remains perfected [9A-703(a)]. Examples: (a) a pledge of



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promissory notes; (b) the filing of a financing statement covering accounts of a debtor incorporated in the state where its chief executive office is located.

(2) The security interest was perfected by acts (other than filing) that would not constitute perfection under the new law. In this situation, perfection will continue for one year after the effective date and then lapse unless the security interest has been perfected under the new law [9A-703(b)]. Examples: (a) security interest in a commercial tort claim that was perfected (say) by filing an assignment with the clerk of the court; (b) security interest in goods in the possession of a bailee that was perfected by notice to the bailee. Perfection will continue beyond one year in example (a) if a proper financing statement is filed, and in example (b) if the bailee acknowledges that it holds the goods for the secured party.

(3) The security interest was perfected by filing a financing statement, but the filing would not constitute perfection under the new law. In this situation, perfection will continue until the normal lapse date of the financing statement (but never longer than five years after the effective date) [9A-705]. Examples: (a) the filing of a financing statement covering accounts of a debtor incorporated in a state other than the location of its chief executive office; (b) the filing of a financing statement covering inventory and equipment located in a state other than the state where the debtor is incorporated. In these examples, the filing does not constitute perfection under the new law because the place of filing has changed. In both examples, the new law calls for filing in the state where the debtor is incorporated. To continue these carry-over filings, it is necessary to file in the state of the debtor's incorporation an initial financing statement in lieu of a continuation statement [9A-706]. This "in lieu of" financing statement must identify the pre-effective-date financing statement by indicating where and when it was filed and giving applicable filing numbers.


Conclusion

Because of its great length (compared to other articles of the UCC) and the complexity of certain provisions (such as the transition rules), Revised Article 9 might seem at first to emulate America's most-maligned statute, the Internal Revenue Code. Indeed, the casual reader will find

the going hard and might easily lose his way. However, greater familiarity with this text reveals that the vice of prolixity is more than offset by the virtues of clarity and specificity. And paradoxically, the system that the new law describes in such great detail will operate more easily and simply than the system it replaces. You will find it easier and faster to create and perfect a security interest, you will encounter fewer priority disputes, and the rules governing nonjudicial enforcement of security interests will be more certain. All in all, a significant improvement in commercial law. ♪

Daniel B. Ritter has practiced in Seattle with Davis Wright Tremaine LLP (and predecessors) since 1963. He is past chairman of the WSBA Business Law Section and of its UCC Committee, on which he has served since its formation in 1980. He headed the committee's study of Revised Article 9 and lobbied for its enactment in Washington.

Adapted from the author's article of the same title in 17 *Journal of Equipment Lease Financing* 26 (Fall 1999).




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Better Late than Never: Settlement at the Federal Court of Appeals

by Mori Irvine

This is the first article in a two-part series. The second article will be published in the October issue of *Bar News*.

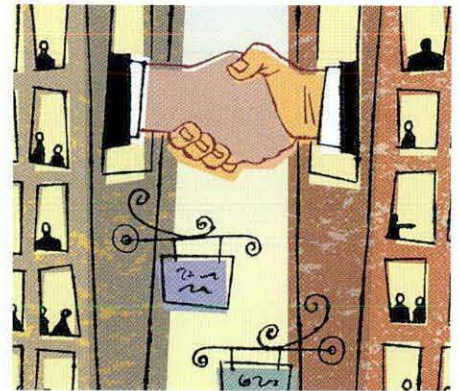
Nearly 95 percent of all federal civil cases will settle before trial,¹ leaving less than five percent of civil cases to be appealed.² Those cases are the most difficult, most intractable, and least likely to resolve short of a definitive judicial adjudication at the highest level. Their longevity, tenancy and staying power have been well-proven during the course of litigation.³ Can anything be done to aid them in settlement? The federal courts have decided to make the effort.

Federal District Court Programs⁴

The first codification of dispute resolution in any federal court came when the U.S. Congress passed the Civil Justice Reform Act (CJRA or the Act).⁵ The Act encourages all federal district courts to implement alternative dispute resolution (ADR) programs to help reduce delay in civil litigation and provide litigants alternative means to resolve their disputes.⁶

The Act authorizes the courts to use dispute resolution and specifically lists a variety of processes the district courts might implement. As a result, the federal courts have experimented with dispute resolution,⁷ and a variety of settlement mechanisms are present in the courts. Mediation,⁸ arbitration⁹ and neutral case evaluation¹⁰ are the most common, but there are summary jury trials¹¹ and other hybrids¹² available. Each brings a different settlement opportunity to the parties. Each provides a different approach toward resolution without the need for final intervention of the courts by way of order or decision.

Since the passage of the Act, the district courts' efforts reflect diversity and experimentation in promoting settlement to the litigants. In addition to the traditional judge-directed settlement conference,¹³ the courts have elected to adopt one or more of the six processes authorized by Congress in the Act. Nearly half of the district courts have established a court-managed mediation program.¹⁴ A third of the courts offer some form of arbitration.¹⁵ Thirty-nine federal trial courts approve the use of summary jury trials,¹⁶ and 25 have authorized the use of minitrials.¹⁷ Early Neutral Evaluation (ENE) has not been adopted with the same enthusiasm. Only 16 courts have included ENE in their dispute resolution program offerings.¹⁸



Congress has since decided this experiment in dispute resolution should become an integral part of the district courts. The Alternative Dispute Resolution Act of 1998 mandates that all district courts establish and offer dispute resolution to the litigants.¹⁹ Where there had been experimentation, there is now a mandate: The courts must give litigants a clear opportunity to resolve their problems themselves before the courts take that control away from them and decide their cases.²⁰

The Act requires all U.S. district courts to authorize the use of ADR processes in all civil actions. The courts are required to devise and implement an ADR program to encourage and promote the use of ADR in each district, to examine the effectiveness of existing ADR programs, and to adopt appropriate improvements. Each court must retain or designate an employee or judicial officer who is knowledgeable in ADR practices to implement, administer, oversee and evaluate that court's ADR program.²¹

The federal trial courts may have been the first federal courts to adopt dispute resolution in some form, but they are no longer alone in providing settlement opportunities. The U.S. appellate courts have also implemented programs to provide alternative avenues for settlement to disputants.²²

Federal Courts of Appeals Programs

The U.S. Court of Appeals for the 2nd Judicial Circuit took the lead when it established a settlement program in 1974. Its goal was to assist litigants in resolving their cases without the need for the appeal to result in a final decision by the court.²³ Inspired by district court dispute-resolution programs, Chief Judge Irving R. Kaufman believed that similar settlement efforts would benefit the Court of Appeals.²⁴ This vision of settlement at the Court of Appeals became the Civil Appeals Management Plan (CAMP). Virtually all civil cases that reach the 2nd Circuit are referred to CAMP.²⁵ First in time, CAMP may have served as the impetus for subsequently established circuit-court mediation programs,²⁶ all of which were created to help litigants settle while on appeal.

Why Settle on Appeal?²⁷

Settling a case while it is pending on appeal may seem counterintuitive. There is already a winner and a loser, so what would motivate them to compromise and settle at this point? The answer is that, even though the case is on appeal, it is still driven by the professional, practical and personal motives of the participants. Consequently, appellate cases remain ripe for mediation and do settle on appeal.

The parties' professional motives often include a concern with the probabilities of winning on appeal (does the client want to take the risk of losing on appeal?), an interest in protecting a favorable lower court opinion (does the client want to lose that decision?), and the availability of alternative legal avenues that are better suited to resolving the client's problem (the federal court of appeals is not always the best forum).

The parties' practical interests may also push them towards mediation. An appeal takes a long time to reach a final decision,²⁸ and waiting may be disruptive to the client's business. It may cost the client less to settle now rather than later, and the payments can be structured to be convenient for the client and to maximize tax benefits.

Finally, the parties are driven to mediation by personal concerns. A party may have an immediate need to settle for financial reasons. The client may have developed a willingness to move beyond the conflict and finally let go of it. The client may be motivated by fairness and believe that settle-

Where there had been experimentation, there is now a mandate: The courts must give litigants a clear opportunity to resolve their problems themselves before the courts take that control away from them and decide their cases.²⁰


ment is the right thing to do regardless of the law. Ultimately, settlement brings peace of mind to the participants.

With these motivations, all the parties need is a forum to allow them to explore settlement. Mediation gives them this forum. A risk-free environment and a trained neutral equipped to fully explore these motivations help the participants fashion a so-

lution that satisfies their interests, even on appeal.

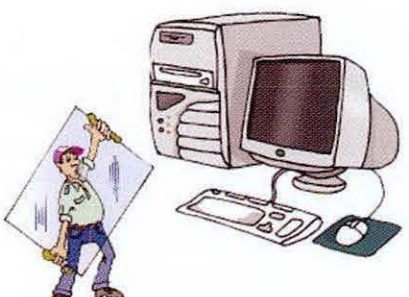
U.S. Court of Appeals, 11th Judicial Circuit Program²⁹

To date, nearly every U.S. appeals court has established a mediation program to assist parties in resolving their appeals.³⁰ These courts-of-appeals programs are gen-



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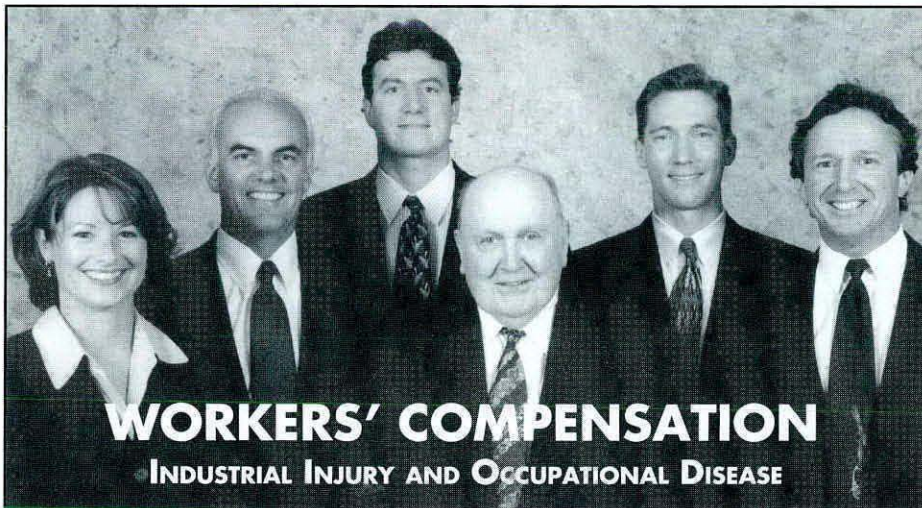
erally established under Federal Rule of Appellate Procedure (FRAP) 33³¹ in conjunction with a local rule or order.³² While each is unique, conducted in a fashion that best suits the individual court's settlement mission, there are more similarities among the programs than differences. The 11th Circuit mediation program, which shares many of its characteristics with other circuit-court programs, is detailed below as an example of the federal courts' mediation efforts.³³

In the 11th Circuit, mediation conferences are conducted by the court's circuit mediators, pursuant to FRAP 33 and 11th Circuit Rule 33-1.³⁴ Under the circuit's rules, judges may participate in the conferences, but rarely do so.³⁵ These conferences may address any procedural questions or problems that are raised by the parties. However, the primary purpose of these conferences is to offer participants a confidential, risk-free opportunity to explore all possibilities for the voluntary disposition of the appeal and the case.³⁶

Most civil cases are eligible for selection into the program³⁷ and can be placed in the program in one of three ways: selection by a circuit mediator, a confidential request by counsel, or a referral by hearing panels either before or after oral argument.³⁸ Most initial mediation conferences are scheduled before a briefing order has been issued. If all counsel are located in the Atlanta area,³⁹ the initial conference is held in person at the court. Otherwise, initial conferences are by telephone, with the court initiating the calls. At the mediator's discretion, conferences for cases outside the Atlanta area may be conducted in person.

For the most part, participation is mandatory. If there is a compelling reason that mediation would not be appropriate, the lawyer is free to call the circuit mediator and explore those concerns. As a result, the mediator may cancel the conference. Otherwise, the appearance and participation by counsel is expected.⁴⁰ Settlement, of course, is not required, and the parties will not be coerced into settling by the mediator. Instead, the conference is an opportunity to explore the possibility of devising a settlement that satisfies the parties' concerns and interests.

Like classic civil mediation,⁴¹ the mediation conference is conducted in a series of joint and separate sessions, with the mediator initially talking with both sides to-



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gether and then meeting with each side separately. Conferences generally begin with an inquiry as to any procedural questions or problems that can be resolved by agreement. These might include questions about the record excerpts or the need for a specially tailored briefing schedule.⁴² If negotiations are productive, and everyone

Like classic civil mediation,⁴¹ the mediation conference is conducted in a series of joint and separate sessions, with the mediator initially talking with both sides together and then meeting with each side separately.

agrees, briefing may be postponed for a reasonable time until negotiations are completed.⁴³

The discussion then moves to an explanation by each party of the issues on appeal. The purpose of this discussion is not to decide the case, but to understand the issues and to evaluate the risks — to both sides — on appeal. In many cases, a candid examination of the case is helpful in reaching a consensus on the settlement value of the case. This examination may be done in a joint session or with the mediator talking privately to each party.⁴⁴

Private sessions are often more candid than the joint session. During these sessions, the mediator and the participants talk about the parties' interests, explore more realistic settlement options, and evaluate the case's shortcomings. The information revealed in these private sessions is not shared with the other side unless the participants permit the mediator to transmit it.

In most cases there is extensive follow-up activity to the initial sessions, including additional telephone calls, in-person conferences, additional telephone conferences, and ex parte conferences with one party.⁴⁵ Every effort is made to generate offers, counteroffers, and alternative settlement options until the parties either settle or know the case cannot be settled. Where it is possible, the mediator assists the parties in resolving related trial court cases, frequently in an attempt to achieve a "global settlement" of various lawsuits. Indeed, the mediation may continue right up to the point that the court decides the issues on appeal, and issues an opinion. As a result, follow-up discussions may continue for days, weeks or longer.

Throughout mediation, the lawyers play

a critical role. Without them, settlement is not possible.⁴⁶ Unfortunately, our adversary system creates many attorneys who are not adept at negotiating settlement for their clients and are ill-equipped for the mediation forum.⁴⁷ "Mediation offers enormous potential for lawyers to recognize and honor the missing human dignity dimension in

current versions of adversarial lawyering,"⁴⁸ and by doing so, reach a settlement that satisfies their clients' interests. To fully serve his or her client, a lawyer must be educated about the mediation process and its potential. ☞

Next month: The Ten Commandments of Effective Mediation.

Mori Irvine is a circuit mediator for the U.S. Court of Appeals 11th Judicial Circuit in Atlanta, Georgia. She also serves as an adjunct professor at Emory University School of Law and is a member of the WSBA. The author thanks her research assistant, Ada Brown, for her hard work.

Copyright © 1999 by Mori Irvine. This article is the next installment of a discussion started in Mori Irvine, *The Lady or the Tiger: Dispute Resolution in the Federal Courts*, 27 U. Tol. L. Rev. 795 (1996). In that earlier article, the author examines what the federal courts are doing to assist litigants in settling their cases, and ventures some thoughts on their success, and more importantly, on the appropriateness of their efforts. The reader should treat this article as a side trip from that journey — the appropriateness of federal court dispute resolution — which the author still intends to treat at greater length in Mori Irvine, *Settlement at the Court of Appeals: Distilling or Diluting the Law?* (work in progress). The views expressed in the article are solely those of the author and do not reflect the views of the U.S. Court of Appeals, the 11th Judicial Circuit, the chief circuit mediator or the Circuit Mediation Office.

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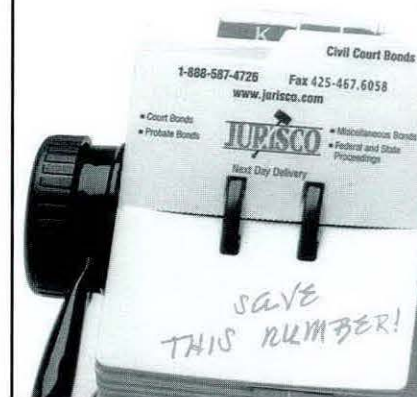
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NOTES

1. The exact percentage of lawsuits that settle out of court varies by jurisdiction and the nature of the lawsuit. One study, now over 20 years old, found that only 4.2 percent of claims filed against insurance companies reached trial. See H. Laurence Ross, *Settled Out of Court: The Social Process of Insurance Claims Adjustment* 179 (1970). A 1980 study found 6.5 percent of federal district court suits reached trial. Director of the Administrative Office of the U.S. Courts, Annual Report of the Director A-28 (1980). A study conducted in the mid-1980s found that less than eight percent of civil suits filed in state and federal courts did not settle and were tried. See David M. Trubek et al., *The Costs of Ordinary Litigation*, 31 UCLA L. Rev. 72, 89 (1983); see also Harry T. Edwards, *Alternative Dispute Resolution: Panacea or Anathema?*, 99 Harv. L. Rev. 668, 670 (1986) (observing that over 90 percent of all civil cases settle before trial).
2. There is no clear statistic on the percentage of civil cases that are appealed, but it is a safe assumption that not all losers appeal. Nonetheless, "[b]ecause the decision to file a notice of appeal is a virtually cost-free, risk-free proposition, it is often a knee-jerk reaction to an adverse decision." Jerrold J. Ganzfried, *Bringing Business Judgment to Business Litigation: Mediation and Settlement in the Federal Courts of Appeals*, 65 Geo. Wash. L. Rev. 531, 540 (1997).
3. As circuit mediator I call these cases "the toughest two percent."
4. A similar discussion can be found at Irvine, *supra* note,* at 796.

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5. Civil Justice Reform Act of 1990, Pub. L. No. 101-650, §§ 101-06, 104 Stat. 5089 (codified as amended at 28 U.S.C. §§ 471-82 (Supp. V 1993)).
6. *Id.* § 103(a). These civil-delay reduction plans were required to be completed by December 1, 1993.
7. The first formal recognition of ADR's role in the federal courts came with the 1983 amendments to federal rule of civil procedure 16, which provided for the use of "extrajudicial procedures to resolve the dispute." Fed. R. Civ. P. 16(b)(7). However, federal district court experimentation began with court-based arbitration programs in the late 1970s. Donna Stienstra & Thomas E. Willging, *Alternatives to Litigation: Do They Have a Place in the Federal Courts?* 4 (1995).
8. Mediation is the use of a third-party neutral to facilitate a settlement that the parties themselves devise. S. Rep. No. 416, at 29 (1990), 1990 U.S.C.C.A.N. 6803, 6832: "In its simplest form mediation is a process through which two or more disputing parties negotiate a voluntary settlement of their differences with the help of a third party (the mediator) who typically has no stake in the outcome. The parties' negotiation is guided and structured by the mediator, who acts primarily as a catalyst for the process by shaping both the agenda and the discussion. The mediator helps the parties identify issues and explore possible solutions. The mediator also encourages each party to accommodate the other party's interests. As mediation expands and develops, providing a single universal definition of this process becomes increasingly difficult. The preceding description, however, illustrates the classic mediation model." Mori Irvine, *Serving Two Masters: The Obligation Under the Rules of Professional Conduct to Report Attorney Misconduct in a Confidential Mediation*, 26 Rutgers L.J. 155, 158 (1994) (internal quotes and footnotes omitted): "A mediator can be envisioned as the Sherpa guide of the negotiation process. The Sherpa guide does not tell the explorers which mountain to climb, or whether to climb a mountain, the Sherpa guide helps the expedition find the best way to the top. Similarly, a mediator does not tell the parties when or how to settle a case, but will help the parties maneuver towards resolution." *Id.* at 158 n.13. For a more detailed discussion of mediation, see *Id.* at 158-61.
9. In 1988, Congress authorized the implementation of 10 mandatory arbitration programs with 10 more courts permitted to offer such programs. 28 U.S.C. §§ 651-658. Arbitration is a dispute-resolution process where a third-party neutral sits as fact-finder and decision-maker. The arbitrator conducts a hearing during which evidence is presented in a more informal setting and where the rules of evidence are often relaxed. After all the evidence has been presented, the arbitrator rules on the case. A disappointed litigant has the right to pursue a trial de novo.
10. CJRA § 103(a). However, Early Neutral Evaluation (ENE) started before this. In this process the third-party neutral provided the litigants with a nonbinding advisory opinion of the probable outcome if the matter went to trial. Early Neutral Evaluation is also known as Early Neutral Case

- Evaluation or Case Evaluation. For a more detailed description of this process, see Brazil et al., *Early Neutral Evaluation: An Experimental Effort to Expedite Dispute Resolution*, 69 *Judicature* 279 (1986).
11. In a summary jury trial, the parties present condensed versions of their case to a jury, which renders an advisory opinion to the litigants. This advisory opinion then serves as a starting point for the parties to discuss settlement. S. Rep. No. 416, at 28-29 (1990), 1990 U.S.C.C.A.N. 6803, 6831-32.
12. For example, the courts may now refer cases to minitrials. In a minitrial, the attorneys present evidence and legal arguments to representatives of the parties so they may better understand the issues of the case and be in a better position to negotiate a satisfactory settlement. S. Rep. No. 416, at 29 (1990), 1990 U.S.C.C.A.N. 6803, 6832.
13. Settlement conferences are the most common dispute-resolution mechanism. In this process, the attorneys, sometimes with their clients present, meet with a judicial officer, usually a judge or a magistrate, to discuss settlement. Two-thirds of the district courts offer some variation of the settlement conference. Judicial Conference of the United States, *Civil Justice Reform Act Report 6* (1994) [hereinafter *Civil Justice Reform Act Report*]. The Judicial Conference of the United States prepared this comprehensive report on the implementation of the Civil Justice Reform Act, pursuant to 28 U.S.C. § 479(a). *Id.* at 1.
14. *Id.* at 6.
15. *Id.*
16. See generally David Rauma & Donna Stienstra, *The Civil Justice Reform Act Expense and Delay Reduction Plans: A Sourcebook*, 285-98 (1995) (listing the ADR methods approved by each district court) [hereinafter *Sourcebook*].
17. See generally *id.*
18. See *Civil Justice Reform Act Report*, *supra* note 13, at 7.
19. *Alternative Dispute Resolution Act of 1998*, Pub. L. No. 105-315, 112 Stat. 2993, 2994.
20. *Id.*
21. *Id.*
22. Interestingly, the success of the federal courts of appeals mediation programs caused Congress to mandate that district-court dispute resolution move from the experimental to the mainstream: "[T]he continued growth of Federal appellate court-annexed mediation programs suggests that this form of alternative dispute resolution can be equally effective in resolving disputes in the Federal trial courts...." *Alternative Dispute Resolution Act of 1998* § 2(3).
23. Irving R. Kaufman, *New Remedies for the Next Century of Judicial Reform: Time as the Greatest Innovator*, 57 *Fordham L. Rev.* 253, 261-62 (1988).
24. *Id.* at 261.
25. *Id.* at 262 (citing Irving R. Kaufman, *The Second Circuit Review — Safeguarding Judicial Resources: The Joint Duty of Bench and Bar*, 52 *Brook. L. Rev.* 579, 586 n.24 (1986)).
26. Irving R. Kaufman, *Must Every Appeal Run the Gamut? — The Civil Appeals Management Plan*,

95 Yale L.J. 755, 761-62 (1986). Chief Judge Kaufman observed that "[i]f imitation is any measure of achievement, CAMP has indeed earned high marks. Since the inception of CAMP in 1974, four circuits and more than a dozen states have implemented or experimented with preargument conference programs." *Id.*

27. There is an excellent list of reasons listed in Thomas F. Ball III, *Appellate Mediation in the Fourth Circuit: An Idea That Works*, 9 S.C. Law., Nov.-Dec. 1997, at 28, 30 (1997). This is a brief summary from that list.

28. In the 11th Circuit it takes a civil appeal an average of 14 months to result in a final decision. See Court Statistical Report (internal court document on file with author).

29. A less detailed discussion of these programs can be found at Irvine, *supra* note,* at 798. This description of the program and how it operates is taken from a descriptive narrative created by the circuit mediators that is on file with the author.

30. The federal circuit remains the sole circuit without a mediation program. See James B. Eaglin, *The Preargument Conference in the Sixth Circuit Court of Appeals* 5 (Federal Judicial Center 1990); *Appellate ADR: D.C. Circuit Experimenting with Mandatory Mediation in 100 Lawsuits*, 6 Alternatives 35, 35 (1988); Ganzfried, *supra* note 2, at 531; John Martin, *Eighth Circuit Court of Appeals Preargument Conference Program*, 69 Judicature 312, 312 (1986); Pamela Mathy, *Experimentation in Federal Appellate Case Management and the Prehearing Conference Program of the United States Court of Appeals for the Seventh Circuit*, 61 Chi.-Kent L. Rev. 431 (1985); Robert Rack Jr., *Preargument Conferences in the Sixth Circuit Court of Appeals*, 15 U. Tol. L. Rev. 921 (1984).

31. The rule provides: "The court may direct the attorneys — and, when appropriate, the parties — to participate in one or more conferences to address any matter that may aid in disposing of the proceedings, including simplifying the issues and discussing settlement. A judge or other person designated by the court may preside over the conference, which may be conducted in person or by telephone. Before a settlement conference, the attorneys must consult with their clients and obtain as much authority as feasible to settle the case. The court may, as a result of the conference, enter an order controlling the course of the proceedings or implementing any settlement agreement." Fed. R. App. P. 33.

32. See, e.g., 11th Cir. R. 33-1.

33. For a description of other circuit mediation programs, see Eaglin, *supra* note 30; David Aemmer, *Appellate Mediation in the Tenth Circuit*, 26 Colo. Law. 25 (Oct. 1997); *Appellate ADR*, *supra* note 30; Ball, *supra* note 27; Ganzfried, *supra* note 2; Martin, *supra* note 30; Mathy, *supra* note 30; Rack, *supra* note 30.

34. The circuit mediators are full-time employees of the court who conduct settlement conferences. See 11th Cir. R. 33-1(b)(1). The circuit maintains two mediation offices. The main office, with three mediators, is located in Atlanta, Georgia. A single mediator occupies the branch office in Tampa, Florida. A Miami office is anticipated to be operational within the next two years.

35. *Id.* at 33-1(c)(1).

36. *Id.*

37. All fully counseled civil cases except prisoner, habeas corpus, and immigration cases are considered suitable for the program and are eligible for selection. *Id.* at 33-1(a)(3).

38. *Id.* at 33-1(c)(1).

39. The U.S. Court of Appeals for the 11th Judicial Circuit sits in Atlanta, and the main Circuit Mediation Office is located there as well. The 11th Circuit encompasses Georgia, Alabama and Florida. As a result, parties and counsel often are located well beyond the Atlanta area.

40. The circuit rule provides: "Upon failure of a party or attorney to comply with ... the provisions of the court's notice of mediation conference, the court may assess reasonable expenses caused by the failure, including attorney's fees; assess all or portion of the appellate costs; dismiss the appeal; or take such other appropriate action as the circumstances may warrant." 11th Cir. R. 33-1(f)(2).

41. For an explanation of classic civil mediation, see *supra* note 8.

42. The mediator has the authority to grant extensions to the parties for the filing of their briefs. This is done to facilitate the settlement talks. Only if the case is in active settlement discussion will this be done, and only with the consent of all the participants. Otherwise, mediation does not delay the appellate process. The court does not know which cases are being mediated, and mediation does not delay final consideration and decision by the court. The mediation is confidential and the circuit mediator does not make a report to the court. 11th Cir. R. 33-1(c)(3).

43. Ordinarily, there is a two-tier program that permits litigants to pursue simultaneously a resolution of their dispute by legal decision or by voluntary settlement. The settlement talks do not change the briefing schedule and time to decision unless all the participants agree to delay that process. *Id.* at 33-1(e); Irvine, *supra* note,* at 798.

44. If the mediation has an evaluative component, the conference is akin to neutral case evaluation. Civil Justice Reform Act of 1990, Pub. L. No. 101-650, § 103(a), 104 Stat. 5089 (codified as amended at 28 U.S.C. § 473(a)(6) (Supp. V 1993)).

45. Ex parte contact with counsel is not a concern because the mediator is not a fact-finder or decision-maker. Private caucuses with parties are an important tool of the mediator's trade.

46. Remember, the mediator only directs and assists the participants in reaching their own settlement.

47. In reality, many attorneys actually impede the settlement process and can snatch trial from the jaws of a settlement, or in the case of appellate mediation, snatch an adverse opinion from the jaws of settlement. See, e.g., McKinlay v. McKinlay, 648 So. 2d 806 (Fla. Dist. Ct. App. 1995) (claiming that attorney badgered and intimidated a party during a mediation).

48. Jacqueline M. Nolan-Haley, *Lawyers, Clients, and Mediation*, 73 Notre Dame L. Rev. 1369, 1370-71 (1998).

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The Board's Work

by **Mark A. Panitch**

Bar News Editor

Your Board of Governors heard major reports from the Discipline 2000 Task Force, Court Rules Committee, Future of the Legal Profession Study Group, Death Penalty Study Group, and the Professionalism Committee.

The Discipline 2000 Task Force, co-chaired by Supreme Court Justice **Charles W. Johnson** and President-elect **Richard Manning**, presented a report calling for important changes to the WSBA discipline system. Manning made the presentation with support from attorney **Kurt Bulmer**, and WSBA Office of Disciplinary Counsel Associate Director **Joy McLean** and Senior Disciplinary Counsel **Randy Beitel**.

Discipline Recommendations

Among the task force's major recommendations are:

- creating a small cadre of trained and compensated hearing officers organized and managed by a chief hearing officer. Hearing officers would have some previous judicial or similar experience, would receive additional training for their roles, and would be compensated based on the assumption that they would be able to spend 20-30 days a year in hearing-officer work without suffering serious economic hardship.
- reversing the current presumption to require Discipline Board members to leave the board while disputing a grievance.
- creating a diversion program similar to those used by many prosecutors' offices. Upon admitting and describing the misconduct under oath or penalty of perjury, an attorney accused of "less serious misconduct" could be referred to some combination of monitoring, education and treatment. Successful completion of the program would bar future discipline for a particular grievance. "Less serious misconduct" generally means an accusation which, if true, would not result in the restriction of a respondent lawyer's license to practice law.
- increasing efforts to make the discipline system more self-sustaining. For example, costs would be filed as judgments.
- allowing hearing officers to approve agreements for discipline.

- allowing members the option of permanent resignation instead of discipline.
- combining censure and reprimand in a single form of discipline, which would be delivered in writing rather than orally by the BOG.

Death-Penalty Study

Former WSBA Governor **Walt Krueger** spoke to the BOG about the inability to obtain a study of the death penalty in Washington, as previously authorized by the BOG. Although \$30,000 for the study had been in the Office of the Administrator for the Courts' (OAC) budget, that money was returned to the general fund by the OAC and the study was not done. Several governors argued that the death penalty was so heavily supported by the population that there was no point in discussing it.

However, other governors argued that whether the penalty was carried out fairly, and whether a convict was really guilty were

matters that many people were very concerned about. Governor **Victoria Vreeland** moved that the WSBA sponsor a study; the motion was defeated 3-7. After it was clarified that no WSBA direct funding would be used for the study, the motion for a study was renewed, and passed 9-1. Governor Vreeland urged the BOG to support a death-penalty moratorium while the study was underway. Her motion was defeated 3-7. The BOG then asked President **Jan Eric Peterson** and the study group to report back on the issue in six to eight months.

Pro Hac Vice Admissions

The governors noted that the WSBA has no record of attorneys admitted *pro hac vice* in various courts around the state, and the BOG agreed to ask the Supreme Court to create a rule requiring payment of a \$200 fee to the WSBA and registration as a *pro hac vice*.

Oath of Attorney: The Board of Governors approved a revised version of the Oath of Attorney to be submitted to the Supreme Court for adoption. The oath is prescribed by Admission to Practice Rule 5(b). Pursuant to General Rule 9, if the Supreme Court determines to consider the change, it will be published for comment at that time. As proposed by the Board of Governors, the oath would read:

Do you accept the invitation of the Supreme Court of Washington to practice before the courts of this State, and solemnly promise:

1. that you will uphold the laws and Constitutions of the United States and of the State of Washington and support the principles of constitutional government;
2. that you will support the independence of the judiciary and help sustain its independence by assuring that adequate provision is made for its support;
3. that you will sustain the rule of law and help realize the promise of liberty for all by assuring equal access to justice for all;
4. that you will undertake representation of the oppressed, the defenseless, the disempowered, and the just cause, without regard for considerations personal to yourself, to the end that you make justice manifest and society just;
5. that, as an Officer of the Court, you will maintain the respect due the Court, its officers, staff and all persons appearing before it;
6. that, as a member of this honorable profession, you will abide by the Rules of Professional Conduct, both in letter and spirit, always tell the truth, and never intentionally mislead by act or omission;
7. that you will faithfully represent your clients, maintain their confidences, and preserve as inviolate their communications, pursuing their just causes by only such means as are consistent with truth and honor;
8. that you will strive at all times to adhere to the highest standards of professional and personal conduct, to advance and improve the justice system, to act in all ways in service to your clients and your community, and by so doing, be proud to be a lawyer and become a source of pride to the profession?

The individual(s) taking the oath will respond: Yes. I will. [Should be repeated after each statement above.]

Do you now, without equivocation, affirm your sincere and solemn commitment to the fulfillment of all of these promises, knowing that by so doing you bring honor to yourself, the greater community, and your profession?

The individual(s) taking the oath will respond: Yes. I do.

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Creed of Professionalism

Attorney Harry McCarthy presented an aspirational statement of professionalism that starts with the words: "As a proud member of the legal profession practicing in the state of Washington, I endorse the following principles of civil professional conduct, intended to inspire and guide lawyers in the practice of law."

Governors spent more than an hour debating the meaning of a statement which is aspirational only, and which carries no weight in any forum. Several governors suggested that judges might post the creed on courtroom doors and impose the standards on attorneys practicing in their courts. This raised a response from other governors who responded that the creed was aspirational and voluntary.

Finally, the BOG adopted a slightly amended version of the creed with the addition at the bottom of the page of a state-

ment in small print that: "This creed is a statement of professional aspiration adopted by the Washington State Bar Association on July 27, 2001, and does not supplant or modify the Washington Rules of Professional Conduct." See the WSBA Web site at www.wsba.org/creed for the full text of the creed.

Other Matters

Governors hotly debated a report from the Future of the Legal Profession Study Group. The study group was divided on the issue of multidisciplinary practice (MDP) and was unable to reach a consensus on any recommendation to the BOG, either to change or not change the Rules of Professional Conduct prohibiting sharing of legal fees and control of law firms. Some governors argued that shared practice is the wave of the future and is inevitably coming regardless of what the BOG

does; however, other governors argued that shared practice would result in a loss of professional and economic independence for attorneys. Following a tie vote, and therefore no action, President Peterson noted his personal opposition to MDP.

In regard to multijurisdictional practice (MJP), the BOG — after spirited argument — agreed to send both the previously passed *pro hac vice* recommendation and a rule relating to MDP with Idaho and Oregon to the Rules of Professional Conduct Committee. The study group's report is available on the WSBA Web site at www.wsba.org/2001/future.

The next BOG meeting will be September 13-15 at the WSBA office in Seattle. The Annual Awards Dinner and Business Meeting will be September 13 at the W Seattle Hotel. To reserve your space at the dinner, please complete the reservation form below. ☞



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_____ beef tenderloin halibut vegan

_____ beef tenderloin halibut vegan

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 4, 2001. (Please note that refunds will not be made after September 4.)

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

Name as it appears on card _____

Signature _____

Please send to: **Washington State Bar Association**
Annual Awards Dinner
2101 Fourth Avenue, Fourth Floor
Seattle, WA 98121-2330

Phone: 206-733-5944; Fax: 206-727-8320

TOTAL \$ _____

Reciprocal Admission Between Washington, Idaho and Oregon

by Robert D. Welden • WSBA General Counsel

Has the prospect of taking another bar exam caused you to think twice about practicing law in another state? Do you have clients who have legal business in Idaho or Oregon that requires them to hire out-of-state counsel? Does the nature of your law practice transcend the political boundaries of state lines? If so, this may be for you.

Idaho and Oregon have now made it possible for Washington lawyers to be admitted in their states without passing their respective bar exams. This is the result of a two-year project by a tri-state study group initiated by **George Riemer**, general counsel of the Oregon State Bar and a member of the Washington State Bar. Washington representatives to the study group included WSBA Governor **Stephen J. Henderson**, Chair of the Committee of Law Examiners **Frank V. Slak Jr.**, and WSBA General Counsel **Robert D. Welden**.

Until recently, there were effectively only two ways a Washington lawyer could practice law in Idaho or Oregon. If the matter were in litigation, he could seek admission *pro hac vice*, i.e., associate in a particular case with a local lawyer who would be present at all proceedings. This form of limited admission is only available for lawyers handling matters in litigation; there is no comparable *pro hac vice* admission for a lawyer handling a multistate transactional matter. The only alternative was to take and pass the Idaho or Oregon bar exam. The same was true for an Idaho or Oregon lawyer wanting to handle a legal matter in Washington.

In 1999, Washington adopted a broad reciprocity admission rule. Now Idaho and Oregon have adopted reciprocal admission rules, limited to reciprocity between Washington, Idaho and Oregon. Idaho's rule will be effective October 1, 2001; Oregon's rule will be effective January 1, 2002. What does this mean for Washington lawyers who

**Oregon and Idaho
have now made it possible
for Washington lawyers to
be admitted in their states
without passing their
respective bar exams.**

want to practice law in Idaho or Oregon? Foremost, it means that it will be possible for Washington lawyers to become regularly admitted to practice in these states without taking the Idaho or Oregon bar examination. There are, however, other conditions that must be met:

- As with any applicant to any bar, the Washington lawyer must be of good moral character.
- To qualify for admission under the Idaho and Oregon rules, the applicant lawyer must have been admitted in Washington and practiced law in this state for a minimum of three years.
- The applicant lawyer must complete 15 hours of continuing legal education in the other state's practice, procedure and ethics. Idaho will require that this CLE be completed within six months of admission; Oregon will require completion of this CLE before admission.
- The applicant must be a graduate of an ABA-approved law school, which means that Washington lawyers who qualified for our bar exam through the Law Clerk Program will not qualify for reciprocal admission in these two states.
- The applicant must have passed the Washington, Idaho or Oregon bar exam, which means that a lawyer who is reciprocally admitted in Washington from some other state without taking the Washington bar exam will not qualify for reciprocal admission in Idaho or Oregon.
- Oregon, which is the only state with a mandatory malpractice insurance rule, will

require reciprocal admittees to comply with that rule.

Any lawyer who becomes admitted in more than one state will be subject to the Rules of Professional Conduct or their equivalent in each state. Disciplinary action taken in one state may result in similar or reciprocal discipline in any other state in which the lawyer is admitted.

Washington lawyers with questions about reciprocal admission in these other states should contact Idaho or Oregon for further information. For Idaho, call 208-334-4500 (ask for the admissions administrator or for Executive Director Diane Minnich). The Idaho rule is also posted on the Idaho State Bar Web site at <http://www.state.id.us/isb>. For Oregon, call General Counsel George Riemer at 503-431-6405.

Reciprocal admission is one aspect of a broader issue which is currently being studied by the WSBA, as well as by many other states and the ABA — multijurisdictional practice. Many persons advocate for a change in the restrictions on lawyers practicing across state lines. The WSBA Future of the Legal Profession Study Group has spent the last year studying this issue as well as issues of multidisciplinary practice. Their recommendations, submitted to the Board of Governors in July, generally support the multijurisdictional practice rule changes in the ABA Model Rules of Professional Conduct that will be submitted to the House of Delegates in August to provide "safe harbors" for certain types of interstate practice. They also propose similar amendments to Washington's Admission to Practice Rules and the Rules of Professional Conduct. This debate likely will continue for the foreseeable future, and interested lawyers should watch *Bar News* and the WSBA Web site (www.wsba.org) for further developments. ♣

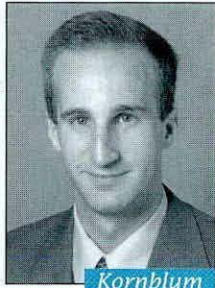
Changing Venues

Honors and Awards

The Washington Association of Criminal Defense Lawyers (WACDL) recently presented awards to 15 Washington lawyers. **Richard A. Hansen** received the William O. Douglas Award in recognition of his courage and dedication to the practice of criminal law. Mr. Hansen was the founding president of WACDL from 1987 to 1989. **L. Daniel Fessler**, **Neil Fox** and **Jon C. Komorowski** received the President's Award for distinguished service to the criminal defense bar. The Champion of Justice Award was presented to Washington Supreme Court Justice **Richard B. Sanders**. The award recognizes individuals who, through legislative, judicial, journalistic or humanitarian pursuits, have staunchly preserved or defended the constitutional rights of Washington residents,



Hirokawa

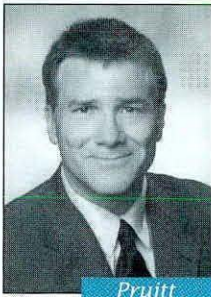


Kornblum

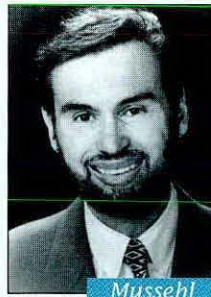
and endeavored to ensure justice and due process for those accused of crimes. Certificates of Appreciation were presented to the following members: **Jill S. Bernstein**, **Catherine A. Chaney**, **Alison K. Chinn**, **David S. Marshall**, **Sheryl Gordon McCloud**, **Mark W. Muenster**, **Jennifer Shaw**, **Nancy L. Talner**, **Brett C. Trowbridge** and **Robert J. Wayne**.

Seattle lawyer **Irwin H. Schwartz** has been elected president of the National Association of Criminal Defense Lawyers for the 2001-2002 term. Mr. Schwartz is a past president of the Washington Association of Criminal Defense Lawyers and the Federal Bar Association of the Western District of Washington.

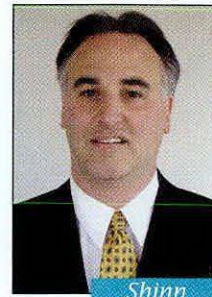
Charles J. "Chuck" Pruitt, a partner in the Portland office of Lane Powell Spears Lubersky LLP, has completed the Oregon Executive MBA program and been awarded an MBA from the University of Oregon. Mr. Pruitt provides legal counsel to clients in Washington and Oregon on general business, corporate, real estate and litigation matters.



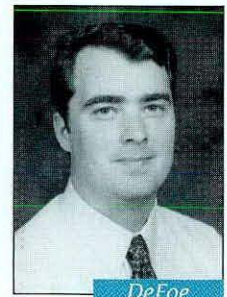
Pruitt



Mussehl



Shinn



DeFoe

Lawrence C. Watters was selected as a Fulbright Scholar in environmental law by the Council for the International Exchange of Scholars for 2001-2002 in Norway.

Jerome L. Rubin has been named a fellow in the National College of Labor and Employment Lawyers. The college includes leading lawyers in the practice of labor and employment law, with a select membership of 500 attorneys nationwide. Mr. Rubin is



Caron



Kilbane

the senior principal in the labor and employment practice group at the Seattle office of Stoel Rives LLP.

J. David Andrews has received an award of honor from Legal Aid for Washington (LAW) Fund for nine years of service to the board of LAW Fund. Mr. Andrews was president from 1996 to 1998.

Charles Bates has been appointed to the board of directors of the Olympia Symphony Orchestra.

Joseph P. Mentor Jr. has been selected by the American Water Resources Association (AWRA) to present a paper and participate in a panel discussion at the AWRA conference "Globalization and Water Management: The Changing Value of Water." Mr. Mentor is the founder of Mentor Law Group in Seattle, a firm focused on water rights, land use and natural resource development, and fish and wildlife concerns.

Seattle lawyer **Robert C. Mussehl** has been appointed by the chair of the American Bar Association (ABA) Dispute Resolution Section to chair a task force to draft new ABA policy concerning mandatory consumer arbitration. The task force will develop a due-process protocol to help level the playing field between consumers and providers of goods or services.

Mike F. Shinn has been inducted into the Willamette University (WU) Athletic Hall of Fame for his contribution to the nationally ranked 1979 WU cross-country team. Mr. Shinn practices real estate, media and communication, probate and estate planning law with the Yakima firm Halverson Applegate PS.

Movers and Shakers

Brian B. DeFoe has joined the Seattle office of Lane Powell Spears Lubersky LLP

In Memoriam

Former Washington Supreme Court Chief Justice **William H. Williams** passed away July 25 at age 79 in his hometown of Spokane. Justice Williams served on the Supreme Court from January 1979 to January 1985, becoming chief justice in 1983. Prior to his election to the Court, he served more than 20 years on the Spokane County Superior Court bench from 1958 to 1979.

Justice Williams was raised in Spokane and attended the University of Idaho. An outstanding collegiate boxer, he won the Pacific Coast Intercollegiate Boxing Championship prior to WWII. His undergraduate studies were interrupted by the war when he enlisted in the U.S. Army Air Corps, where he flew 26 combat missions over Germany as a B-24 pilot. After the war, he resumed his studies at the University of Idaho and then attended Gonzaga University School of Law.

as an associate, concentrating on corporate finance and securities.

Keith H. Hirokawa has joined the Vancouver Law Office of John S. Karpinski as an associate. His practice emphasizes plaintiff land use and environmental law.

Marc Rosenberg has joined the Seattle firm Lee Smart Cook Martin & Patterson PS as an associate focusing on civil defense litigation.

Aaron E. Kornblum has joined the Seattle firm Graham & Dunn as an associate. He is part of the firm's banking and financial institutions team.

Gideon D. Caron has left the Vancouver firm Morse & Bratt to become a solo practitioner. He remains of counsel to the firm. Mr. Caron's practice emphasizes civil litigation.

Charles Bates has been appointed to the board of directors of TransAlta USA and TransAlta Investments LLC. He manages human resources for the U.S. operations of TransAlta, a Calgary-based power generation company.

Ater Wynne LLP has re-appointed **Thomas M. Kilbane** principal-in-charge of the Seattle office. He has also been re-elected to the firm's management committee. Mr. Kilbane's practice focuses on corporate and regulatory issues in industries ranging from oil to high technology.

Michael S. Kelley has joined the Seattle firm Preston Gates & Ellis LLP as a partner, concentrating on state and local tax law. Mr. Kelley is also a faculty member in the UW graduate tax program, where he teaches state and local taxation.

The Seattle office of Bullivant Houser Bailey PLLC has added **Charles A. Willmes** to the general litigation practice group as an associate. **Joseph J. Straus** has joined the firm as of counsel, focusing on commercial litigation.

Paul L. Sherfey has been selected chief administrative officer of King County Superior Court. He has served the court since 1984, first as deputy director of judicial administration, then as director of judicial administration and county clerk.

Paul C. Dempsey has joined the Yakima firm Halverson Applegate PS as an associate. His practice includes employment and labor law, water rights, and general corporate issues.

Susan K. McIntosh has joined the Se-



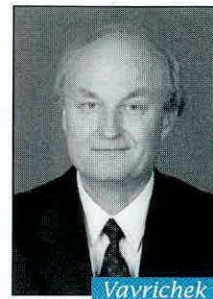
Dempsey



Coble



Holliday



Vavrichek

attle firm Bennett Bigelow & Leedom as an associate. Her practice is focused on litigation in the areas of health-care fraud and abuse, and reimbursement.

Mark Richard Hennings and **Paul Nickolauson** have joined the Seattle office of Merchant & Gould as associates. Mr. Hennings concentrates on patent prosecution in computer and Internet-related technologies, semiconductors, telecommunications and cryptography. Mr. Nickolauson focuses on patent applications in the fields of software, electronics, semiconductor processing, business methods, electronic commerce, digital systems and optics.

The Tacoma office of Gordon, Thomas, Honeywell, Malanca, Peterson & Daheim PLLC has welcomed **Gary E. Hood** back as a senior associate. Mr. Hood's practice emphasizes intellectual property counseling and advocacy, as well as criminal law representation.

Kathleen Coble and **Alesia M. Holliday** (a member of the Florida and Ohio state bars) have joined the Seattle office of Wil-

liams, Kastner & Gibbs PLLC as associates. Ms. Coble represents clients in complex litigation matters in federal and state courts, including claims relating to commercial contracts, intellectual property, products liability, insurance coverage, and labor and employment matters. Ms. Holliday's practice emphasizes personal injury litigation, national class-action defense, and products liability defense litigation. **Wayne C. Vavrichek** has joined the firm as of counsel. He concentrates on personal injury, insurance coverage, products liability, professional negligence, and environmental and construction issues.

Robert A. Baskerville has left Davis Wright Tremaine to start a solo practice focusing on business law and mediation. Mr. Baskerville was a partner at DWT, where he practiced for 17 years.

Zulema Hinojos-Fall, former deputy King County prosecutor and senior trial attorney at the Equal Employment Opportunity Commission (EEOC), has been appointed EEOC administrative judge. ♪

Don't let an appeal catch you off balance.

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



JOHN P. MELE

LAWYERS

RYAN, SWANSON & CLEVELAND, PLLC

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Seattle, WA 98101-3034

Telephone (206) 464-4224 / Facsimile (206) 583-0359

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Washington State Bar Association

2001 Annual Report

Board of Governors

Left to right, front row:

Daryl L. Graves, District 9
 Stephen T. Osborne, District 4
 Jan Eric Peterson, President
 Dale L. Carlisle, President-elect
 Kenneth H. Davidson, District 1

Left to right, back row:

James E. Deno, District 2
 Victoria L. Vreeland, District 8
 William D. Hyslop, District 5
 Jenny A. Durkan, District 7-East
 Lindsay T. Thompson, District 7
 S. Brooke Taylor, District 6
 Stephen J. Henderson, District 3
 Lucy Isaki, District 7-West



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Stew Cogan
 Amicus Brief, Bertha B. Fitzer
 Character and Fitness, David Boerner
 Civil Rights, J. Gary Nece
 Consumer Protection, Mark A. Clausen
 Continuing Legal Education
 Kurt Lichtenberg
 Corrections, Christopher S. Tait
 Court Improvement, James (Kirk) Johns
 Court Rules and Procedures
 David W. Savage
 Disciplinary Board, Stephen C. Smith
 Committee for Diversity
 Bonnie J. Glenn and Rafael A. Gonzales
 Editorial Advisory Board, Jerry R. Kimball
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 Interprofessional, Gail M. Lundgren
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 Law Clerk, John Acheson
 Law Examiners, Frank V. Slak Jr.
 Law Office Management Assistance
 Program, David D. Gordon
 Lawyers' Assistance Program
 Joseph Nappi Jr.

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 Legal Assistants
 Edward Gerald (Ted) Maloney
 Legal Services to the Armed Forces
 Philip K. Safar
 Legislative, Keith G. Baldwin
 Pro Bono and Legal Aid
 Christine Allen Crowell
 Professionalism, Harry J. McCarthy
 Resolutions, John M. Riley
 Rules of Professional Conduct
 Zachary Mosner
 State Board of Continuing Legal
 Education, Virginia Tee

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 Business Practices, Susan E. Foster
 Business Law, Donald K. (Kit) Querna
 Corporate Law Department
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 Creditor/Debtor, Richard J. Hyatt
 Criminal Law, William A. Bowman
 (2000); James A. Hershey (2001)

Dispute Resolution, Mary C. Barrett
 Elder Law, Michael J. Longyear
 Environmental and Land Use
 Kathryn L. Gerla
 Family Law, Cheryl D. Russell
 General Practice, Gregory S. Morrison
 Health Law, Randi S. Nathanson
 Indian Law, Sarah Colleen Sotomish
 Intellectual Property, Paul D. Swanson
 International Practice, Adam G.S. Chanak
 Labor and Employment Law
 Thomas T. Bassett and Michael B.
 Harrington
 Law Practice Management & Technology
 Mark L. Wheeler
 Litigation, Steven F. Fitzer
 Public Procurement & Private
 Construction, Kenneth G. Yalowitz
 Real Property, Probate & Trust
 Serena S. Carlsen
 Senior Lawyers, Kenneth J. Selander
 Taxation Law, Paul D. Fitzpatrick
 World Peace Through Law
 Paul A. Schlossman
 Young Lawyers Division
 Thomas P. Quinlan (President)

The Year in Review

by Jan Eric Peterson and Jan Michels

"Proud to Be a Lawyer," "Proud of the Profession," and "Proud of the WSBA" reflect 2000-2001. It was a year of significant accomplishments and seminal developments, as we continued to be guided by our Long-Range Strategic Plan. Members can be proud of themselves as lawyers, proud of their profession, and proud of the WSBA.

Proud to Be a Lawyer

The WSBA Web site (www.wsba.org) featured tributes to significant lawyers of history and our times. The Board of Governors honored local heroes in conjunction with BOG meetings. The positioning statement "Working Together to Champion Justice" was adopted, describing our mission as the high calling of protecting and furthering the justice imperative.

Working with the Washington State Supreme Court and the UW School of Law, we posthumously admitted Takuji Yamashita, the first Japanese-American to graduate from the University of Washington School of Law (class of 1902), who, because of regressive immigration laws, could not be admitted in his lifetime.

In the interest of justice, the WSBA supported reassessment of drug laws, reform of juror compensation and procedures, re-examination of the effect of an apology, and renewed emphasis on truthfulness in the practice of law.

Proud of the Profession

The Board of Governors adopted a Creed of Professionalism – an aspirational guide for civil and professional conduct in the practice of law. The creed will be promulgated throughout the Bar.

Recognizing that certain segments of members are underrepresented in board leadership, the Board of Governors developed two additional governor positions to be applied for by members who believe they would bring diversity to the board. Diversity is defined in the WSBA Bylaws and includes practice type, ethnicity, sexual orientation, age or any other element in which there are differences among members.

The Legislative Committee and legislative advocates were successful in securing passage of five substantive changes to the law in the areas of trusts, family law and the commercial code. The WSBA worked in

cooperation with the courts and the Board for Judicial Administration to achieve a proposed constitutional amendment to allow portability of judges. And the WSBA worked cooperatively with the Access to Justice Board and legal services community to assure continued state funding for civil legal services.

Working with the Young Lawyers Division, the WSBA developed a series of programs to better support new lawyers and help bridge the gap between law school and the "real life" practice of law. These programs include: "Lawyer-to-Lawyer," which provides the opportunity for a new lawyer to develop a relationship with an experienced lawyer in his or her area of practice, where both can learn from one another; a more structured first-year practicum to enhance the professional development of new lawyers; and a revised oath and admission ceremony to better reflect our noble profession.

We made great strides in furthering our goal of broadening public knowledge about the law and the role of lawyers in the legal system. Impressive growth in the Law Week program brought nearly 600 lawyers and judges together with approximately 20,000 students in 30 counties. *The Law Book*, a 12-page supplement to King County Journal Newspapers, reached more than 140,000 readers, providing practical information about various aspects of the law. A joint project with KING-5 Television, "Legally Speaking," features lawyers educating citizens about their legal rights and responsibilities, twice a week during news broadcasts.

There was powerful growth in the justice programs of Access to Justice (ATJ) and Public Legal Education (PLE). ATJ secured grant funds to develop a "Technology Bill of Rights," so that no one's justice is bypassed for want of technology or technology sophistication. PLE established a Web site (www.wsba.org/ple) that offers a vast array of resource materials. The PLE Council has the ambitious goal of having everyone understand the principals of separation of power; one person, one vote; and legal rights/due process; and has launched an educational program to achieve it.

Proud of the WSBA

For more than a year, the WSBA has been processing grievances within the established aspirational timelines – 80 percent in under three months. All regulatory services have been streamlined and consolidated to provide nearly error-free license renewals,

MCLE tracking, and admission procedures.

The WSBA worked with Oregon and Idaho to implement tri-state reciprocity by 2002. The three states are now considering ways to develop tri-state practice for both court appearances and non-court practice of law. The Future of the Legal Profession Study Group worked all year to develop a report to the board. The report recommends some changes in the RPCs to allow more multi-jurisdictional practice, but the divided study group did not recommend any changes in the rules to allow what has become known as multidisciplinary practice (or MDP).

The WSBA has worked with the Supreme Court to define the practice of law. The Court approved the creation of a Practice of Law Board to sort through the issues of who can provide legal services, and how the public should be both assisted and protected.

Many concrete member services and benefits were implemented, including the addition of an addiction counselor in the Lawyers' Assistance Program (LAP); broadcast e-mail for efficient and inexpensive communication with members; a Law Office Management "Road Show" that brought practical technology and business advice to 300 members in 15 cities throughout the state, and CLE credits close to home; and more than 110 courses and presentations made by the WSBA-CLE Department and other professional staff.

The Rules for Lawyer Discipline (RLDs) were thoroughly reviewed as to substance and structure in the past year by a joint task force of the Supreme Court and the WSBA.

The WSBA has been fiscally responsible to members and will achieve the return to an eight percent reserve by 2003, as promised in the 2001-2003 license fee plan.

The Long-Range Strategic Plan Remains the Steady Rudder

The Board of Governors remains committed to listening to members and continues to hold "listening sessions" throughout the state. Members' advice and desires are incorporated into the plan at each annual planning retreat, and at each board meeting one or two of the strategic goals are discussed and progress assessed. With this beacon to guide us, progress can be measured. We can report with confidence that the past year was productive and responsible for members, the profession and the Association.

Note: See the WSBA Web site at www.wsba.org/annual-report for more information.

Financial Highlights for Fiscal Year 2000

The Washington State Bar Association ended the fiscal year (October 1, 1999 through September 30, 2000) on target with its budget. The budget provided for a loss in order to use some of the net assets accumulated in previous years before requiring an increase in member license fees or other sources of revenues. We received an unqualified opinion on our financial statements from our auditors.

The WSBA has a strategic goal to be fiscally responsible – to be accountable to our members and the public, and to use our resources wisely in ways that accomplish our mission. In order to maintain a sound reserve, as recommended by our auditors, member license fees required to fund the WSBA's activities in the future were forecasted and set in 1999.

Financial Results

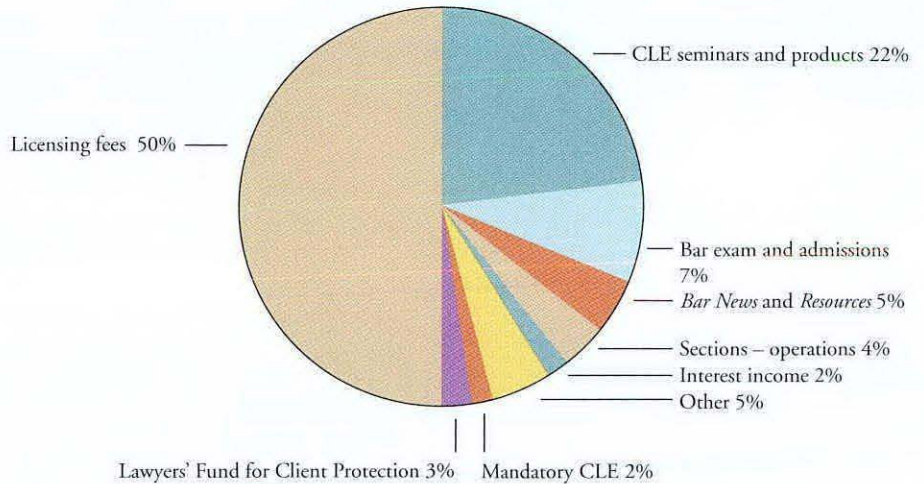
The net loss for fiscal year 2000 of \$341,106 was less than the budgeted target of \$689,866. About \$473,000 of this amount reduced the general fund net assets, as anticipated in the budget. The general fund net assets at year end of about \$825,000 are nine (9) percent of general fund operating expenses, above the target of eight (8) percent.

CLE programs and products had a loss of \$50,407, less than the budgeted loss of \$123,968. This loss was fully funded by CLE net assets built up in previous years. Providing CLE opportunities for members is self-funded by seminar registration fees, sales of deskbooks, etc. The remaining CLE net assets are about \$451,000. No member license fees were used to support CLE activities.

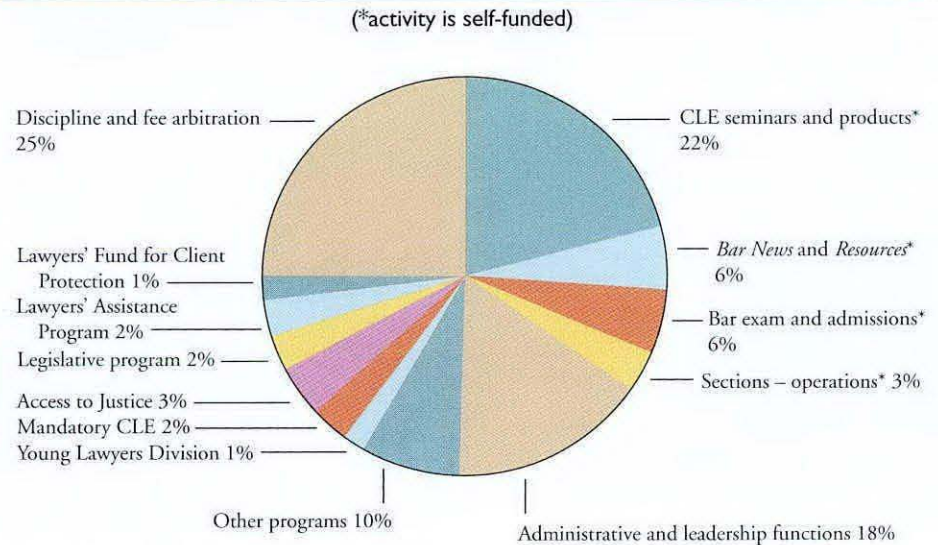
The WSBA's 23 sections ended the fiscal year with a combined net profit of \$14,667, increasing their combined fund balance to \$564,000. Sections are a voluntary activity for WSBA members and are fully self-supporting through section dues and fees for section products or services. No member license fees were used for section activities, and all net income from sections is carried forward in each section's net assets for use by that section in future years.

The Lawyers' Fund for Client Protection had net income of \$167,000, which is avail-

Percentage of 2000 Revenues Collected from Various Sources



Percentage of 1999 Expenses Used by Activity



able for use in future years.

The revenue chart shows the percentage of revenues collected from various sources.

The expenses chart shows the percentage of total expenses used for each regulatory activity and member service we perform. Regulatory activities such as discipline and fee arbitration, random audits of trust accounts, mandatory continuing legal education administration, member licensing, office administration, and leadership activities are funded by member license fees. The

chart identifies major programs that are entirely or substantially self-funded, including CLE seminars and products, *Bar News* and the *Resources* directory, the bar exam and admissions, and section activities.

The statement of activities lists revenues and expenses by program.

A complete copy of the audited financial statements and auditor's report is on the WSBA Web site at www.wsba.org/finances. If you would like a copy mailed to you, please contact Pat Dieken at patd@wsba.org or 206-727-8241.

Statements of Activities

	Year ended September 30, 2000			Year ended September 30, 1999		
	Revenues	Expenses	Revenues over (under) expenses	Revenues	Expenses	Revenues over (under) expenses
Unrestricted						
Licensing fees	\$ 6,219,674	\$ —	\$ 6,219,674	\$ 5,820,922	\$ —	\$ 5,820,922
Access to Justice	22,048	316,713	(294,665)	50,611	335,712	(285,101)
Administration	199,044	1,431,080	(1,232,036)	201,053	1,151,514	(950,461)
Bar examination and admissions	834,338	695,518	138,820	779,374	666,351	113,023
Audits (random and for cause)	—	118,797	(118,797)	—	123,168	(123,168)
<i>Bar News</i>	474,900	609,390	(134,490)	458,206	644,297	(186,091)
Communications	13,463	272,972	(259,509)	33,254	302,441	(269,187)
Convention	231,286	288,013	(56,727)	—	15,998	(15,998)
Court rules	—	14,589	(14,589)	—	31,589	(31,589)
Discipline	66,545	3,080,220	(3,013,675)	76,086	2,804,250	(2,728,164)
Fee arbitration	—	57,897	(57,897)	5,850	60,299	(54,449)
Lawyers' Assistance Program	31,602	303,846	(272,244)	25,310	271,026	(245,716)
Lawyers' practice assistance program	20,702	143,004	(122,302)	16,096	211,534	(195,438)
Leadership	—	334,418	(334,418)	11,100	451,289	(440,189)
Legislative	—	213,964	(213,964)	—	214,459	(214,459)
Local bar support	—	88,017	(88,017)	1,479	21,498	(20,019)
Mandatory continuing legal education	238,496	188,629	49,867	194,908	144,783	50,125
Membership records	50,967	524,611	(473,644)	47,703	448,429	(400,726)
Professional responsibility program	—	94,683	(94,683)	—	65,140	(65,140)
Public Legal Education	—	87,778	(87,778)	—	26,967	(26,967)
<i>Resources</i> directory	132,216	63,356	68,860	130,487	58,253	72,234
Sections – administration	159,864	121,372	38,492	153,968	132,283	21,685
Young Lawyers Division	19,545	132,479	(112,934)	25,090	134,255	(109,165)
Other	4,720	10,782	(6,062)	—	—	—
Unrestricted – General	<u>8,719,410</u>	<u>9,192,128</u>	<u>(472,718)</u>	<u>8,031,497</u>	<u>8,315,535</u>	<u>(284,038)</u>
Unrestricted – sections operations	<u>433,549</u>	<u>418,882</u>	<u>14,667</u>	<u>375,815</u>	<u>365,255</u>	<u>10,560</u>
Continuing Legal Education – publications	<u>732,742</u>	<u>667,687</u>	<u>65,055</u>	<u>624,727</u>	<u>635,207</u>	<u>(10,480)</u>
Continuing Legal Education – seminars	<u>1,912,120</u>	<u>2,027,582</u>	<u>(115,462)</u>	<u>1,799,480</u>	<u>1,895,252</u>	<u>(95,772)</u>
Unrestricted – Continuing Legal Education	<u>2,644,862</u>	<u>2,695,269</u>	<u>(50,407)</u>	<u>2,424,207</u>	<u>2,530,459</u>	<u>(106,252)</u>
Total unrestricted	<u>11,797,821</u>	<u>12,306,279</u>	<u>508,458</u>	<u>10,831,519</u>	<u>11,211,249</u>	<u>(379,730)</u>
Restricted						
Lawyers' Fund for Client Protection	<u>313,354</u>	<u>146,002</u>	<u>167,352</u>	<u>229,553</u>	<u>150,646</u>	<u>78,907</u>
Total	<u>\$12,111,175</u>	<u>\$12,452,281</u>	<u>\$(341,106)</u>	<u>\$11,061,072</u>	<u>\$11,361,895</u>	<u>\$(300,823)</u>

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.

Disbarred

Thomas G. Batson (WSBA No. 20888, admitted 1991), of Seattle, has been disbarred by order of the Supreme Court effective May 31, 2001, following a stipulation. The discipline is based upon his admission that the Bar Association could prove that he knowingly converted client funds from his trust account in 2000.

Between January and August 2000, Mr. Batson removed \$49,314.40 from his trust account. These funds, which did not belong to Mr. Batson, were paid to himself and others for office expenses. Between February 4 and April 10, 2000, Mr. Batson failed to disburse a client's share of settlement proceeds, telling the client that the funds had not been received. When the client found out that Mr. Batson had the funds, and then confronted him, Mr. Batson wrote him a check that was not supported by sufficient funds. Later, the client did receive the funds. Mr. Batson did not admit the allegations in the stipulation, but agreed that if the case proceeded to hearing, the Bar Association would be able to prove the allegations.

Mr. Batson's conduct violated RPCs 1.14, requiring lawyers to preserve the identity of client funds; and 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation.

Joy McLean represented the Bar Association. Kurt Bulmer represented Mr. Batson.

Disbarred

John C. Beckwith (WSBA No. 8083, admitted 1978), of Seattle, has been disbarred by order of the Supreme Court effective January 22, 2001, following a default hearing. The discipline is based upon his use of client funds to make personal investments in 1998.

In 1986, Mr. Beckwith drafted a client's

will. The will established a testamentary trust. The will also provided a \$1,000 testamentary gift to Mr. Beckwith's wife and \$500 to his daughter. The client died in September 1986. Following probate, Mr. Beckwith transferred the estate's \$387,000 in assets into the trust. In May 1988, the trustee became ill and Mr. Beckwith was appointed successor trustee. On January 6, 1990, the client's last living sibling died. The trust directed that the trustee should distribute the remaining assets to charities he believed the client would favor.

In March 1998, a firm bookkeeper discovered a February 1998 bank statement for the client's trust account. The statement included cancelled checks for Mr. Beckwith's personal dry cleaning, shopping, grocery, utility and credit-card expenses. Upon this discovery Mr. Beckwith's partner suggested that he self-report to the Bar Association. Mr. Beckwith contacted the Bar Association on March 26, 1998 and asked about resigning. He told the licensing supervisor that he was thinking of leaving the country.

On March 27, 1998, Mr. Beckwith signed the resignation form at the Bar Association office; however, the Bar Association's general counsel did not accept the resignation. On March 31, the Office of Disciplinary Counsel subpoenaed Mr. Beckwith to appear, provide testimony, and produce records regarding this client's estate. On April 6, Mr. Beckwith wrote a letter to disciplinary counsel stating that he no longer considered himself subject to Bar Association jurisdiction and that he was invoking his Fifth Amendment right against self-incrimination in declining to comply with the subpoena. Mr. Beckwith did not attend the deposition.

In May 1998, the attorney general's office received a preliminary injunction prohibiting any transfers or disposition of any trust assets and appointing a special master. Mr. Beckwith refused to cooperate with the investigation. The special master found that Mr. Beckwith used the trust funds to make high-risk investments and commingled his personal funds with the trust funds. The special master also found that on December 1, 1989, Mr. Beckwith, as trustee of the trust, loaned \$20,000 in trust funds to developers of a condominium project on Bainbridge Island. The loan was

secured by the undeveloped real property and memorialized by a note and profit-sharing agreement.

In late 1992, Mr. Beckwith and a friend purchased the note and profit-sharing agreement for \$20,000. On January 21, 1993, Mr. Beckwith assigned the note to himself personally and to his friend. Mr. Beckwith and his friend then exchanged their note for an interest in a real-estate development partnership. They may have added an additional \$10,000 of their own funds to this investment. On January 22, 1999, the court appointed a receiver for the trust funds. In March 2000, Mr. Beckwith and his friend each received \$84,668 from the real-estate investment. The profit was not returned to the trust.

Mr. Beckwith's conduct violated RPCs 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; 8.4(c), prohibiting engaging in conduct prejudicial to the administration of justice; 1.8(c), prohibiting preparing an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee; and RLD 2.8, requiring lawyers to cooperate with discipline investigations.

Kevin Bank represented the Bar Association. Mr. Beckwith represented himself. The hearing officer was Jack Cullen.

Disbarred

Scott A. Everard (WSBA No. 20218, admitted 1990), of Spokane, has been disbarred by order of the Supreme Court effective December 12, 2000, following a default hearing. The discipline is based upon his failure to diligently represent and adequately communicate with three clients, failure to properly handle client funds, and failure to cooperate with disciplinary counsel's reasonable requests for information from 1994 through 1997.

Matter 1: Mr. Everard agreed to represent a client injured in a 1992 automobile accident. In spring 1994, Mr. Everard made a demand for underinsured motorist coverage. In August 1994, Mr. Everard obtained a \$10,000 PIP payment for his client. He sent this check to the client in February 1995. The claim was never resolved

because the insurance adjuster was not able to contact Mr. Everard. The adjuster tried to contact Mr. Everard several times by letter and telephone between November 1994 and August 1996 but received no response. The client also tried to contact Mr. Everard between February 1995 and April 1996 but received no response.

In June 1994, the client asked Mr. Everard to pursue a dental malpractice claim. The dentist had left a paper tooth in the client's mouth during a root canal, causing swelling and pain. The client believed that Mr. Everard had agreed to pursue this claim; however, Mr. Everard took no action on this claim. After February 1995, the client was not able to contact Mr. Everard.

On June 8, 1995, the client filed a grievance against Mr. Everard, asking the Office of Disciplinary Counsel to assist him in contacting Mr. Everard. Disciplinary counsel wrote to Mr. Everard in July, August and September 1995, but received no response. On April 16, 1996, the client terminated Mr. Everard's services and requested that he make a copy of the client's file available on April 19. On that date, the client went to Mr. Everard's office and found a note taped to the door stating that Mr. Everard did not have time to make copies of the client's file and that he could have his original pictures back if he paid for them in advance. The client then asked the Office of Disciplinary Counsel to assist him in getting his file. Despite several attempts by the client and the Office of Disciplinary Counsel, Mr. Everard did not release the client's file until March 1997.

Matter 2: Mr. Everard agreed to represent a client injured in a 1991 automobile accident. The case proceeded to mandatory arbitration in August 1995. At the hearing, Mr. Everard was sanctioned \$750 for failing to file a timely arbitration brief. He paid the sanctions with a check that was returned due to insufficient funds. The arbitrator awarded Mr. Everard's client \$6,294.50. Mr. Everard told the client that she had a year to appeal the arbitration award and that he would file an appeal if he could not negotiate a settlement for more than the arbitration award. Mr. Everard did not negotiate a higher amount, appeal the arbitration award, or collect the arbitration award.

In September 1995, the client saw Mr. Everard in a nightclub. He told her that he had a \$10,000 check waiting for her at his office, and to call him the next day to arrange to pick it up. The client called Mr. Everard several times between September 1995 and July 1996, but was not able to contact him. In mid-July, the client retained substitute counsel, who was not able to contact Mr. Everard and learned the status of the case from opposing counsel. Opposing counsel indicated that he would not disburse the arbitration award without a substitution of counsel signed by Mr. Everard.

On July 22, 1996, the client sent a certified letter to Mr. Everard indicating that she had retained substitute counsel. The letter was returned unclaimed. Substitute counsel called Mr. Everard several times between August and October 1996, until the phone message stated that the party (Mr. Everard) would not accept incoming calls from substitute counsel's number. Substitute counsel filed a motion for an order substituting counsel. At the hearing, the judge directed that notice again be sent to Mr. Everard's business address. On the morning of the second hearing, Mr. Everard delivered the client file and signed the substitution.

Matter 3: In March 1997, Mr. Everard agreed to defend a client against charges of driving under the influence and with a suspended license. The client's case was in Whatcom County and Mr. Everard was in Spokane County. Mr. Everard told the client that he would send paperwork after the client sent him \$1,000. On March 29, 1996, the client paid Mr. Everard a \$1,000 cashier's check. Approximately two days prior to the hearing, Mr. Everard contacted the client, said he would put the paperwork in the mail, and told the client to attend the arraignment himself and plead not guilty. The client appeared without counsel at the arraignment and pleaded not guilty. The client did not receive any paperwork from Mr. Everard prior to the May 23 pretrial conference date. The client called Mr. Everard several times, but received no response.

On May 20, 1996, Mr. Everard called the client and indicated that he would ask the court for a continuance. On May 21 and 22, Mr. Everard told the prosecuting

attorney he would be faxing a notice of appearance and sending the paperwork necessary for a continuance. Mr. Everard did not fax a notice of appearance or send any continuance documentation. The client called the court and found that Mr. Everard had not appeared or continued the conference. The client retained new counsel to appear at the pretrial conference.

On May 24, 1996, the client sent Mr. Everard a letter demanding refund of his \$1,000 within 10 days. In late July or August 1996, Mr. Everard called the client, stating that he had done some work on the case and should be paid for his work. Later, Mr. Everard agreed to refund \$700, but did not send this amount to the client.

In April 1997, Mr. Everard told the Office of Disciplinary Counsel that he had sent a \$1,000 money order to the client and his new lawyer. His letter to disciplinary counsel included a copy of the money order. In October 1997, the client and lawyer indicated they had not received the money order. Mr. Everard then sent a money order dated October 31, 1997.

Matter 4: In June 1995, The Office of Disciplinary Counsel (ODC) sent Mr. Everard a letter suggesting that he contact his client. He did not contact the client within a reasonable time. ODC made several informal attempts to obtain a copy of the client's file. Although Mr. Everard promised to provide a copy of the file if the client paid the copying charge, neither the client nor ODC was able to contact Mr. Everard to obtain the copies and determine the cost. ODC sent Mr. Everard a request for a response to the client's grievance, but Mr. Everard did not respond to this request. Mr. Everard did not claim the certified letter from ODC informing him that if he did not respond within 10 days he would be liable for the costs of his deposition.

Mr. Everard's conduct violated RPCs 1.3, requiring lawyers to diligently represent their clients; 1.4, requiring lawyers to promptly comply with clients' reasonable requests for information about their matters; 1.14(b)(4), requiring lawyers to promptly deliver client funds upon request; 1.15(d), requiring lawyers to take reasonable steps to protect clients' interests upon withdrawal from representation; 8.4(d), prohibiting conduct prejudicial to the ad-

ministration of justice; 1.5, requiring lawyers' fees to be reasonable; and RLD 2.8, requiring lawyers to promptly and reasonably respond to disciplinary counsel's requests for information in disciplinary investigations.

Leslie Allen represented the Bar Association. Frank Conklin and Mr. Everard acted as co-counsel. The hearing officer was Timothy Esser.

Disbarred

C. Allen Grider (WSBA No. 16927, admitted 1987), of Clarkston, has been disbarred by order of the Supreme Court effective May 31, 2001, following a stipulation. The discipline is based upon his failing to preserve client funds and entering into an unfair business transaction with a client from 1998 through 2000.

Matter 1: In 1998, Mr. Grider agreed to represent a client whose husband had been killed in an automobile accident. Mr. Grider did not have a written fee agreement with the client. The court appointed the wife as personal representative of the husband's estate and also appointed a guardian ad litem (GAL) for the two children. On August 4, 1998, the insurance company issued two \$77,827.59 checks, one for each child. The GAL endorsed the checks and Mr. Grider deposited them into his IOLTA trust account. On August 11, Mr. Grider withdrew \$100,000 and purchased a three-month certificate of deposit in the name of "C. Alan Grider ITF and [child's name]." On August 13, Mr. Grider transferred \$14,000 from the IOLTA account into his general account. Although his ledger indicates this transfer was for court-ordered fees, there were no withdrawals authorized at that time. In a declaration filed with the court, Mr. Grider stated that his fees were justified because both the insurance company and the husband's employer initially denied coverage. In fact, neither company denied coverage.

The court approved the children purchasing one half of a family home. The client found a suitable house, but Mr. Grider told her she could not buy it. In January 1999, Mr. Grider sold her a remote, undeveloped five-acre parcel he owned with his wife and another couple. Mr. Grider sent the client to another lawyer to draft the documents. The GAL was not involved in

this process and Mr. Grider specified all the terms. In July 1999, the client met with the GAL. The client explained that she could not afford to put a home on the property and that no electricity, water or roads currently served the area. The GAL contacted Mr. Grider and suggested that he refund the children's money. In August or September 1999, Mr. Grider withdrew from the case, and another lawyer substituted as counsel for the personal representative. Mr. Grider sent a check to substituted counsel for the balance of the estate funds. Due to a shortage of funds in the trust account, Mr. Grider used other client funds to cover this check.

Matter 2: In October 1990, Mr. Grider established a trust for a client. The client was the grantor and Mr. Grider and the client were named co-trustees. Mr. Grider also drafted a will for this client, naming himself as executor and trustee. The will contained a specific bequest to D.C., who was raised as the client's daughter but was never legally adopted. At the time of the client's death on May 11, 1995, the trust had \$110,709.36 in assets. Mr. Grider sent monthly checks to D.C. beginning in June 1995. In February 1998, he wrote D.C. "there should be sufficient income from the investments to keep these payments coming for many years. This I fully intend to do." D.C. did not receive any funds after September 2000. It appears that there are no remaining funds and \$88,500 is missing.

Matter 3: Mr. Grider represented a minor in a personal-injury case. The child had been severely bitten by a dog. On December 16, 1998, the court approved a \$14,272.66 settlement. The court ordered that the funds be placed in a blocked account and not released prior to the child's age of majority without a court order. Mr. Grider's client ledger indicates that the child's money is still owed, but it is not in an IOLTA trust account or blocked account.

Matter 4: Mr. Grider's client ledger for an estate had a negative balance beginning April 30, 1999, and as of the stipulation date, December 20, 2000, that balance was negative \$19,221.94. On June 19, 2000, Mr. Grider sent the beneficiary a statement indicating the estate balance was \$43,069.05.

Mr. Grider's conduct violated RPCs

1.14, requiring lawyers to preserve client funds; 8.4(c), prohibiting lawyers from engaging in conduct involving dishonesty, fraud, misrepresentation or deceit; 1.8(a), prohibiting entering a business transaction with a client unless the terms are fair and reasonable and the client obtains independent legal advice; and 3.3(a), prohibiting misrepresentation of material facts to a tribunal.

C. Elizabeth Williams represented the Bar Association. David A. Gittins represented Mr. Grider.

Disbarred

Randall Keys (WSBA No. 15929, admitted 1986), of Bremerton, has been disbarred by order of the Supreme Court effective May 22, 2001, following a default hearing. The discipline is based upon his engaging in a consensual sexual relationship with a client and denying that relationship under oath.

In 1995, the Kitsap County Superior Court assigned a law firm to represent a client charged with second-degree assault. The firm assigned the case to Mr. Keys. The client, who had a history of being battered by her husband, allegedly shot a handgun in the husband's general direction.

In May or June 1995, while preparing for trial, Mr. Keys and the client entered a consensual sexual relationship. Mr. Keys delivered handwritten, intimate notes and gifts to the client, and offered to assist her in ending her marriage after the criminal case was concluded. During their relationship, Mr. Keys advised the client to accept a plea agreement to third-degree assault. The client received a sentence giving her credit for time served, requiring community service, and placing her on probation for one year. Mr. Keys represented the client at all court hearings. The client believed that the plea would end the case.

During the probation, the client realized that she had not fully understood the consequences of her plea agreement and had followed Mr. Keys' advice because of their personal relationship. On July 10, 1996, the client wrote to the court asking to withdraw her guilty plea. The court appointed a new lawyer and held a hearing on the client's request to withdraw her guilty plea. At the hearing, Mr. Keys denied under oath that he had a sexual rela-

relationship with the client or that he wrote the 10 intimate notes to the client. The court granted the client's motion.

Mr. Keys' conduct violated RPCs 1.7(b), prohibiting representing a client if the representation may be materially limited by the lawyer's own interests, unless the lawyer reasonably believes that the representation will not be adversely affected and the client consents in writing after full disclosure; 8.4(c), prohibiting conduct involving dishonesty, fraud, deceit or misrepresentation; 8.4(d), prohibiting engaging in conduct prejudicial to the administration of justice; and RLD 1.1(a), prohibiting conduct reflecting disregard for the rule of law.

Harold Vhugen represented the Bar Association. Mr. Keys represented himself. The hearing officer was Stew Cogan.

Disbarred

Michael A. McKean (WSBA No. 4438, admitted 1971), of Seattle, has been disbarred by order of the Supreme Court effective May 31, 2001, following a hearing. The discipline is based upon his pleading guilty to six felonies reflecting adversely on his honesty, trustworthiness or fitness as a lawyer.

In 1973, Mr. McKean became a general partner with Mr. W in a large number of federally subsidized housing projects. There were many limited partners with investments in these projects. When Mr. W was removed as general partner for failing to fulfill his duties, Mr. McKean took over these responsibilities in addition to his previous responsibilities. Mr. McKean used the project funds to remodel his home and for other personal expenses. He also paid out project funds before the projects were completed, and used his personal funds to start or pay construction expenses, which he later reimbursed to himself. He operated in a manner intended to complete the projects without regard to legal requirements. During a federal investigation of Mr. W, Mr. McKean's conduct was discovered.

On March 3, 1998, Mr. McKean pleaded guilty to bank fraud, making a false request for a loan advance, making a false cost certificate, accepting an unlawful payment from a bank, presenting a forged cashier's check, and filing a false tax return. On June 5, 1998, the court sentenced Mr. McKean to 21 months at the federal camp at Sheridan, Oregon, three years' probation, and \$300,000 restitution.

Mr. McKean's conduct violated RLD 1.1(a), prohibiting committing an act involving moral turpitude, dishonesty or corruption; RPCs 8.4(b), prohibiting committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and 8.4(c), prohibiting engaging in conduct involving dishonesty, fraud, deceit or misrepresentation.

Richard M. Clinton represented the Bar Association. Mr. McKean represented himself. The hearing officer was Edward LeRoy Dunkerly. ☐

Opportunities to Serve

Northwest Justice Project Board of Directors

Application deadline: November 15, 2001

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

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

Legal Foundation of Washington Board of Trustees

Application deadline: November 15, 2001

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

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

Opportunities for 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 individuals to their governor, or interested persons may submit letters of application to the WSBA, Office of the Executive Director, 2101 Fourth Ave., Fourth Fl., Seattle, WA 98121-2330, or e-mail oed@wsba.org. Service on these boards is voluntary. Members are reimbursed for travel and related expenses; meetings are generally held at the WSBA office in Seattle; all appointments are for three-year terms.

- **Character and Fitness Committee:** Conducts hearings on Bar applications where there is a significant question as to the applicant's moral character. Hearings typically involve review of criminal histories, record of academic discipline (cheating and

plagiarism), and previous Bar discipline (for lawyer applicants). In addition, the committee considers petitions for reinstatement after disbarment. The committee generally meets two to four times a year on Saturdays.

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

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

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

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

2001 WSBA Award Winners

The WSBA Board of Governors takes great pleasure in announcing the recipients of the 2001 awards. The recipients will be honored at the Awards Dinner, Thursday, September 13, 2001 at the W Seattle Hotel. (To make your reservation, please complete and return the form on page 42 no later than September 4.)

Award of Merit – John McKay; Rick Nagel

President's Award – to be announced at Awards Dinner

Board of Governors' Award for Professionalism –

Francois X. Forgette

Angelo Petrucci Award for Lawyers in Public Service –

Narda D. Pierce

Outstanding Judge Award –

The Hon. Daniel J. Berschauer

Pro Bono Award – TeamChild

Courageous Award – Steven J. Tucker

Affirmative Action Award – Rafael A. Gonzales;

Washington Young Lawyers Division

Excellence in Legal Journalism Award –

Robert C. Pittman

Special Lifetime Service Award – Joseph H. Gordon Sr.

Business Skills for Lawyers

The Aljoja Conference Center in Seattle will host a WSBA symposium September 20-21 to study the use of the Association of Legal Administrators' business-skills curriculum for lawyers. For more information, contact Peter Roberts at peter@wsba.org or 206-727-8237.

Information for Your Clients

Did you know that easy-to-understand pamphlets on a wide variety of legal topics are available from the WSBA? For a very low cost, you can provide your clients with helpful information. Pamphlets cover a wide range of topics:

<i>Alternatives to Court</i>	<i>Lawyers' Fund for Client Protection</i>
<i>Bankruptcy</i>	<i>Legal Fees</i>
<i>Buying and Selling</i>	<i>Marriage</i>
<i>Real Estate</i>	<i>Parenting Act</i>
<i>Consulting a Lawyer</i>	<i>Probate</i>
<i>Criminal Law</i>	<i>Revocable Living Trusts</i>
<i>Dissolution</i>	<i>Signing Documents</i>
<i>Elder Law</i>	<i>Trusts</i>
<i>Landlord/Tenant Rights</i>	<i>Wills</i>

Each topic is sold separately. Pamphlets are \$9 for 25, \$15 for 50, \$20 for 75, and \$25 for 100. Pricing for larger quantities is available on request.

Additionally, copies of *The Law Book*, a special supplement to the King County Journal Newspapers, are available. The 12-page tabloid includes articles by WSBA members on a wide range of topics. The cost is \$20 for 100 copies.

To place your order or for more information, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA. Sales tax is applicable to all in-state orders.

Goldmark Award Nominations

The Legal Foundation of Washington is now 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 whose 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 emailing 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.

Upcoming BOG Meetings

The Board of Governors meeting schedule is as follows:

September 13-15 – WSBA office, Seattle

October 19-20 – Vancouver, WA

November 30-December 1 – Tacoma

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 liril@wsba.org.

Usury Rate

The average coupon equivalent yield from the first auction of 26-week treasury bills in August 2001 is 3.456 percent. The maximum allowable interest rate for September is therefore 12 percent. Compilations of the average coupon equivalent yields from past auctions of 26-week treasury bills and past maximum

interest rates for June 1988-June 1999 appear on page 53 of the June 1999 *Bar News*. Information from January 1987 to date appears at www.wsba.org/barnews/usuryrate.html.

LFW Notice of Public Meeting

The trustees of the Legal Foundation of Washington (LFW) will meet on September 13, 2001 at the LFW office in Seattle. The public may appear from 9:00 a.m. to 9:30 a.m. to comment on the foundation's activities. This opportunity is made pursuant to Article I, Section 1.7 of the bylaws of the Legal Foundation of Washington.

Court Rules and Procedures Committee Meeting

When it reconvenes later this fall, the Court Rules and Procedures Committee is scheduled to review the Criminal Rules for Superior Court (CrR) and for Courts of Limited Jurisdiction (CrRLJ). Please send any suggestions for rule changes to the Supreme Court of Washington, Temple of Justice, PO Box 40929, Olympia, WA 98504-0929; or e-mail Lisa Bausch at lisa.bausch@courts.wa.gov.

Washington Chapter of American Judicature Society Meeting in Seattle

Attorneys, judges and other interested persons are invited to attend a meeting of the Washington chapter of the American Judicature Society on October 12, 2001 from 9:00 a.m. to noon at the WSBA office. The two-part program includes Judge Robert Alsdorf, author of the I-695 trial court decision, speaking on judicial independence. There will also be a panel discussion on judicial election vs. selection moderated by Denny Heck of TV Washington. Panelists include Washington Supreme Court Chief Justice Gerry Alexander; attorneys Nicholas Corning and John McKay; and Walsh Commission members Court of Appeals Judge William Baker and attorney Mary Wechsler. For more information, contact Gail Stone at 206-733-5925 or gails@wsba.org.

Elder Law Section Announces Grant Program

Washington's senior citizens are well-served by the WSBA Elder Law Section. Not only do many section members volunteer their time by providing pro bono legal counseling services, the section launched its first grant program this year. The grant program will award up to \$10,000 annually to Washington non-profit programs that provide legal services to seniors. Each award will vary from \$1,000 to \$5,000, based on the number of award recipients, type of program, and number of seniors who will benefit from the program.

During the past two years, the section has donated \$10,000 each year to the Legal Aid for Washington (LAW) Fund. The grant program was developed in keeping with the section's practice of recognizing the importance of access to legal services for all seniors. For additional information, see the Elder Law Section's page on the WSBA Web site at www.wsba.org/elderlaw.

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

Descendants Endow Takuji Yamashita Memorial Scholarship

Descendants of Takuji Yamashita have donated \$65,000 to endow a University of Washington School of Law scholarship in international law and human rights. Twenty-three of Mr. Yamashita's descendants, mostly in Japan, endowed the scholarship, which will begin supporting law students next year.

Mr. Yamashita graduated from the law school in 1902 and became an early champion of Asian-American civil rights after the Washington Supreme Court refused to let him practice law because of his Japanese origin. He challenged that denial, but died in 1959 without being able to practice law. Earlier this year, the Supreme Court posthumously admitted Mr. Yamashita to the WSBA (see *Bar News*, March 2001, p. 22). Donations may be made to the Takuji Yamashita Memorial Scholarship, University of Washington School of Law, 1100 NE Campus Parkway, Seattle, WA 98195-6617.

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.

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 more information, contact Ed Greenleaf at 206-296-9320.

Calendar Change — Civil Antiharassment Hearings

Civil antiharassment hearings for the Seattle case assignment area are now being heard Tuesdays at 1:15 p.m. in courtroom W-275 at the King County Courthouse. This applies to calendared hearings for full protection orders and hearings to modify or terminate existing orders. All notices and orders setting hearings on the civil antiharassment calendar filed on or after July 17, 2001 must reflect this change. Emergency temporary orders will continue to be heard in the Ex Parte Department in courtroom W-325. Antiharassment hearings at the Regional Justice Center are not affected by this change.

Northwest Justice Project Receives Grants

Northwest Justice Project (NJP) has been awarded three technology initiative grants totaling \$674,000 by Legal Services Corporation. The \$50,000 state *Web site grant* will help fund an online advocate resource center for lawyers representing low-income clients. A state *technology grant* of \$374,000 will help expand the availability of NJP's Coordinated Legal Education, Advice and Referral (CLEAR) service. A \$250,000 *national grant* will fund staff from probono.net and lawhelp.org to assist with Web site content and protocol. Included in these grants is \$25,000 to support the access to justice Technology Bill of Rights project, being developed by the Washington State Access to Jus-

tice Board. For more information about the technology initiative grants awarded to NJP, contact Joan Kleinberg at 206-464-1519 or joank@nwjustice.org.

Lawyer Directory Enhancement

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

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

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

2001 LOMAP Roadshow

The WSBA Law Office Management Assistance Program (LOMAP) will hit the road October 8-19, 2001. Seminars will be conducted in Colfax, Kennewick, Olympia, Vancouver, Wenatchee and Yakima. The program focuses on using technology to improve law practices, remain competitive, and exceed client expectations. CLE credits are pending. For more information, contact Peter Roberts at 206-727-8237 or peter@wsba.org, or Julie Griffiths at 206-733-5914 or julieg@wsba.org. Registration information is available on the WSBA Web site at www.wsba.org/lomap.

Revised Editions of Motor Vehicle Accident Deskbook Available

Updated editions of the *Motor Vehicle Accident Deskbook*, the *Washington Motor Vehicle Accident Insurance Deskbook*, and the *Washington Motor Vehicle Accident Litigation Deskbook* are now available from WSBA-CLE. The three-volume series provides exhaustive coverage of all issues from the initial interview with a potential client to the final resolution of the claim. The deskbooks include analysis and practice tips from more than 50 leading Washington personal injury and defense lawyers, plus detailed sample pleadings, discovery and settlement documents, letters, forms and memoranda commonly used in automobile accident litigation.

- *Washington Motor Vehicle Accident Deskbook* (2nd ed. 2001), edited by David F. Ross; \$195
- *Washington Motor Vehicle Accident Litigation Deskbook* (2nd ed. 2001), edited by John J. Soltys and Michael L. Schrenk; \$195
- *Washington Motor Vehicle Accident Insurance Deskbook* (2nd ed. 2001), edited by Donald C. Harrison, Sidney R. Snyder Jr. and Ronald S. Dinning; \$160

Purchasers who sign up for the automatic update service will receive a 10 percent discount on the price. A further discount applies to purchases of all three deskbooks. To order, please contact the WSBA Service Center at 800-945-WSBA or 206-443-WSBA; or visit the WSBA Web site at www.wsba.org/cle/catalog/form.htm.

Announcements

FOSTER PEPPER & SHEFELMAN PLLC

ATTORNEYS AT LAW

We are pleased to announce the expansion of our litigation, municipal/public finance, tax, real estate, and creditors' rights & bankruptcy practice groups

with the addition of the following associates:

Rod Dembowski*

Brian DeSoto*

Jennifer Droz *

Leigh Ann Lucero *

Kol Medina *

Alice Ostdiek*

Ramsey Rammerman

* Washington admission pending

www.foster.com

ANCHORAGE

PORTLAND

SEATTLE

SPOKANE

Law Offices

FURRER & SCOTT LLC

announces the withdrawal of
Patrick J. Furrer from the firm,
and the change of the firm's name to

SCOTT HOOKLAND LLP
LAWYERS

Aaron L. Blankenship* Alan L. Mitchell
Douglas L. Gallagher Thomas J. Murphy
Douglas R. Hookland* Michael J. Scott

Mailing address: PO Box 25414
Tigard, Oregon 97281
Street address: 9185 SW Burnham
Tigard, Oregon 97223
Telephone: 503-620-4540
Fax: 503-620-4315

*Also admitted in Washington

*We wish Pat well as he continues his practice
sharing offices with Greg Soriano.*

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at 206-727-8260 or
e-mail jacky@wsba.org.

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Attorneys at Law

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520 Melbourne Tower
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Seattle, Washington 98101

and the appointment of
Managing Attorney **Credo James Enriquez**.

Mr. Enriquez received his J.D. and
L.L.M. in taxation from the
University of Washington. He was law
clerk for the Honorable James N. Barr
of the United States Bankruptcy Court
for the Central District of California.

His practice emphasizes complex
bankruptcy, tax representation and
corporate law. He is also admitted
to the Wisconsin Bar.

The firm welcomes **Frederick Arcala** as
bankruptcy and litigation associate.
Mr. Arcala is a graduate of Thomas M.
Cooley School of Law in Michigan.

Our firm's practice emphasizes
consumer and corporate bankruptcy,
tax representation, debt management,
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formation and dissolution.

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Telephone: 206-622-9977
Fax: 206-622-2005

Calendar

ADR

Training to Be a Professional Mediator

September 20-21 – Seattle. 21.5 CLE credits pending, including 2.5 ethics. By Alhadeff Mediation Services; 206-281-9950.

Training to Be a Professional Mediator

October 2-5 – Seattle. 40 CLE credits pending. By Alhadeff Mediation Services; 206-281-9950.

Professional Mediation Skills Training

October 5-7; 20-21 – Seattle. 34 CLE credits pending, including 2 ethics. By UW-CLE; 206-543-0059.

ADMINISTRATIVE LAW

Administrative Law Section CLE

September 12 – Lacey. CLE credits TBD. By WSBA Administrative Law Section; 800-945-WSBA or 206-443-WSBA.

BUSINESS

Business Law Institute

September 20-21 – Seattle. 7 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Drafting Technology Contracts

September 28 – Seattle. 3.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Intellectual Property Licensing Agreements

September 28 – Seattle. 3.5 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Deciding ICANN Domain-Name

Disputes: Questioning Delegation, Fairness and Consent

October 5 – Portland. 6.5 CLE credits pending. By Northwestern School of Law; 503-243-3326.

The WSBA Lawyer Services Department offers these four programs:

The Lawyers' Assistance Program (LAP) – 206-727-8268

Confidential assistance for lawyers with emotional, drug/alcohol or other personal problems.

The Law Office Management Assistance Program (LOMAP) – 206-727-8237

Offers consultation and information to help solo and small-firm practitioners deliver legal services of the highest quality.

The Professional Responsibility/Ethics Program – 206-727-8284

Lawyers can call a WSBA lawyer for assistance in resolving ethical dilemmas.

The Alternative Dispute Resolution Program (ADR) – 206-733-5923

Offers two low-cost methods of resolving disputes: voluntary fee arbitration and mediation.

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

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

8th Annual Criminal Justice Institute

September 20-21 – Tukwila. 14 CLE credits, including up to 2 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ELDER LAW

Elder Law Section Annual Meeting and Seminar

September 21 – Seattle. 6.25 CLE credits, including .75 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

EMPLOYMENT LAW

Public Sector EEO & Employment Law Conference

September 20-21 – San Francisco; September 27-28 – Washington, D.C. CLE credits TBD. By National Employment Law Institute; 303-861-5600.

Privacy in the Workplace

September 25 – Mt. Vernon. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Labor & Employment Law Section CLE

October 19 – Seattle. CLE credits TBD. By WSBA Labor & Employment Law Section; 800-945-WSBA or 206-443-WSBA.

ENVIRONMENTAL & LAND USE

Land Use and GMA update

October 4 – Seattle; October 11 – Olympia. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Takings & Condemnations

October 5 – Seattle. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ESTATE PLANNING

YLD: How to Draft Wills

October 18 – Seattle; October 25 – Olympia. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

YLD: How to Probate an Estate

October 19 – Seattle; October 26 – Olympia. CLE credits TBD. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

ETHICS

Ethics, Professionalism and Civility:

The Hard Questions Continue

September 28 – Seattle. 3 CLE ethics credits. By WSBA Professionalism Committee; 800-945-WSBA or 206-443-WSBA.

FAMILY LAW

New Tax Act

September 6 – Seattle. 4.25 CLE credits. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

GENERAL

New Takes on Depositions

September 7 – Portland. 6 CLE credits pending. By Oregon State Bar; 503-684-7413.

Career Guidance

September 13 – Seattle. No CLE credits available. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

Winning Strategies

September 14 – Seattle. Spokane and Vancouver by video replay. 6.75 CLE credits, including 3.25 ethics. By WSBA-CLE; 800-945-WSBA or 206-443-WSBA.

The Courthouses in Seattle

October 1-4 – Seattle. 4 CLE credits pending. By King County Bar Association; 206-340-2578.

New UCC Article 9 Update

October 5 – Portland. 5 CLE credits pending, including 1 ethics. By Oregon State Bar; 503-684-7413.

Fundamentals of Civil Trial Procedure

October 19 – Portland. CLE credits pending. By Oregon State Bar; 503-684-7413.

Professionals

Legal Writing

October 19 – Seattle; October 24 – Spokane.
6.75 CLE credits. By WSBA-CLE; 800-945-
WSBA or 206-443-WSBA.

HEALTH LAW

Health Law Primer & Refresher

September 12 – Seattle. CLE credits TBD. By
WSBA-CLE; 800-945-WSBA or 206-443-
WSBA.

Health Law Institute

September 13 – Seattle. CLE credits TBD. By
WSBA-CLE; 800-945-WSBA or 206-443-
WSBA.

INDIAN LAW

14th Annual University of Washington Indian Law Symposium

September 13-14 – Seattle. 12.5 CLE credits
pending, including 1 ethics. By UW-CLE; 206-
543-0059.

LAW OFFICE MANAGEMENT

Law Practice Management & Technology Section Brown-Bag Lunch

September 12 – Seattle. 1 CLE credit. By
WSBA Law Practice Management & Technol-
ogy Section; 800-945-WSBA or 206-443-
WSBA.

LITIGATION

Advanced Negotiations (*with Martin Latz*)

October 18 – Seattle. CLE credits TBD. By
WSBA-CLE; 800-945-WSBA or 206-443-
WSBA.

REAL PROPERTY

Gifts to Minors

September 6 – Seattle; September 7 – Mt.
Vernon. 3.5 CLE credits, including .75 ethics.
By WSBA-CLE; 800-945-WSBA or 206-443-
WSBA.

Durable Power of Attorney

September 6 – Seattle; September 7 – Mt.
Vernon. 3.5 CLE credits. By WSBA-CLE; 800-
945-WSBA or 206-443-WSBA.

TAX LAW

Tax Institute

September 6 – Seattle. 8.25 CLE credits. By
WSBA-CLE; 800-945-WSBA or 206-443-
WSBA.

Broad-Brush Taxation

October 4 – Portland. 6.25 CLE credits. By
Oregon State Bar; 503-684-7413.

Northwest Technology Tax Institute

October 26 – Seattle. CLE credits TBD. By
UW-CLE; 206-543-0059.

**For information about advertising in the
Professionals section of *Bar News*, please call**

**Jack Young at 206-727- 8260 or
e-mail jacky@wsba.org.**

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Lawrence (Wn. App. 2001)

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

Passed CPA exam in 1982

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425-451-1202
Fax: 425-454-4289

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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Prime North Seattle office available: Greenwood neighborhood; three offices, two bathrooms, conference room and kitchen, with off-street parking. One attorney to share 1,000 sq.-ft. suite with current occupant, or two attorneys could take over entire space. Located at 8011 Greenwood Ave. N., Seattle. Call Rob at 206-783-2300.

Wells Fargo Center, 32nd Fl.: View attorneys' office. Completely equipped law office including receptionist, conference room, library, kitchen. Secretarial station available. Call Harris, Mericle & Wakayama, 206-621-1818.

Bellevue: Five remodeled offices. Reception, conference, library, kitchen, fax, copier, T1, network, cable, DSL. Support-staff stations available. Free parking. Beautiful location just outside downtown. D. Richardson, 425-646-9801, dbrlaw@msn.com.

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

Office space for rent: Reasonably priced office in downtown Seattle's financial district. Near courthouse, with spectacular view of Elliott Bay and Olympic Mountains. Includes telephone, mail delivery, coffee room, storage and conference room. Reception and secretarial space available. Call 206-667-0239.

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Downtown Seattle: Three large view offices and one associate/staff support space available in the Exchange Building. Offices may be leased either as a group or individually. Tenants would share space with the regional office of a Wash-

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ington, D.C.-based energy/environmental law firm, as well as with several other sole practitioners and consultants. Congenial atmosphere, great location, and newly updated space makes this a perfect environment for the sole practitioner or consultant. Includes copy/fax access, reception support, shared conference room facilities, and the opportunity for shared staff support on an hourly or monthly basis. Please direct e-mail inquiries to Jennifer Barnes, jlb@vnf.com, or call 206-829-1803.

Office space available: Three offices, downtown Seattle, spectacular western views, receptionist, conference rooms, library. Progressive atmosphere. Overflow, referral, contract work potential. Call Leah at 206-624-9392.

Downtown Seattle: Two view offices plus one or two staff spaces in a small suite at 520 Pike, 15th floor. Includes receptionist, storage, conference room with small library, DSL, wiring for network, copier, fax, phones, kitchenette. Parking available. \$3,000. Call David at 206-622-2573.

POSITIONS AVAILABLE

Prosecutor: Kenyon Dornay Marshall PLLC is a rapidly expanding 13-attorney Issaquah firm which limits its practice to the representation of Washington cities. The firm currently provides regular city attorney, city prosecutor, and special counsel services to nearly 30 cities. The firm is hiring a full-time prosecutor to serve in multiple King County cities. Prior prosecution experience is required. We expect an honest day's

work Monday through Friday, but the weekends are your own. The position includes a great deal of court experience, independence, and "thinking on your feet," along with ample amounts of teamwork, camaraderie and fun. \$38,000, plus excellent medical, dental and retirement benefits. Send a cover letter explaining your interest in the position, and a résumé to: Kenyon Dornay Marshall PLLC, Attn: Margaret Starkey, 11 Front St. S., Issaquah, WA 98027; or fax 425-392-7071.

Martston & Heffernan PLLC, AV-rated firm located in a park setting in downtown Redmond, is seeking an associate with a minimum of three years' experience for its construction law practice involving complex contract and construction-defect litigation. Strong research, writing and oral advocacy skills required. Annual salary \$80,000, plus performance incentives. Please send résumé to: Jackie Perrigou, Marston & Heffernan PLLC, 16880 NE 79th St., Redmond, WA 98052-0902; e-mail jackiep@marstonheffernan.com.

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 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.

Four Lynnwood attorneys seek fifth with experience in some of these areas: civil litigation,

TO PLACE A CLASSIFIED AD:

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

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

personal injury, bankruptcy, real estate, estate planning. Perfect for downtown associate who wants to move north. Prefer attorney with client following but will consider others. Salary, medical, IRA. See <http://www.jamesrobertdeal.com>. Send résumé to jamesrobert@jamesrobertdeal.com.

The Seattle office of Lane Powell Spears Lubersky LLP seeks an associate with a minimum of two years' experience in employment and labor law, including employment discrimination, unfair labor practices, wage and hour matters, employment contracts and handbooks, noncompetition agreements, and state and federal EEO compliance matters. Candidates should submit cover letter and résumé to: Len Roden, Administrator of Attorney Recruiting, Lane Powell Spears Lubersky LLP, 1420 Fifth Avenue, Ste. 4100, Seattle, WA 98101-2338.

Workers' comp. defense firm seeks associate attorney. Qualified candidate will possess a minimum of two years' workers' comp./med./mal./ins. defense experience, and excellent writing and client-relations skills. Send résumé, cover letter, transcript and writing sample to: L. Nelson, 216 1st Ave. S., Ste. 340, Seattle, WA 98104.

Associate attorney: Downtown Seattle insurance defense firm seeks associate. Two years' litigation and/or insurance defense experience is preferred. All applicants should possess superior verbal and writing skills, and have a strong academic background. Excellent benefit package. Submit confidential replies, references and two writing samples to: Office Administrator; Clarke, Bovingdon, Cole Mills & Lether PC; 1001 4th Ave., Ste. 3810, Seattle, WA 98154-1131.

Eastern Washington opportunity: Seeking quality associate attorney to join well-established general practice with business emphasis. Applicant must possess outstanding credentials, have a strong work ethic, and desire to live in small eastern Washington community. Exceptional financial opportunity for the right person. If interested, e-mail letter and résumé to foianini@bentonrea.com.

Chmelik Sitkin & Davis PS is a well-established, five-attorney, business, municipal, real estate and land use firm in Bellingham. We represent a wide variety of business clients and port districts, fire districts, and other municipal governments throughout northwest Washington. We are seeking an associate attorney with a minimum of three years' experience in business and transactional law. The ideal candidate will have demonstrated success in law school and the desire to work in a collegial environment in an expanding law practice. The firm provides a

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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.

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Associate attorney needed for small, friendly insurance defense firm with major insurance company clients. The ideal candidate will have strong research/writing/communication skills, the ability to work independently, and a background in litigation. Send résumé, cover letter and writing sample to: Hiring Coordinator, Barrett & Worden PS, 2201 6th Ave., Ste. 1201, Seattle, WA 98121. Applications also accepted by fax at 206-436-2030, or e-mail administrator@barrett-worden.com.

Expanding practice: Smith & Zuccarini PS, an established AV-rated Bellevue business and estate planning firm seeks experienced attorney with established practice focused on business, real estate, and/or trust and estate transactions or disputes. Solid academics a must. Partnership potential. Send résumé to: Nikki Thomas, Smith & Zuccarini PS, 777 108th Ave NE, Ste. 2250, Bellevue, WA 98004; or nikki@smithzuccarini.com.

Weiss, Jensen, Ellis & Howard – estate planning/tax lawyer: We are a mid-sized, AV-rated Pacific Northwest law firm seeking a talented associate in our Portland, Oregon, office to work and train within a substantial existing estate planning/tax practice. The candidate should have a minimum of two years' solid experience in sophisticated estate planning/tax, and solid academic credentials. Please send, fax or e-mail résumé and cover letter to: Patti Maltase, Human Resources; Weiss, Jensen, Ellis & Howard; 111 SW 5th Ave., Ste. 2300, Portland, OR 97204; fax 503-241-8014; e-mail pm@weiss-law.com.

Corporate attorney: WaferTech is a contract semiconductor foundry in North America using the latest equipment, technology and processes to manufacture a wide variety of integrated circuits. We have an exciting opportunity in our high-tech manufacturing environment to join our fast-paced corporate legal team in providing a full range of responsibilities. Responsibilities will include contracts, litigation monitoring, employment law, corporate governance, environmental law, intellectual property, financing, securities and regulatory compliance. The position requires proficient computer skills (MS Office Word, Excel and PowerPoint); legal analysis and analytical writing skills; strong communication, interpersonal and organizational skills; ability to multitask, meet tight deadlines, prioritize, and handle confidential matters. If you are a self-starter, can work with minimal supervision, and have a J.D. and at least two years' experience (in-house legal experience preferred), please submit your résumé (indicating Job Code WSBA/0701/AT) to: WaferTech, 5509 NW Parker St., Camas, WA 98607; fax 360-817-3593; e-mail resume@wafertech.com.

Associate positions: Downtown law firm seeks two associates with at least two years' experience, and strong research and writing skills. One position will focus on employment and maritime litigation. The other position will focus on business transactional work and some litigation. Send résumé and writing sample to: Louis Shields; LeGros Buchanan & Paul; 701 5th Ave., Ste. 2500, Seattle, WA 98104-7051; or e-mail jlucien@legros.com. Visit our Web site at <http://www.legros.com>.

Hearing officers (statewide): The Washington State Department of Licensing seeks applicants to conduct administrative hearings on drivers' license sanctions arising from DUI arrests, financial responsibility violations, and habitual traffic-offender status. Salary: \$2,984-3,818 per month. Further information and application materials may be obtained from <http://www.hr.dop.wa.gov/bulletins/jobcat.htm>

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Executive director: Western Environmental Law Center, a highly successful three-office, public-interest law firm serving clients on major cases throughout the West, seeks full-time executive director. Significant nonprofit experience required. Salary negotiable based on experience. Progressive benefits and workplace. Please submit résumé to: WELC, 1216 Lincoln St., Eugene, OR 97401; or eugene@westernlaw.org.

Associate attorney: Growing four-attorney business law firm with substantial securities litigation practice seeks associate with minimum three years' experience in both transactional and litigation matters. Experience with securities issues a plus. Send résumé and writing sample to: Israel, 1001 4th Ave., Ste. 2130, Seattle, WA 98154.

Associate position: Attorney sought by established general-practice firm serving Thurston and surrounding counties. Experienced in wills/probate/bankruptcy and tax law; LLM a plus. Self-starter and team player. Potential for growth available. Send résumé to: Don A. McConnell and Associates; 2112 Black Lake Blvd., Olympia, WA 98512; Web sites: <http://www.lewiscounty.com> and <http://www.thurstoncounty.com>.

Seattle family and criminal practice for sale: Monthly payments out of firm revenue towards purchase price mean that very little capital is needed and very little risk involved. Right candidate will have references and some practical experience in these areas. For more information, send résumé and contact information to: WSBA Bar News Box 613, 2101 4th Ave., 4th Fl., Seattle, WA 98121-2330; and/or e-mail lawpracticeforsale@yahoo.com.

Associate attorney – Vancouver firm: Associate will practice variety of areas of law. Minimum two years' experience preferred. Computer experience necessary. Must have passed Washington Bar. Send cover letter and résumé to: Marsh & Higgins, PO Box 54, Vancouver, WA 98666; or dana_gardner@marsh-higgins.com.

Dickson Law Offices PLLC, a real estate litigation, land use, and business law firm in Tacoma, seeks attorney with a minimum of two years' experience for work in areas including all phases of litigation, sale of real estate, leasing, property development, zoning, administrative agencies, environmental, and hazardous waste and condemnation. Candidates should be able to handle caseloads independently and in a team environment. Send cover letter and résumé to:

Hiring Coordination, 1201 Pacific Ave., Ste. 1425, Tacoma, WA 98402; fax 253-572-1300; e-mail kdmaher@qwest.net.

Assistant city attorney: The City of Puyallup Legal Department is seeking applicants for the position of assistant city attorney. Responsibilities primarily entail criminal prosecution and police advising, with some municipal civil duties such as building-code enforcement, drug forfeitures, contract writing and review, etc. Potential for additional civil duties depending upon experience. Requirements: member of WSBA or recent examinee of Bar examination, with employment conditioned upon passage of Bar exam. Salary range: \$3,711- 4,824 per month, plus excellent benefits. Position open until filled. Job announcement, required application form and supplemental questionnaire available at <http://www.ci.puyallup.wa.us>, or call 253-841-5541. EOE.

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Law school dean and professor, University of Oregon: The University of Oregon invites applications for the position of law school dean and professor. The expected starting date is July 1, 2002. The new dean will have a distinguished record of academic achievement and outstanding professional credentials in practice, academia or both. The successful candidate will demonstrate a strong ability to relate well to people, both within and beyond the law school. He or she also will exhibit superior leadership abilities, excellent fundraising skills, and a vision of

the importance of public legal education. The new dean will be committed both to a collaborative decision-making style and to a diverse law school community. Finally, he or she will have administrative experience or aptitude, as well as high levels of energy and institutional commitment. Application materials should include at least a letter of interest, current curriculum vitae, and the names and phone numbers of three references. To ensure full consideration, all materials should arrive by September 15, 2001. Kindly direct applications to this address: Melinda Grier, Chair; Law Dean Search Committee, Office of the Provost; 1258 University of Oregon, Eugene, OR 97403-1258. An equal opportunity, affirmative-action institution committed to cultural diversity and compliance with the Americans with Disabilities Act.

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Administration of the estate of Julian Leighton "Jack" Stallard, who died March 30, 2001, in Santa Clara, Utah, while a domiciliary of Blaine County, Idaho, is presently being administered intestate in Blaine County, Idaho. Anyone who has information concerning a will which Mr. Stallard may have executed is asked to contact the estate: Ann Legg, PO Box 249, Ketchum, ID 83340; 208-726-9311.

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